



Office of the City Clerk

City Hall
121 N. LaSalle St.
Room 107
Chicago, IL 60602
www.chicityclerk.com

Legislation Text

File #: O2016-7126, Version: 1

ORDINANCE

WHEREAS, the City of Chicago ("City") is a duly constituted and existing municipality within the meaning of Section 1, Article VII, of the 1970 Constitution of the State of Illinois ("Constitution"), and is a home rule unit of local government under Section 6(a), Article VII, of the Constitution; 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 ("MWRD"), is a body corporate and politic organized and existing under the laws of the State of Illinois; and

WHEREAS, the City's Department of Transportation ("CDOT") proposes to construct, place, operate, maintain, repair and remove a North Branch Riverwalk Underbridge Connection at Addison Street from Clark Park to California Park ("Bridge"); and

WHEREAS, the Bridge shall be placed on four (4) parcels of MWRD property (the MWRD Property), as depicted on Exhibit A attached hereto; and

WHEREAS, the MWRD is agreeable to enter into a thirty-nine (39) year term lease agreement ("Lease Agreement") with the City to allow for the Bridge to be placed on the MWRD Property for a the total sum of Ten and No/100 Dollars (\$10.00), for the entire 39 year term of the Lease; 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 Commissioner (the "Commissioner") of the Department of Transportation or a designee of the Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a Lease Agreement for a the total sum of Ten and No/100 Dollars (\$10.00), for the entire term of the Lease, substantially in the form attached hereto as Exhibit B, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Lease Agreement, with any such amendments, changes, deletions and insertions as shall be authorized by the persons executing the Lease Agreement.

SECTION 3. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 4. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. This ordinance shall be in full force and effect immediately upon its passage and approval.

Attachments:

**Exhibit A - Depiction of MWRD Property Exhibit B -
Form of Lease Agreement**

EXHIBIT A

DEPICTION OF MWRD PROPERTY (Attached)

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EXHIBIT B FORM OF LEASE AGREEMENT

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EXHIBIT B TO ORDINANCE

**LEASE
(Governmental Form)**

AGREEMENT

THIS INDENTURE, made this day of 2016, 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, with principal offices at 100 East Erie Street, Chicago, Illinois 60611 (hereinafter designated the "Lessor"), and the CHICAGO DEPARTMENT OF TRANSPORTATION, a department of the City of Chicago, itself a municipal corporation, organized and existing under the law of the State of Illinois, with principal offices at 30 N. LaSalle, Suite 500, Chicago, Illinois 60602, (hereinafter designated the "Lessee").

WITNESSETH THAT:

ARTICLE ONE

1.01 PREMISES LEASED

The Lessor for and in consideration of the rents hereinafter reserved and of the covenants and agreements hereinafter contained, does hereby demise and lease unto said Lessee four (4) separate areas ("Leased Parcel Areas") of the Premises including any columns/pylons attached to any portion of the bottom of the River that may be owned by the District, which such Premises is legally described in Exhibit "A" which is attached hereto and made a part hereof and as the Leased Parcel Areas are depicted in the plat of survey marked Exhibit "B" which is attached hereto and made a part hereof, located in the County of Cook and State of Illinois for those purposes, as more specifically described in Article Three, Paragraph 3.07 hereof, pursuant to 70 ILCS 2605/8 and 8c consisting of vacant real estate located on the eastern and on the western banks of the North Branch of Chicago River, north and south of Addison Street, more specifically described as: (a) Leased Parcel Area #1 and Leased Parcel Area #2 north of Addison Street and part of PIN 13-24-206-003-0000 and (b) Leased Parcel Area #3 and Leased Parcel Area #4 both located south of Addison Street and part of PIN 13-24-401-001-0000, along with the right-of-way necessary for the Lessee's construction, maintenance and operation of a suspended aerial bridge spanning the River and landing upon only those four Leased Parcel Areas, described herein and depicted on Exhibit "B" from Clark Park to California Park and known as the "North Branch Riverwalk Underbridge Connection at Addison Street".

For the purposes of this Lease, the terms "Leased Parcel Areas", "Leased Premises,

Leasehold Premises, Demised Premises," or similar terms may be used interchangeably, and shall be used synonymously to mean the real property which is the subject hereof and any improvements located thereon at the time of leasing or placed thereon by Lessee during the term of this Lease.

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1.02 TERM OF LEASE

The term of this Lease is 39-years, beginning on the _____ day of _____ A.D., 2016, and ending on the _____ day of _____, A.D., 2055, unless said term shall end sooner under the provisions hereof ("Term").

1.03 LEASE EXECUTED BY LESSOR WITHOUT WARRANTIES

It is expressly covenanted and agreed by the parties hereto that the Lessor executes and delivers this Lease without representation or warranties concerning Lessor's title to the Premises and authority to execute this Lease, the size of the Demised Premises, the useable areas of the Leased Parcel Areas, and building and zoning laws affecting the Demised Premises. The Lessee has examined the title to the Demised Premises and Lessor's authority to enter into this Lease, the size of each of the Leased Parcel Areas, and the useable areas of the Leased Parcel Areas, and is satisfied therewith. Lessee has further examined the building and zoning laws concerning the Demised Premises and is satisfied that Lessee may construct the North Branch Riverwalk Underbridge Connection at Addison Street as set forth in Section 6.01 of this Lease and that said Lessee may use the Demised Premises in accordance with the uses set forth in Section 3.07 of this Lease:

- A. In the event on the date hereof or any time hereafter, the building and zoning laws do not permit the use set forth in Section 3.07 hereof or the construction set forth in Section 6.01 hereof, the Lessee agrees, at its own expense within one (1) year of the date of this Lease, to take such action as may be necessary to obtain such zoning change and building permits;
- B. The failure of the Lessee to obtain such zoning change as may be necessary and/or such building permit within one (1) year of the date of this Lease, shall be cause for immediate cancellation of this Lease, at the option of the Lessor, provided, however, in this event, all rents due or coming due hereunder shall abate as of the date of the cancellation of this Lease pursuant to this subsection.

1.04 EFFECT OF CONDEMNATION OF DEMISED PREMISES

It is expressly covenanted by the parties hereto that in the event of any condemnation of the Demised Premises herein leased, or any part thereof, the entire condemnation award shall be the sole property of the Lessor, except for the actual value of the improvements made by Lessee during this Lease as of the date of the final judgment order in said condemnation proceedings; that Lessee shall be entitled only to a decrease in the rent reserved by percentage in relation to the whole tract to the part taken; and in the event the whole tract is taken or so much of the tract is taken as to prohibit the operation or use of the Demised Premises by Lessee for the purpose set

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forth in Section 3.07 hereof on the portion remaining impracticable, the Lessee shall be entitled to the cancellation of this Lease.

ARTICLE TWO

2.01 RENT AND ADDITIONAL COMPENSATION

The Lessee covenants and agrees, in consideration of the leasing of all four (4) of the Leased Parcel Areas aforesaid, to pay to the Lessor, as rent for the Demised Premises, the total sum of Ten and No/100 Dollars (\$10.00), receipt of which is hereby acknowledged for the entire term of this Lease.

ARTICLE THREE

GENERAL PROVISIONS

3.01 RENT RESERVED TO BE LIENS ON ALL BUILDINGS, ETC. ERECTED ON DEMISED PREMISES

It is agreed by Lessee that the whole amount of rent reserved and agreed to be paid for the Demised Premises shall be and is hereby declared to be a valid lien upon all buildings and other improvements on the Demised Premises or that may at any time be erected, placed, or put on the Demised Premises by the Lessee and upon the interest of said Lessee in this Lease and in the Demised Premises hereby leased.

3.02 FORCIBLE COLLECTION OF RENT BY LESSOR NOT TO AFFECT RELEASE OF OBLIGATIONS

It is expressly understood and agreed that the forcible collections of the rent by any legal proceedings or otherwise by the Lessor or any other action taken by Lessor under any of the provisions hereof, except a specific termination or forfeiture of this Lease, shall not be considered as

releasing the Lessee from its obligation to pay the rent as herein provided for the entire period of this Lease.

