



Office of the City Clerk

City Hall
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Chicago, IL 60602
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Legislation Details (With Text)

File #: O2015-2656
Type: Ordinance
Status: Passed
File created: 4/15/2015
In control: City Council
Final action: 5/6/2015
Title: Intergovernmental agreement with Metropolitan Water Reclamation District of Greater Chicago regarding Albany Park storm tunnel
Sponsors: Emanuel, Rahm
Indexes: Intergovernmental
Attachments: 1. O2015-2656.pdf

| Date | Ver. | Action By | Action | Result |
|-----------|------|---|---------------------|--------|
| 5/15/2015 | 1 | City Council | Signed by Mayor | |
| 5/6/2015 | 1 | City Council | Passed | Pass |
| 5/5/2015 | 1 | Committee on Budget and Government Operations | Recommended to Pass | Pass |
| 4/15/2015 | 1 | City Council | Referred | |

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, on November 17, 2004, the Illinois General Assembly passed Public Act 093-1049, as amended (the "Act"); and

WHEREAS, the Act declares that stormwater management in Cook County shall be under the general supervision of the District; and

WHEREAS, "stormwater management" as defined in the Act (and codified at 70 ILCS 2605/7h(a)) means the management of floods and floodwaters; and

WHEREAS, the Act specifically authorizes the District to plan, manage, implement, and finance regional and local activities relating to stormwater management in Cook County; and

WHEREAS, the Act provides that stormwater management in a municipality with a population over one million will be conducted by that municipality, or by the District subject to an intergovernmental agreement between the District and that municipality; and /

WHEREAS, the City has a population greater than one million people; and

WHEREAS, on December 13, 2006, the City Council of the City adopted the "Chicago Stormwater

Management Ordinance," codified as Chapter 11-18 of the Municipal Code of Chicago (the "City Ordinance"); and

WHEREAS, pursuant to Section 11-18-110 of the City Ordinance and other provisions of the Municipal Code of Chicago, the Commissioner of the City's Department of Water Management has issued regulations for sewer construction and stormwater management; and

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

WHEREAS, on October 6, 2009, the City and the District entered into an intergovernmental agreement ("Stormwater IGA") regarding stormwater management within the corporate limits of the City; and

WHEREAS, pursuant to the Stormwater IGA, the District and City agreed to work together on identifying and prioritizing stormwater management problems within the corporate limits of the City; and

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WHEREAS, the neighborhood of Albany Park is located within the corporate limits of the City; and

WHEREAS, the North Branch of the Chicago River (the "NBCR") bisects the Albany Park neighborhood on its way to flowing into the Chicago River and a low-lying area near the NBCR is prone to flooding; and

WHEREAS, during a major rainfall event on September 13 and 14, 2008 the NBCR overtopped its banks and caused significant flooding in the Albany Park neighborhood; and

WHEREAS, the City's Department of Transportation ("CDOT") responded by placing sandbags along the shore as a temporary measure against flooding, but recommends that a diversion tunnel be constructed 100 feet below grade (roughly following the right of way of Foster Avenue), to take the excess waters during a potential flood and divert them directly into the Chicago River, thereby bypassing the Albany Park neighborhood and reducing the potential for flooding (the "Diversion Tunnel"); and

WHEREAS, the City and the District shared the cost of (i) a study performed by MWH Americas, Inc. ("IMWH") regarding the feasibility of building a diversion tunnel in soft ground (the "Engineering Study"), and (ii) a design by MWH for a diversion tunnel in Albany Park based upon the Engineering Study (the "Design"); and

WHEREAS, on August 29, 2013, the District's Board of Commissioners authorized the District to negotiate and enter into intergovernmental agreements with the City for the design and construction of the Diversion Tunnel.

WHEREAS, the District's Board of Commissioners further authorized that the District may contribute up to, and no more than, Twenty-Five Million Nine Hundred Twenty Thousand Dollars (\$25,920,000) for the design and the construction of the diversion tunnel; and

WHEREAS, subject to the terms and conditions of an intergovernmental agreement between the City and District for the Design, dated March 4, 2014 (the "Design IGA"), the District contributed up to, and no more than, One Million One Hundred Sixty-Nine Thousand Five Hundred and Ninety-Seven Dollars (\$1,169,597) for the Design; and

WHEREAS, the City plans to construct the Diversion Tunnel pursuant to the Design (the "Project");

and

WHEREAS, subject to the terms and conditions of an intergovernmental agreement, attached hereto as Exhibit A, (the "Agreement") the District intends to contribute up to Twenty-Four Million Seven Hundred Fifty Thousand Four Hundred Three Dollars (\$24,750,403) for the construction of the Diversion Tunnel; and

WHEREAS, on April 9, 2015, The District's Board of Commissioners authorized the District to grant and issue to the City such easements and similar interest in property owned by the District as are reasonably requested by the City for the construction, use and maintenance of the Project; and

S: Shared/Finance/IGA/DOT/IGAw MWRDGC /ConstrluctionTunncl/Ordinancc/Final/2015.4.13 Ordinance

WHEREAS, the District has full power to pass all necessary ordinances, orders, rules, resolutions and regulations for the proper management and conduct of the business of the District and for carrying into effect the object for which it was formed. It is the policy of the State that all powers granted, either expressly or by necessary implication by the District's enabling legislation or any other Illinois Statute, to the District may be exercised by the District under 70 ILCS 2605/4; and

WHEREAS, the City and District have agreed to enter into the Agreement substantially in the form attached hereto as Exhibit A 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 Commissioner of CDOT (the "Commissioner") is authorized to execute the Agreement, and such other documents as are necessary, between the City and District, including indemnification provisions as provided therein, subject to the approval of the Corporation Counsel of the City as to form and legality.