3.03 WAIVER OF COUNTERCLAIM

In the event Lessor commences any legal proceedings for non-payment of rent, or forcible detainer, Lessee will not interpose any counterclaim or set off of any nature or description in any such proceedings.

3.04 LESSEE TO PAY TAXES, ASSESSMENTS AND WATER RATES

As a further consideration for granting this Lease, the Lessee further covenants, promises and agrees to bear, pay and discharge (in addition to the rent specified) on or before the penalty date, all water rates, taxes, charges for revenue and otherwise, assessments and levies, general and special, ordinary and extraordinary, of any kind

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whatsoever, which may be taxed, charged, assessed, levied or imposed upon the Demised Premises or upon any and all of which may be assessed, levied or imposed upon the Demised Premises estate hereby created and upon the reversionary estate in said Demised Premises during the term of this Lease.

And it is further understood, covenanted and agreed by the parties hereto that all of said water rates, taxes, assessments and other impositions shall be paid, unless otherwise exempt, by said Lessee before they shall respectively become delinquent, and in any case within adequate time to prevent any judgment, sale or forfeiture. Lessee shall submit to the Lessor proof of payment of the real estate tax applicable to the Demised Premises property within sixty (60) days of the date said tax is due.

3.05 USE OF DEMISED PREMISES

It is understood that the Demised Premises are to be used by said Lessee for the sole and exclusive purpose of public recreational purposes and for the construction, maintenance and operation of a suspended aerial bridge spanning the River from Clark Park to California Park in Chicago, known as the North Branch Riverwalk Underbridge Connection and for no other purposes whatsoever.

3.06 PROHIBITED USES AND ACTIVITIES

Lessee specifically agrees not to use the said Demised Premises or any part thereof, or suffer them to be used for tanneries, slaughter houses, rendering establishments, or for any use of similar

character or for gambling in any form, or for the conducting thereon of any business which shall be unlawful. Lessee also specifically agrees that no alcoholic beverages of any kind shall be sold, given away, or consumed with the knowledge and consent of Lessee on the Demised Premises unless this Lease is for a term of more than twenty (20) years and then only with the prior written consent of Lessor's Board of Commissioners and the furnishing of dram shop insurance or other applicable insurance protection, with respect to such activities with policy limits, form and carrier approved by Lessor and naming Lessor, its Commissioners, officers, agents and employees as additional insureds, said insurance shall provide that said policy shall not be canceled without twenty (20) days advance written notice thereof, in addition to any insurance provided pursuant to paragraph 4.03 for which the Lessor is the named insured. Hunting and the manufacture, sale, distribution, discharge, and unauthorized use of guns and firearms on the leasehold premises are expressly prohibited.

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**7 LESSEE TO YIELD UP DEMISED PREMISES, ETC.,
UPON EXPIRATION OF LEASE**

The Lessee agrees at the expiration of the term hereby created or the termination of this Lease under the provisions hereof, to yield up said Demised Premises, to the Lessor in as good condition as when said improvements were constructed or placed thereon, ordinary wear and tear excepted. Lessee shall not place any storage tanks and/or asbestos contained improvements on the Demised Premises including aboveground and belowground storage tanks. Lessee will, upon receipt of ninety (90) days advance written notice, remove, at Lessee's sole cost and expense, the improvements placed on the Demised Premises. Should Lessee fail to remove the improvements after notice, or any extension thereof, Lessor will have the improvements removed from the Demised Premises at Lessee's costs therefor. This requirement survives expiration or termination of this Lease Agreement.

**8 FAILURE OF LESSOR TO INSIST ON PROVISIONS
NO WAIVER**

The Lessee covenants and agrees that if the Lessor shall one or more times waive its right to

insist upon prompt and satisfactory performance according to the terms of this Lease of any of the obligations of the Lessee, no such waiver shall release the Lessee from its duty promptly and strictly to satisfy at all times after such waiver each and every obligation arising under the provisions of this Lease, and especially any of such provisions with respect to which such waiver may previously have been made by the Lessor as aforesaid; and the Lessee covenants and agrees that if the Lessor shall for any length of time waive any right or rights accruing to Lessor under the provisions of this Lease, such waiver shall be construed strictly in Lessor's favor and shall not estop Lessor to insist upon any rights, subsequently accruing to it under this Lease not in terms specifically waived; and the Lessee covenants and agrees that if Lessee violates any of the obligations under this Lease, no waiver by the Lessor of its right to take advantage of such violation shall estop Lessor from insisting upon its strict rights in case of and as to any subsequent violation by the Lessee of the same or any other obligation.

3.9 VARIOUS RIGHTS, CUMULATIVE, ETC.

The Lessee agrees that the various rights and remedies of the Lessor contained in this Lease shall be construed as cumulative, and no one of them as exclusive of the other or exclusive of any rights or remedies allowed by law, and that the right given in this Lease to the Lessor to collect any monies or payments due under the terms of this Lease by any proceedings under this Lease or the right herein given the Lessor to enforce any of the terms and provisions of this Lease, shall not in any way affect the right of the Lessor to declare this Lease terminated and the term hereby created ended, as herein provided, upon the default of the Lessee, or failure of the Lessee to perform

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and carry out, all of the provisions in this Lease provided to be performed and carried out by the Lessee.

3.10 RIGHT TO MORTGAGE LEASEHOLD PREMISES INTEREST

- A. The Lessee is hereby expressly given the right at any time and from time to time, to mortgage its leasehold interest in the Demised Premises, by mortgage or trust deed, but any such mortgage or trust deed shall in no way create any lien or encumbrance on the fee of the Demised Premises and the interest of the Lessor therein and the interest of the Lessor in any improvements which may be placed on the Demised Premises by the Lessee; and it is further mutually covenanted and agreed that the mortgagee or trustee in any such mortgage or trust deed and the holder or owner of the indebtedness secured by said mortgage or trust deed shall not personally liable upon the covenants in the Lease unless and until it or its assignee(s) shall acquire the Demised Premises estate created by this Lease. It is further covenanted and agreed that any mortgage or trust deed must be paid

in full and a duly executed and recordable release thereof issued therefor prior to the expiration of the term of said Lease.

B. DEMISED PREMISES MORTGAGEE - TAX ESCROW: If any Demised Premises Mortgagee while the holder of any Leasehold Mortgage with respect to the Demised Premises shall require Lessee to deposit with such Demised Premises Mortgagee the amounts necessary to pay the general real estate taxes and/or special assessments against the Demised Premises pursuant to Paragraph 3.06 hereof, Lessee may make such deposits directly with said Mortgagee, provided, however, that such Demised Premises Mortgagee or Lessee shall notify Lessor of said requirement in advance of Lessee's making the first such deposit and Lessee or Lessee's Mortgagee documents to Lessor's satisfaction the fact of the establishment and annual maintenance of the required escrow deposits hereunder. In any event, where

Lessee is required to deposit with the Demised Premises Mortgagee the amounts necessary to pay the general real estate taxes and/or special assessments, the same to be paid as and when the same become due and payable, and the Lessee shall cause to be delivered to Lessor the receipted bills or photostatic copies thereof showing such payment within thirty (30) days after such receipted bills shall have been received by Lessee.

3.11 DISCLOSURE OF LEASE TO COUNTY TAX ASSESSOR AND RECORDING OF LEASE WITH THE RECORDER OF DEEDS

Within thirty (30) days from the effective date of this Lease, Lessee shall deliver to the Assessor of the County in which the Demised Premises are situated a copy of this Lease so that said Assessor can take such steps as he determines necessary to subject the interest of the Lessee to general real estate taxation, or an exemption thereof, and will record this Lease with the Recorder of Deeds of the county in which the Demised Premises are situated.

3.12 NO NUISANCE PERMITTED

The Lessee covenants and agrees not to maintain any nuisance on the Demised Premises or permit any noxious odors to emanate from the Demised Premises which shall be in any manner injurious to or endanger the health, safety and comfort of the persons residing or being in the vicinity of the Demised Premises.

3.13 DEMISED PREMISES TO REMAIN CLEAN AND SANITARY

The Lessee covenants and agrees to keep the Demised Premises in a clean and sanitary condition in accordance with all applicable laws, ordinances, statutes and regulations of the county, city, village, town, or municipality (wherein the Demised Premises are located), the State of Illinois, the United States of America, and the Metropolitan Water Reclamation District of Greater Chicago.

3.14 LESSEE SHALL ABIDE BY LAW

The Lessee covenants and agrees that it shall abide by any and all applicable laws, ordinances, statutes and regulations of the county, city, village, town, or municipality (wherein the Demised Premises are located), the State of Illinois, the United States of America, and enforcement and regulatory agencies thereof and the Metropolitan Water Reclamation District of Greater Chicago which regulate or control the Demised Premises, the Lessee and/or Lessee's use of the Demised Premises.

ARTICLE FOUR

4.01 INDEMNIFICATION

The Lessee for itself, its officers, employees, officials, executors, administrators, successors and assigns (collectively, the "Lessee Indemnitors") agrees to and does hereby expressly assume all responsibility for and agrees to defend, indemnify, save and keep harmless the Lessor, its Commissioners, officers, agents, servants, and employees (collectively, the "Lessor Indemnitees") against any claim (whether or not meritorious), loss, damage, cost or expense which the Lessor Indemnitees may suffer, incur or sustain or for which it may become liable, growing out of any injury to or death of persons or loss or damage to property which shall at any time during the term of this

Lease be caused by or in connection with the use, occupancy or possession of the Demised Premises, and for any such loss, damage, cost or expense which shall at any time during the term of this Lease be caused by or in the performance of any work or construction, installation, maintenance, removal or repair of any-buildings or structures placed upon the Demised Premises, whether the same be caused by the negligence of Lessee, any contractor employed by Lessee, or as a penalty or claim for the sale- or giving away of any intoxicating liquors on or about the Demised Premises, or the use of the Demised Premises for illegal or immoral purposes. In case any action, suit or suits shall be commenced against the Lessor growing out of any such claim, loss, damage, cost or expense, the Lessor may give written notice of the same to the Lessee, and thereafter the Lessee shall attend to the defense of the same and save and keep harmless the Lessor from all expense, counsel fees, costs, liabilities, disbursements, and executions in any manner growing out of,

pertaining to or connected therewith.

4.02 INDEMNIFICATION AGAINST MECHANICS LIENS

The Lessee agrees to indemnify, save and keep harmless the Lessor of and from any claims for mechanics' liens by reason of any construction work, repairs, replacements or other work or for any improvements made to or placed upon the Demised Premises by Lessee, or in behalf of Lessee or at Lessee's instance, as applicable.

4.03 INSURANCE

The Lessee, prior to entering upon the Demised Premises and using the same for the purposes for which this Lease is granted, shall, , procure, maintain and keep in force at Lessee's expense, as applicable, public liability property damage insurance in which the Lessor, its Commissioners, officers, agents, and employees are a named insured and fire and extended coverage and all risk property insurance in which the Lessor is named as the Loss Payee from a company to be approved by the Lessor. ("CLAIMS MADE" policies are unacceptable). Each aforementioned policy shall have limits of not less than:

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 \$4,000,000.0 per occurrence
and
ALL RISK PROPERTY INSURANCE (Including Coverage for
Environmental Contamination of Demised Premises) in the amount of
not less than \$4,000,000.0 per occurrence
INCLUDING FIRE AND EXTENDED
COVERAGE

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in an amount not less than the replacement cost of improvements
located on the premises

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

limit the liability of the Lessor as set forth in the provisions of 4.01 above.

4.04 SELF-INSURER

If Lessee is a self-insurer, Lessee, prior to entering upon said premises and using the same for the purposes for which this Lease is granted, shall prepare and transmit to the Lessor an acknowledged statement that the Lessee is a self-insurer, and that it undertakes and promises to insure the Lessor, its Commissioners, officers, agents, servants and employees on account of risks and liabilities contemplated by the indemnity provisions of paragraph 4.03 above; and that such statement is issued in lieu of policies of insurance or certificates of insurance in which the Lessor, its Commissioners, officers, agents, servants and employees would be a named or additional insured, and that it has funds available to cover those liabilities in the respective amounts therefor, as set forth as follows:

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
Demised Premises) in the amount of not less than \$4,000,000.00 per occurrence INCLUDING
FIRE AND EXTENDED COVERAGE in an amount not less than the replacement cost of
improvements
located on the premises.

This statement shall be signed by such officer or agent of the Lessee having sufficient knowledge of the fiscal structure and financial status of the Lessee to make such a statement on behalf of the Lessee and undertake to assume the financial risk on behalf of the Lessee and will be subject to the approval of the Lessor.

The provisions of this Section shall in nowise limit the liability of the Lessee as set forth under the provisions of Section 4.01.

4.05 INSURANCE ON IMPROVEMENTS

The Lessee shall keep any buildings and improvements erected, constructed or placed on the Demised Premises fully insured to the replacement cost thereof against loss by explosion, fire and/or windstorm or other casualty loss for their full replacement cost at Lessee's own expense at all times during the term of this Lease by an insurance company or companies approved by the Lessor. Lessor shall be a named insured on all of said insurance policies and a certificate of insurance evidencing same shall be provided to Lessor and kept current at all times throughout the term of this Lease. All policies of insurance indemnifying

against such loss by explosion, fire and/or windstorm so insured shall be payable to the Lessor, as additional security for the payment of rent and the performance by the Lessee of the covenants herein; said policy or policies to be delivered to the Lessor as soon as issued, provided, however, that in the event of loss to or destruction of said buildings and other improvements, the insurance proceeds received by the Lessor in excess of the amounts then due for rent and charges under the provisions of this Lease shall be held in trust by the Lessor for the repair, restoration or rebuilding of such damaged or destroyed buildings and other improvements, and shall be disbursed therefor by said Lessor only on architect's certificates after the Lessee has, at its own expense, without charge or lien upon said buildings or other improvements, restored, rebuilt or repaired the same to an extent that will enable the Lessor, with the insurance money remaining in its hands after the payment of the rent and charges due it, to complete said buildings or other improvements in as good condition as they were in before the said loss or damage by explosion, fire and/or windstorm.

4.05 FAILURE OF LESSEE TO INSURE IMPROVEMENTS

In the event the Lessee should at any time neglect, fail or refuse to insure or to keep insured the buildings and other improvements on said Demised Premises as above provided, then the Lessor at its election may procure or renew such insurance and the amount paid therefor shall be repaid by the Lessee to the Lessor with the rents next thereafter falling due under this Lease, together with interest thereon at the rate of two percent (2%) in excess of the prime rate charged by the principal bank in Chicago, Illinois, to its commercial borrowers as determined on the first date of a delinquency from the respective dates of any such payments.

4.06 RIGHT OF LESSEE TO RECOVER PROCEEDS

It is covenanted and agreed by and between the parties hereto that the Lessor shall not be held responsible for the collection or non-collection of any of said insurance money in any event but only for such insurance money as shall come into its hands. The Lessee, however, shall have the right in the name of the Lessor to sue for and recover any and all sums payable under any of said policies for losses arising thereunder provided it shall indemnify and save harmless the Lessor from any costs or

attorney's fees in connection with any such proceeding to recover' such insurance money. However, all sums so recovered shall be paid to the Lessor to be applied as herein provided.

4.07 APPLICATION OF INSURANCE PROCEEDS

It is covenanted and agreed by and between the parties hereto that in case of damage to the buildings and improvements to be erected, constructed or placed on the Demised Premises, as aforesaid, or the destruction thereof (or loss or damage to any buildings or other improvements thereafter standing upon the Demised Premises) the Lessee shall repair, restore or rebuild the same within one year from such destruction or damage, and in such case the insurance money received by

the Lessor pursuant to the terms of this Lease under said policies, after deducting therefrom the reasonable charges of the Lessor for handling such insurance and all costs and expenses of collecting the same, including attorney's fees, and all unpaid and overdue rental payments shall be paid in whole or in part by the Lessor to the contractor or contractors (employed by the Lessee) upon the delivery to the Executive Director of the Lessor of certificates of the architects of the Lessee properly endorsed by the Lessee and accompanied by waivers of lien and release for the cost and expense of repairing, restoring or rebuilding said buildings or other improvements as the work of repairing, restoring, or rebuilding progresses.

4.08 INSURANCE PROCEEDS DEFICIENCY

It is understood and agreed between the parties hereto that in case the insurance money collected by the Lessor shall not be sufficient to fully pay for the repair, restoration or rebuilding of said buildings and other improvements as aforesaid, then the Lessee shall be required to pay such sums of money, in addition to said insurance money so collected by the Lessor as aforesaid as may be necessary to pay for the complete repair, restoration or rebuilding of said buildings and other improvements; it being understood, however, that the Lessor shall not be required to pay such insurance money so collected until the Executive Director of the Lessor is satisfied that such sum will complete the repair, restoration and rebuilding of said buildings and other improvements, free of mechanics' liens for labor or material, in which event such monies shall be paid by the Lessor to the contractor or contractors employed by the Lessee to complete the repair, restoration or rebuilding of said buildings and other improvements, upon delivery to the Executive Director of the Lessor of certificates of the architects of the Lessee properly endorsed by the Lessee accompanied by waiver of lien and release as the work of repairing, restoring or rebuilding of said buildings and other improvements shall progress. It is expressly understood that nothing herein shall prevent the Lessee from replacing any building or structure destroyed or damaged with other buildings or structures of different design and construction of at least equal value on any part of the Demised Premises.

4.09 LESSOR NOT RESPONSIBLE FOR RESTORATION OF IMPROVEMENTS

It is covenanted and agreed that the Lessor shall not be liable to contribute or pay any sum of money toward the restoration, repair or rebuilding of said buildings or other improvements. In the event of the termination of this Lease by lapse of time, or by reason of any default by the Lessee in any of its payments, or a breach by the Lessee of any of the covenants and agreements of this Lease before the repair, restoration, replacement or rebuilding of said buildings or other improvements shall be completed, as aforesaid, then in any of said cases the insurance money collected by the Lessor shall belong absolutely to the Lessor.

4.10 EXCESS INSURANCE PROCEEDS

It is understood and agreed that after the work of any such repairs, restoration, or rebuilding by the Lessee shall have been completed and paid for, any excess of insurance money then remaining on deposit with the Lessor shall belong to the Lessee and in that event, the Lessor shall pay to the Lessee the balance of said insurance money upon its written request. The provisions of this paragraph as well as those of paragraphs numbered 4.04 to 4.09, inclusive, shall apply whenever and so often as any buildings or other improvements erected and completed on the Demised Premises, under any of the provisions of this Lease, shall have been damaged or destroyed by fire or windstorm.

ARTICLE FIVE

5.01 GENERAL ENGINEERING RESERVATIONS AND REQUIREMENTS

A. The Lessor has heretofore executed various agreements with governmental agencies, public utility companies, private corporations and individuals for the installation of pipelines, duct lines, sewers, cables, electric transmission lines and other surface and subsurface structures, constructions and improvements. Pursuant to those agreements, the various grantees ("Various Grantees") have installed and are operating their respective surface and underground plant facilities which may lie within or otherwise affect the Demised Premises. Lessor, any of the Various Grantees, and anyone acting under its authority shall, with a sixty (60) day advance written notice to and coordination with Lessee (1) maintain access to the Demised Premises and North Branch Riverwalk Underbridge Connection; or (2) provide for an alternate path to the Demised Premises and North Branch Riverwalk Underbridge Connection. Lessee shall, at its own initiative, inquire and satisfy itself as to the presence or absence of any such facilities on the Demised Premises.

B. Lessee expressly agrees that within an area delineated by a line parallel with and 250 feet distant from the top of the edge of the water of any waterway which traverses or is adjacent to the Demised Premises (Corporate Use Reserve Area) and all areas within the Demised Premises below the lowest elevation of development thereon as reflected in the Lessee's approved development plans for the Demised Premises, the Lessor and anyone acting under its authority shall, with a sixty (60) day advance written notice to and coordination with Lessee to (1) maintain access to the Demised Premises

* and North Branch Riverwalk Underbridge Connection; or (2) provide for an alternate path to the Demised Premises and North Branch Riverwalk Underbridge Connection, have the right, to

construct, operate, maintain, repair, renew and relocate any and all pipe, sewer, structure, facility power, and communications lines and appurtenances upon, under and across the Demised Premises. All such work shall be performed in such a manner so as to cause the least amount of interference with Lessee's use of the Demised Premises and the North Branch Riverwalk Underbridge Connection.

C. Lessee expressly understands and agrees that the Lessor may have installed various sewers, shafts, ducts, pipes, and other facilities upon, over or beneath the Demised Premises. Lessor shall cooperate with Lessee to ascertain, identify and locate all of Lessor's improvements, structures and constructions on the Demised Premises. Lessee covenants and agrees that at no time shall its use and occupancy of the Demised Premises damage or interfere with said facilities, if any.

D. Lessor reserves unto itself a perpetual right, privilege, and authority to construct, maintain, operate, repair and reconstruct intercepting sewers (with its connecting sewers and appurtenances), and any other drains or structures constructed or operated in the furtherance of Lessor's corporate purpose upon, under and through Corporate Use Reserve Area and below the lowest elevation of Lessee's approved development plan for the Demised Premises. Subject to a sixty (60) day advance written notice to and coordination with Lessee to (1) maintain access to the Demised Premises and North Branch Riverwalk Underbridge Connection; or (2) provide for an alternate path to the Demised Premises and North Branch Riverwalk Underbridge Connection,, the Lessor shall also have the right, privilege and authority to enter upon and use such portions of said Demised Premises as may be necessary in the opinion of the Executive Director of the Lessor, for the purpose of constructing, maintaining, operating, repairing and reconstructing intercepting sewers, connecting sewers, drains or other structures, appurtenances, parking areas and access drive, if any, which do not unreasonably interfere with Lessee's use of the Demised Premises.

It is expressly understood that 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. Notwithstanding the foregoing, the construction of, the placing of the North Branch Riverwalk Underbridge Connection, and the use of a barge over the water is not a violation of this Lease agreement.

It is further expressly understood and agreed by the Lessee that no buildings, materials, or structures shall be placed or erected and no work of any character done on said Demised Premises so as to injure or damage in any way said intercepting sewer, connecting sewers, drains or other structures and appurtenances, if any, located at any

time on the Demised Premises, or so as to interfere with the maintenance, operation or reasonable access thereto.

E. It is expressly understood and agreed that the Lessor shall not be liable to the Lessee for any loss, cost or expense which the Lessee shall sustain by reason of any damage at any time to its property caused by or growing out of the failure of the sewers, structures, or other equipment of the Lessor located on the Demised Premises, or by any other work which the Lessor may perform on the Demised Premises under the terms hereof, or adjacent to the Demised Premises, unless such loss, cost or expense is due to the negligence or willful acts of the Lessor, its Commissioners, officers, agents, employees, or contractors. Lessor is currently aware that the CSO headwall is in disrepair and the Lessee shall not be liable for the condition of the headwall.

F. Lessee shall relocate or remove the improvements existing or constructed upon the Demised Premises, at no cost to the District in the following instances:

- 1) In the event that the Demised Premises are adjacent to any channel or waterway, and said channel or waterway is to be widened by the District or any other governmental agency; or
- 2) In the event that any agency of government, having jurisdiction over said channel or waterway, requires the relocation or removal of said improvements; or
- 3) In the event that said relocation or removal is required for the corporate purposes of the District.

Such relocation or removal shall be commenced within one hundred eighty (180) days after notice thereof in writing is served upon the Lessee and diligently prosecuted to the conclusion.

G. The Lessor reserves to itself or to its assignees or permittees at any time during the term of this Lease, upon sixty (60) days written notice given by the Lessor to the Lessee, the right to construct, reconstruct, maintain, and operate additional force mains, intercepting sewers, drains, outlets, pipe lines, pole lines, and appurtenances thereto; and such other structures, buildings, apparatus, and water control equipment as may be needed for the corporate purposes of the Lessor upon, under, and across the Demised Premises. Lessor, its Commissioners, officers, agents, employees, or contractors shall be liable for all losses, costs or expenses due to the negligence or willful acts of the Lessor in exercising any construction, reconstruction, maintenance, and operation rights set forth herein. Any such construction shall be located as determined by the Executive Director of the Lessor so as to cause, in his opinion, the least interference with any equipment, or improvements, that the Lessee may then have on the Demised Premises.

H. It is agreed by and between the parties hereto that the Lessee has submitted to the Local Sewer department of the Lessor for Lessor's "Facility Connection Authorization", the general plans for handling the sewerage, grading, and drainage of the Demised Premises; and for any roadways, water supply, telephone and electric

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service, if any, and of all improvements or any other construction to be erected thereon, before the commencement of any work thereon.

I. ... The Lessor reserves to itself the right of access to the North Branch of the Chicago River as well as right of access to the Demised Premises for inspection by the Lessor and its duly accredited agents at all times, so as to cause the least amount of interference with Lessee's use of the Demised Premises and the North Branch Riverwalk Underbridge Connection, and for such surveys or any other purposes as the Executive Director of the Lessor may deem necessary.

5.02 STORMWATER MANAGEMENT REQUIREMENTS

The Lessee has submitted to the Lessor for its review and approval written plans detailing the Lessee's plans for managing stormwater and drainage on the Demised Premises. The approval of the Lessee's stormwater management plans shall meet the requirements of the City of Chicago's Stormwater Management Ordinance.

The Lessee's plans, subject to the requirements of the City of Chicago's Stormwater Management Ordinance, shall provide for the separate collection of all roof water and surface run-off from grounds and roadways to the North Branch of the Chicago River; shall comply with all applicable rules, regulations, ordinances, statutes, and laws pertaining to stormwater management, wetlands management, and flood plains; and shall employ bio-retention swales, vegetated filter strips, and natural landscaping all in accordance with the Chicago Stormwater Ordinance. Stormwater unable to be managed by BMPs will be discharged to the North Branch of the Chicago River in a manner acceptable to the Lessor.

5.03 SPECIFIC ENGINEERING, DESIGN AND OPERATING RESERVATIONS AND RESTRICTIONS. (CLARIFICATION - NOT LIMITATION)

The Lessee shall pay for and include green infrastructure on its leasehold. The amount of green infrastructure credited will be determined by what is referred to as "Design Retention Capacity (DRC). DRC shall mean using 200 sf of bio-retention swale and 2560 sf of vegetated filter strip, all in accordance with the Chicago Stormwater Ordinance.

ARTICLE SIX

PROVISIONS FOR BUILDING AND IMPROVEMENTS

6.01 CONSTRUCTION REQUIREMENT

The Lessee agrees within 3 years from the date hereof to construct and place the North Branch Riverwalk Underbridge Connection solely on the four (4) Leased

Parcel Areas hereinafter called "improvements", free and clear of all mechanics' and materialman's liens, claims, charges or unpaid bills capable of being made liens and to design, construct, operate and maintain in full compliance with all applicable building and zoning laws of any agency having jurisdiction thereof. All plans must be approved in writing by the Executive Director of the Lessor prior to commencement of construction.

6.02 TIME OF CONSTRUCTION

Construction of the improvements shall commence within 2 years of the effective date of this Lease. All of said buildings and improvements shall be completed within 3 years of the effective date of the Lease. In the event said improvements are not completed or construction is not commenced as provided above, then the Lessor may at its option terminate this Lease upon giving ninety (90) days' notice, in writing, to the Lessee.

6.03 REMOVAL OF IMPROVEMENTS AND LESSEE VACATION OF THE FOUR LEASED PARCELS AT LEASE TERMINATION OR EXPIRATION

It is expressly understood and agreed by and between the parties hereto that upon the termination of this Lease by forfeiture, lapse of time or by reason of the failure by the Lessee to keep and perform the covenants, agreements or conditions herein contained, the improvements erected, constructed or placed upon the four Leased Parcel Areas during the term hereof the Lessee shall have eighteen (18) months to remove the improvements and vacate the four Leased Parcel Areas at the Lessee's sole cost and expense. Lessee shall not commit waste during the term hereof or in the course of vacating same.

ARTICLE SEVEN 7.01

NOTICES

All notices herein provided for from the Lessor to the Lessee or Lessee to Lessor shall be personally served or mailed by U. S. Registered or Certified Mail, Return Receipt Requested, First Class Postage Prepaid addressed to the Lessee at:

or to Lessor at: Ms. Janet Attarian
City of Chicago, Department of Transportation
30 N. LaSalle, Suite 500
Chicago, Illinois 60602
Tel. (312)744-5900
ianet.attarian@cityofchicago.org <<mailto:ianet.attarian@cityofchicago.org>>
Lubica Benak, Project Manager
Tel. (312) 742-2837

Metropolitan Water Reclamation District of Greater
Chicago 100 East Erie Street Chicago, Illinois
60611 Attn: Executive Director

or any other address either party may designate in writing. Any notice so mailed by one party hereto to the other shall be and is hereby declared to be sufficient notice for all the purposes of this Lease and that a post office registry receipt showing the mailing of such notice and the date of such mailing shall be accepted in any court of record as competent prima facie evidence of those facts.

7.02 RIGHT TO DECLARE LEASE TERMINATED

It is understood and agreed by the Lessee that neither the right given in this Lease to the Lessor to collect rent or such other compensation as may be due under the terms of this Lease by sale nor any proceedings under this Lease shall in any way affect the right of the Lessor to declare this Lease terminated and the term hereby created ended as above provided, upon default of or failure by the Lessee to perform and carry out any of the provisions of this Lease, as herein provided, after notices as aforesaid.

7.03 RIGHTS OF LESSOR IN EVENT OF FORFEITURE OR TERMINATION

In the event of the termination of this Lease by reason of forfeiture by the Lessee arising from a default by or failure of it to carry out and perform any of the covenants herein contained, the Lessor shall not be obligated to refund to the Lessee any sums of money paid by the Lessee to the Lessor as rentals under the terms of this Lease, and such sums of money shall be retained by the Lessor as liquidated damages, but this provision shall not operate to relieve the Lessee of its obligation to pay to the Lessor the balance of the rental then due the Lessor for the entire term of this Lease.

7.04 TERMS OF LEASE BINDING ON SUCCESSOR AND ASSIGNS

The parties hereto agree that all of the terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors, lessees, sub-lessees and assigns; and whenever in this Lease reference to either of the parties hereto is made, such reference shall be deemed to include, where applicable, also a reference to the successors, lessees, sub-lessees and assigns of

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such party; and all the conditions and covenants of this Lease shall be construed as covenants running with the land during the term of this Lease.

7.06 NO ASSIGNMENT OR SUBLEASE

It is agreed by and between the parties that the Lessee shall not sublet or assign any part of this Lease to any other governmental agency, individual, partnership, joint venture, corporation, land trust or other entity without prior written consent of the Lessor.

Lessee shall notify Lessor in writing not less than sixty (60) days prior to any proposed sublease or assignment. Lessee shall identify the name and address of the proposed assignee/sublessee and deliver to Lessor 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 the Lease and any other information or documentation requested by Lessor. Lessor shall not unreasonably withhold the consent to assignment or sublease.

It is agreed that reasonable grounds for withholding consent shall include but not be limited to the following:

- A. The proposed activity of the assignee/sublessee does not conform with the terms of this Lease or policies established by the Lessor.
- B. The proposed assignee/sublessee does not have either substantial experience in the business provided for in the Lease or the financial resources to comply with the requirements of the Lease.
- C. There is an existing violation of or uncured default by Lessee with respect to the Lease.
- D. The activity of the proposed assignee/sublessee would interfere with or disturb neighboring tenants or owners.

In addition to the payment of all cash rent or additional compensation otherwise herein required to be paid by or performed by the Lessee, Lessee will pay to the Lessor, as additional compensation hereunder in the event Lessee assigns this Lease or sublets all or part of the Demised Premises, fifty percent (50%) of all value it receives from its assignee/sublessee for the use and

occupancy of the Demised Premises as a result of the sublease or assignment in excess of the cash rent which Lessee is currently paying with respect to the subleased portion of the leasehold or the leasehold as a tract, if assigned.

The value of additional services to be performed by the Lessee, sublessee or assignee shall not in any way be included in determining the foregoing fifty- percent (50%) sum.

It is agreed that this Lease shall not pass by operation of law to any trustee or receiver in bankruptcy or for the assignment for the benefit of creditors of the Lessee.

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Any attempted sublease or assignment not in compliance with this section shall be void and without force and effect. Additionally, Lessor shall retain 100% of all sublease fees received by Lessor under any unauthorized sublease.

ARTICLE EIGHT

MISCELLANEOUS PROVISIONS

8.01 LESSEE MAY IMPLEAD THE METROPOLITAN WATER RECLAMATION DISTRICT IN REAL ESTATE LITIGATION

The Lessee may, after notice in writing to the Lessor, implead the Lessor as a party at any time during the term of this Lease, in any litigation concerning the Demised Premises in which Lessor is a necessary party.

8.02 LESSEE TO PAY ALL COSTS OF ENFORCEMENT

The Lessee agrees to pay and discharge all costs and reasonable attorney's fees and expenses, which the Lessor shall incur in enforcing the covenants of this Lease.

8.03 HEADINGS ARE FOR CONVENIENCE OF PARTIES

All paragraph headings of this Lease are inserted for purposes of reference and convenience of the parties only, and do not constitute operative provisions of the Lease.

8.04 COMPLIANCE WITH WATERWAY STRATEGY RESOLUTION

To the extent that the Demised Premises embrace or abut a waterway regulated by Lessor or in which Lessor asserts property rights, Lessee shall to the extent applicable, comply with the

Waterway Strategy Resolution and Implementation Criteria therefor, the River Edge Renaissance Program and the Revised Leasing Criteria for the North Shore Channel Right-of-Way Lands of the Lessor's Board of Commissioners in the execution of its development plan for the Demised Premises which abut any such waterway and Demised Premises which afford Lessee direct access thereto may be utilized by the Lessee for the purpose of waterborne commerce.

However, the Lessee will be responsible for the construction and maintenance of any docking facility at its own cost and expense which is compatible with the Waterway Strategy Resolution to maintain the bank in an aesthetically pleasing condition. Permanent storage of bulk commodities, unsightly materials and/or debris on waterway side of the scenic berm or the docking area is prohibited.

It is the intent of the Lessor to maintain, where possible, a "natural" appearance to its properties by retaining existing vegetative cover. However, the Lessor recognizes that site development will sometimes necessitate the removal of existing vegetative

cover. In those cases the Lessor will require the Lessee to re-establish vegetative cover in the same quantities and qualities as those removed. The reestablished plant materials are to be considered as an addition to the landscaping required within the scenic easement. The Lessor acknowledges that Lessee is in compliance with the Waterway Strategy Resolution.

Lessee will comply with all applicable local zoning and setback requirements. The Lessor reserves the right to traverse the Demised Premises to access the waterway which abuts the Demised Premises.

The Lessor's Board of Commissioners has heretofore adopted its Waterway Strategy Resolution relating to the development of leased waterways property. Lessee shall comply with all applications of said Resolution in its use and development of the Demised Premises. In the attached Exhibit C.

8.05 PUBLIC SERVICE PROMOTIONAL SIGNAGE

Lessee shall, during the term of this Lease, at its sole cost and expense, construct, erect and maintain, at one or more prominent locations on the leasehold premises, tastefully designed and constructed permanent signs which acknowledge the cooperation and support of the Lessor in connection with Lessee's use of the leasehold premises. The style, text and size of the sign(s) shall be approved in advance of erection thereof by the Executive Director of Lessor, and shall, at a minimum, state that:

"THIS FACILITY IS PROVIDED IN PART AS A COMMUNITY SERVICE WITH THE COOPERATION AND SUPPORT OF THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO."

ARTICLE NINE

LEASEHOLDS WITH EXISTING IMPROVEMENTS

9.01 LESSEE WILL NOT ALLOW WASTE TO IMPROVEMENTS

The Lessee will keep the leasehold improvements safe, clean and in good order, repair and condition which shall include all necessary replacement, repair and decorating. Lessee will not allow the improvements to become damaged or diminished in value, ordinary wear and tear excepted, by anyone or by any cause.

9.02 CONDITION OF PREMISES AND IMPROVEMENTS NOT WARRANTED

Lessee expressly acknowledges that the Lessor has made no representations, warranties express or implied, as to the adequacy, fitness or condition of Demised Premises or the improvements upon the Demised Premises for the purpose set forth in Article Three, Paragraph 3.07 hereof or for any other purpose or use express or implied by the Lessee. Lessee accepts the Demised Premises and the improvements thereon, if

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any, "AS-IS" and "WITH ALL FAULTS". Lessee acknowledges that it has inspected the Demised Premises and has satisfied itself as to the adequacy, fitness and condition thereof.

9.03 MODIFICATION OF IMPROVEMENTS

, no modification of the leasehold improvements shall be made by Lessee without the prior written approval of the Lessor and compliance by Lessee with all other terms of this Agreement.

9.04 PLAT OF SURVEY AND LEGAL DESCRIPTION

Lessee understands and agrees that in the event the legal description of the Leased Parcel Areas, Exhibit A, and plat, Exhibit B, attached hereto are not legally sufficient for acceptance for recordation of this Lease by the Recorder of Deeds of the county in which the Demised Premises are located, Lessee shall procure, at its own expense, a plat of survey and legal description of the Demised Premises prepared and certified in writing by a Registered Illinois Land Surveyor, within twenty-one (21) days of the execution date hereof. Said plat of survey and legal description shall be reasonably satisfactory to and approved by the Lessor's Executive Director in writing. Failure to timely procure and receive approval of said plat of survey and legal description shall be grounds for immediate termination of this Lease. The Lessor reserves the right and Lessee concurs that Lessor shall insert said legal description and plat of survey into this Lease Agreement as Exhibits A and B, respectively, upon the approval thereof by District's Executive Director, without further affirmative act by either party hereto.

ARTICLE TEN

GENERAL ENVIRONMENTAL PROVISIONS

10.01 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 sub-divisions 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;

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(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 sea.), 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, crude oil and any fraction of it, polychlorinated biphenyls (PCBs), trichloroethylene, ureaformaldehyde and radon gas;

- 2) any substance (whether solid, liquid or gaseous in nature), the presence of which (without regard to action level, concentration or quantity threshold) requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law;
- 3) any substance (whether solid, liquid or gaseous in nature) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, muta-genic, 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 Demised 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;

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

"Phase I Environmental Assessment" shall mean:

- (1) an assessment of the Demised Premises performed an assessment of the Demised Premises 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 Demised Premises, and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Demised Premises, a review of the utilization and

maintenance of Hazardous Materials on the Demised Premises, review of the Demised Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Demised 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.

"Phase II Environmental Assessment" shall mean:

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- (1) an assessment of the Demised Premises 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 Demised Premises, and., said assessment shall include, but not necessarily be limited to, extensive sampling of soils, groundwaters and structures, followed by laboratory analysis of these samples and interpretation of the results, and preparation of a written report with boring logs, photograph logs, maps, investigative procedures, results, conclusions and recommendations.

10.02 MANUFACTURE, USE, STORAGE, TRANSFER OR DISTRIBUTION OF HAZARDOUS MATERIALS UPON OR WITHIN THE Demised Premises

Lessee, for itself, its heirs, executors, administrators, successors and assigns, covenants that to the extent that any Hazardous Materials are brought upon, placed, stored, transferred or distributed upon or within the Demised Premises by Lessee, or its subtenant or assigns, or any of their 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 existing underground storage tanks and underground interconnecting conveyance facilities for any material or substance is not permitted without the advance written consent of the Executive Director of the District.

10.03 USE OF PREMISES (RESTRICTIONS - ENVIRONMENTAL)

Lessee shall use the Demised Premises only for purposes expressly authorized by Article 3.07 of this Lease. Lessee will not do or permit any act that may impair the value of the Demised 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 Demised Premises) arising from activities thereon, or that could

cause or threaten to cause a public or private nuisance on the Demised Premises.

10.04 CONDITION OF PROPERTY (ENVIRONMENTAL)

In the event of a release, emission, discharge, or disposal of Hazardous Materials in, on, under, or about the Demised Premises or the improvements thereon, during the Term of this Lease Agreement, Lessee will take all appropriate response action, including any removal and remedial action, either before or after the execution date of this Lease.

10.05 INDEMNIFICATION (ENVIRONMENTAL)

- A. In consideration of the execution and delivery of this Lease Agreement, the Lessee indemnifies, exonerates, and holds the Lessor and its Lessor

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Indemnitees 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, including reasonable attorney's fees, costs and disbursements, ..incurred by the Lessor Indemnitees 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 Lessee's activities, or (ii) any investigation, litigation, or proceeding related to any environmental response, audit, compliance, or other matter relating to the protection of the environment, or (iii) the release or threatened release by Lessee of any Hazardous Materials, or the presence of Hazardous Materials on or under the Demised Premises caused by the Lessee, or any property to which the Lessee has sent Hazardous Materials, (including any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under any Environmental Law), regardless of whether caused by or within the control of the Lessee, provided that, to the extent Lessor is strictly liable under any Environmental Laws, Lessee's obligation to Lessor under this indemnity shall be without regard to fault on the part of the Lessee with respect to the violation of law which results in liability to Lessor.

- B. Lessee shall defend, indemnify, save and keep harmless the Lessor Indemnitees against any loss, damage, cost, lien or expense which they may suffer, incur or sustain or for which it may become liable, growing out of any injury to or death of persons or loss or damage to property which shall at any time during the term of this Lease be caused by or resulting from the migration of Hazardous Materials from the Demised Premises to adjacent properties caused by Lessee. In case any action, suit, proceeding or investigation shall be commenced against one or more of the Lessor Indemnitees growing out of any such loss, damage, cost or expense, the Lessee shall give immediate written notice of the same to the Lessor, and Lessee shall attend to the defense of the same and save and keep harmless the Indemnified Parties from all expense, attorney's fees, costs, disbursements and liabilities in any manner growing out of, pertaining to

or connected therewith.

10.06 ENVIRONMENTAL COVENANTS

Lessee agrees to and covenants as follows:

- A. Lessee covenants and agrees that, throughout the term of the Lease, all Hazardous Materials which may be used by any person for any purpose upon the Demised 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.

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- B. Within 60 days after execution of the Lease, the Lessee shall prepare and submit a general statement to Lessor of its operations and maintenance program for any activities conducted on Demised Premises, describing its
- C. Lessee agrees to conduct daily monitoring and to maintain a daily log book to ensure compliance with all Environmental Laws which may be inspected by Lessor at its option.
- D. The Lessee shall notify Lessor in writing of any proposed significant renovation or improvement on or to the Demised Premises, which notice shall include any drawings, plans and specifications thereof, at least 30 days prior to beginning construction of any such renovation or improvement. For purposes of this subsection (D), renovation shall be deemed significant when the total cost exceeds \$10,000.00.
- E. The aforesaid representations and warranties shall survive the expiration or termination of the Lease.

10.07 COVENANTS (ENVIRONMENTAL)

Lessee shall cause its contractors, subcontractors, employees and agents to:

- A. (1) Use and operate all of the Demised 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 Lessor by telephone within two hours of the release of Hazardous Materials, including the extent to which the identity of the Hazardous Materials is known, the quantity thereof and the cause(s) of the release, and provide Lessor within 72 hours of the event, with copies of all written notices by Lessee that are reported to government regulators or received from the government regulators.
- C. Provide such information that Lessor may reasonably request from time to time to determine compliance by the Lessee with this Article.
- D. Lessee covenants and agrees to cooperate with Lessor in any inspection, assessment, monitoring or remediation instituted by

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Lessor during the Lease term and to allow prospective tenants or purchasers reasonable access to the Demised Premises one year prior to the expiration of the Lease.

10.08 COMPLIANCE (ENVIRONMENTAL)

The Lessee will exercise due diligence to comply with all applicable treaties, laws, rules, regulations, and orders of any government authority.

- A. Capacitators, transformers, or other environmentally sensitive installations or improvements shall be removed at the end of the Lease at Lessor's election.
- B. Lessor shall have the right, but is not required to cause an independent environmental consultant, chosen by the Lessor at its sole discretion, to inspect, assess and test the Demised Premises for the existence of any and all environmental conditions and any and all violations of Environmental Laws (Environmental Assessment). The scope, sequence and timing of the Environmental Assessment shall be at the sole discretion of Lessor.
- C. If any Environmental Assessment reveals, or Lessor otherwise becomes aware of, the existence of any violation of any Environmental Laws caused by Lessee that either Lessee is unwilling to remediate or that Lessor is unwilling to accept, Lessee shall be in default under this Lease and Lessor shall have the right and option to terminate this Agreement and to declare it null and void.
- D. Not less than one (1) year prior to the expiration of the Lease, Lessee shall have caused

to be prepared and submitted to the Lessor 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 Lessor, and dated not more than eighteen (18) months prior to the expiration of the Lease, showing that:

- 1) The Demised Premises and any improvements thereon do not materially deviate from any requirements of the Environmental Laws, including any licenses, permits or certificates required thereunder;
- 2) The Demised Premises property and any improvements thereon do not contain: (i) asbestos in any form; (ii) urea formaldehyde; (iii) items, articles, containers, or equipment which contain fluid containing polychlorinated biphenyls

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(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 or maintained on the Demised Premises, the exposure to which is prohibited, limited, or regulated by any Environmental Laws;
- 4) If any Hazardous Materials were utilized and maintained on the Demised Premises, the engineer has conducted and submitted a Phase II Environmental Assessment of the Demised Premises, which documents that the Demised 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 describes any submission by Lessee concerning said environmental matter which it intends to give, has been given or should be given with regard to the Demised 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.

E. In the event Lessee should receive a Notice of Environmental Problem, Lessee shall promptly provide a copy to the Lessor, and in no event later than seventy-two (72) hours from Lessee'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 Lessee 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 Demised Premises, or any improvements thereon; (iii) the Lessee will be liable, in whole or in part, for the costs of cleaning up, remediating, removing, or responding to a release of Hazardous Materials; or (iv) any part of the Demised 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 a Hazardous Material.

10.09 INSPECTION AND RIGHT OF INSPECTION (ENVIRONMENTAL)

- A. In the event Lessee receives a Notice of Environmental Problem as defined in Paragraph 10.8, Lessee shall, within ninety (90) days, submit to Lessor a written report in scope, form and substance, and prepared by an independent, competent and qualified, professional, registered engineer, satisfactory to the Lessor, 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, indicating whether any evidence or indication came to light which would suggest there was a release of substances on the Demised Premises which could necessitate an environmental response action, and which describes the Demised Premises compliance with, or lack thereof, and with all applicable Environmental Laws or certificates required thereunder, and the Lessee's compliance with the representations and warranties previously set forth in this Lease. After review of the written report, Lessor may require Lessee to submit a written Phase II Environmental Assessment pursuant to provisions set forth in paragraph 10.09A.
- B. Lessor hereby expressly reserves to itself, its agents, attorneys, employees, consultants, and contractors, an irrevocable license and authorization to enter upon and inspect the Leased 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 Demised Premises or improvements thereon, as the Lessor, in its sole discretion, determines is necessary to protect its interests.

ARTICLE ELEVEN

1 The Lessee agrees and understands that prior to the commencement of any new construction work, the Lessee must submit for the Lessor's Facility Connection Authorization review

and approval its final construction plans and no work shall commence until said plans have been approved, by the Lessor in writing, and said plans shall be subject to any modifications, terms, and conditions required by the Lessor. Plans are not required by the Lessee to perform emergency repairs, routine minor repairs such as preventive maintenance repairs and repairs which are necessary for the safe condition and operation of the proposed suspended aerial bridge and for the recreation premises.

2 The Lessee agrees and understands that the Lessor has two intercepting sewers that run under the Addison Street (the Addison Street Siphon & Northside 8) and that the Lessee must submit its proposed plans for the Lessor's review and approval, pursuant to the Lessor's Facility Connection Authorization, prior to the

construction of the new trail segment beneath the bridge to assure that the proposed work does not impact on the Lessor's facilities and infrastructure at the subject location.

3 .Lessee agrees and understand that on June 20, 2013, the Lessor and the Chicago Park District entered into a non-exclusive "50-YEAR ECOSYSTEM RESTORATION EASEMENT" as required for the construction, operation and maintenance of the Horner Park Section 206 Ecosystem Restoration Project and that the easement premises are adjacent to the leasehold premises and the right-of-way granted under this Lease Agreement. Any construction activities undertaken under the terms of this Lease should not disturb and/or interfere with the construction, operation and maintenance of the afore-referenced ecosystem restoration project, including but not limited to the reshaping of the riverbank, excavation of material and planting of native vegetation.

4 Lessee understand and agrees that it its sole responsibility to post on all the segment of the Lessor's land and water at the subject location, including the portion of the land or water which are not as part of the leasehold and right-of-way premises, any and all warning and emergency signs required by the law for the protection of the public.

5 The Lessee agrees and understands that prior to entering upon the leasehold premises and using the same for the purposes for which this Lease is granted, shall, at Lessee'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 United States of America, the State of Illinois, the county, and municipalities.

6 Within thirty (30) days from the effective date of this Lease, Lessee shall record this Lease Agreement with the Recorder of Deeds of the county in which the Leasehold Premises are situated and submit to the Lessor evidence of such recordation within 30 days thereafter.

7 Unless otherwise provided herein, Lessee shall procure, at its own expense, a survey and legal description of the Leasehold Premises prepared and certified in writing by a Registered Illinois Land Surveyor, within one-hundred and twenty (120) days of the execution date hereof. Said survey and legal description shall be reasonably satisfactory to and approved by the Lessor's Director of Engineering in writing. Failure to timely procure and receive approval of said survey and legal description shall be grounds for immediate termination of this Lease. The Lessor reserves the right and Lessee concurs that Lessor shall insert said survey and legal description into this Lease Agreement as Exhibits A and B respectively.

8 All provisions of this Lease Agreement, including the benefits and burdens, shall run with the land.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

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[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO has caused this instrument to be executed in triplicate by the Chairman of the Committee on Finance of its Board of Commissioners and attested by its Clerk, and its corporate seal to be hereunto affixed; and the Lessee has caused this instrument to be executed in triplicate by its President and attested by its Secretary and its corporate seal to be hereunto affixed all the day and year first above written.

METROPOLITAN WATER RECLAMATION DISTRICT OF
GREATER CHICAGO

By:
Frank Avila
Chairman of Committee on Finance

ATTEST:

Jacqueline Torres, Clerk

CHICAGO DEPARTMENT OF TRANSPORTATION

, they signed and delivered the said instrument as
, as their free and voluntary act
and as the free and voluntary act and deed of said body corporate and politic, for the uses and
purposes therein set forth.

GIVEN under my hand and Notarial Seal this day of
A.D. 2016

Notary Public

My Commission expires:

APPROVED: As to Plat and Legal Description: Engineer of Sewer Design

Director of Engineering Director of Engineering APPROVED AS TO FORM AND LEGALITY:

Head Assistant Attorney

General Counsel APPROVED:

Executive Director

Chicago Department of Transportation

CITY OF CHICAGO

MEMORANDUM

Time is of the essence

Passage of this ordinance by September 2016 will allow CDOT to seek IDOT project approval so that federal funds can be obligated by October 01, 2016 and permission to advertise the construction of the project can be granted.

To: Samantha Fields Deputy Director
Mayor's Office of Legislative Counsel and Government Affairs Room 406

Jeffrey Levine Deputy Corporation Counsel
Department of Law Room 600

Kurt Peterson 1st Deputy Budget Director Office of
Budget and Management Room 604

From:
First Deputy Commissioner Chicago Department of
Transportation

Re: Riverview Bridge / North Branch Riverwalk Underbridge Connection at Addison Street from
Clark Park to California Park CDOT & MWRD Lease Agreement

Date: Resubmit September 12, 2016)

SUMMARY

A. Who: Chicago Department of Transportation

30 NORTH LASALLE STREET. SUITE 1100, CHICAGO. ILLINOIS 60602

DEBORAH L. MELL

Alderman,33rd Ward 3001 W. Irving Park Rd. Chicago, IL 60618 Telephone: (773) 478-8040 Fax: (773) 478-8006

CITY COUNCIL CITY OF CHICAGO

City Hall-Room 200 121 North LaSalle Street Chicago, Illinois 60602

COMMITTEE MEMBERSHIPS

Committees, Rules and Ethics

Budget and Government Operations

Health and Environmental Protection Housing and Real Estate

Pedestrian and Traffic Safety (Vice Chairman) Transportation and Public Way

Zoning, Landmarks and Building Standards

Date: 7/13/16

Anna Valencia, Director
Mayor's Office of Legislative Counsel and Governmental Affairs
City of Chicago
121 N. LaSalle St. Room 406
Chicago IL 60602

**Re: Riverview Bridge/ North Branch Riverwalk Underbridge Connection at Addison
Street Ordinance Authorizing CDOT & MWRD Lease Agreement**

Dear Director Valencia:

I am writing to inform you of my support for the Riverview Bridge project and the ordinance authorizing a lease agreement between the Chicago Department of Transportation and The Metropolitan Water Reclamation District of Greater Chicago. The lease agreement is required to construct the multi-use trail and bridge, closing a critical gap in the existing North Branch Riverfront Trail. The new trail segment will provide a grade-separated crossing under Addison, enhancing user safety by eliminating the need to cross Addison on foot or on bike. It will extend along the east embankment of the North Branch of the Chicago River, and cross the river on a multi-use pedestrian bridge. The creation of this publicly accessible open space will link Clark and California parks and encourage use of the Riverfront trail by users of all ages and

abilities.

I appreciate your support for this project and have asked CDOT to request authority to enter into the lease agreement at their next opportunity.

Thank you for your help with this matter. Please contact my office with any questions or concerns.

Sincerely,

Deborah
Alderman
Ward

33

Mell,
rd

cc: Randy
Conner
Kevin
O'Malley
Luann
Hamilton
Javier
Torres
Lubica
Benak

OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

September 14, 2016

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

Ladies and Gentlemen:

At the request of the Commissioner of Transportation, I transmit herewith an ordinance authorizing execution of a lease agreement with the Metropolitan Water Reclamation District regarding the North Branch Riverwalk under-bridge connection.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

JOSEPH A. MOORE

Alderman, 49th Ward 7356 North Greenview Avenue Chicago, Illinois 60626 telephone 773-338-5796 ward49@cityofchicago.org www.ward49.com

CITY COUNCIL

CITY OF CHICAGO COUNCIL CHAMBER

City Hall, Room 200 121 North LaSalle Street Chicago, Illinois 60602 Telephone 312-744-3067

COMMITTEE MEMBERSHIPS

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Education and Child Development

Finance

Health and Environmental Protection

Human Relations

Special Events, Cultural Affairs and Recreation

October 5, 2016

To the President and Members of the City Council:

Your Committee on Housing and Real Estate, for which a meeting was held on September 29, 2016, having had under consideration the ordinance introduced by Mayor Rahm Emanuel on September 14, 2016, this being the lease agreement with Metropolitan Water Reclamation District to construct the North Branch Riverwalk Under-bridge Connection, begs leave to recommend that Your Honorable Body do hereby concur herewith.

This recommendation was concurred in by a voice vote of all committee

members present with no dissenting votes.

Respectfully submitted,

CORPORATION (XWKSSaL