SECTION 3. The Commissioner is authorized to execute such documents as may be necessary to accept donations of easements and other interest in property of the District or others as may be reasonably required for the construction, use and maintenance of the Project, all subject to the approval of Corporation Counsel of the City as to form and legality.

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 takes effect upon passage and approval.

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EXHIBIT A

Intergovernmental Agreement

(See Attached)

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INTERGOVERNMENTAL AGREEMENT BETWEEN
THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO
AND
THE CITY OF CHICAGO, ILLINOIS, DEPARTMENT OF TRANSPORTATION

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter this "Agreement") is entered into this _____, 201_, by and between the Metropolitan Water Reclamation District of Greater Chicago, a body corporate and politic, organized and existing under the laws of the State of Illinois (hereinafter "District") and the City of Chicago, a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, (hereinafter "City"), acting through its Department of Transportation ("CDOT").

WITNESSETH, THAT:

WHEREAS, on November 17, 2004, the Illinois General Assembly passed Public Act 093-1049, as amended (the "Act"); and

WHEREAS, the Act declares that stormwater management in Cook County shall be under the general supervision of the District; and

WHEREAS, "stormwater management" as defined in the Act (and codified at 70 ILCS 2605/7h(a)) means the management of floods and floodwaters; and

WHEREAS, the Act specifically authorizes the District to plan, manage, implement, and finance regional and local activities relating to stormwater management in Cook County; and

WHEREAS, the Act provides that stormwater management in a municipality with a population over one million will be conducted by that municipality, or by the District subject to an intergovernmental agreement between the District and that municipality; and

WHEREAS, the City has a population greater than one million people; and

WHEREAS, on December 13, 2006, the City Council of the City (the "City Council") adopted the "Chicago Stormwater Management Ordinance," codified as Chapter 11-18 of the Municipal Code of Chicago (the "City Ordinance"); and

WHEREAS, pursuant to Section 11-18-110 of the City Ordinance and other provisions of the Municipal Code of Chicago, the Commissioner of the City's Department of Water Management has issued regulations for sewer construction and stormwater management; and

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

WHEREAS, on October 6, 2009, the City and the District entered into an intergovernmental agreement ("Stormwater IGA") regarding stormwater management within the corporate limits of the City; and

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WHEREAS, pursuant to the Stormwater IGA, the District and the City further agreed to work together on identifying potential projects to address stormwater management problems within the corporate limits of the City; and

WHEREAS, the neighborhood of Albany Park is located within the corporate limits of the City; and

WHEREAS, the North Branch of the Chicago River (the "NBCR") bisects the Albany Park neighborhood, and a low-lying area within that neighborhood is prone to overbank flooding; and

WHEREAS, during a major rainfall event on September 13 and 14, 2008, the NBCR overtopped its banks and caused significant flooding in the Albany Park neighborhood; and

WHEREAS, CDOT responded by placing sandbags along the shore as a temporary measure against flooding, but recommends that a diversion tunnel be constructed (roughly following the right-of-way of Foster Avenue), to take the excess waters during a potential flood and divert them directly into the Chicago River, thereby bypassing the Albany Park neighborhood and reducing the potential for flooding (the "Diversion Tunnel"); and

WHEREAS, the City and the District shared the cost of (i) a study performed by MWH Americas, Inc. ("MWH") regarding the feasibility of building a diversion tunnel in soft ground (the "Engineering Study"), and (ii) a design by MWH for a diversion tunnel in Albany Park based upon the Engineering Study (the "Design"); and

WHEREAS, subject to the terms and conditions of an intergovernmental agreement between the City and District for the Design, dated March 4, 2014 (the "Design IGA"), the District contributed up to, and no more than, One Million One Hundred Sixty-Nine Thousand Five Hundred and Ninety-Seven Dollars (\$1,169,597) for the Design; and

WHEREAS, the City plans to construct the Diversion Tunnel pursuant to the Design (the "Project"); and

WHEREAS, on August 29, 2013, the District's Board of Commissioners authorized the District to negotiate and enter into intergovernmental agreements with the City for the design and construction of the diversion tunnel; and

WHEREAS, the District's Board of Commissioners further authorized that the District may contribute up to, and no more than, Twenty-Five Million Nine Hundred Twenty Thousand Dollars (\$25,920,000) for the design and the construction of the diversion tunnel; and

WHEREAS, subject to the terms and conditions of this Agreement, the District intends to contribute up to Twenty-Four Million Seven Hundred Fifty Thousand Four Hundred Three Dollars (\$24,750,403) for the construction of the Diversion Tunnel; and

WHEREAS, on April 9, 2015, The District's Board of Commissioners authorized the District to grant and issue to the City such easements and similar interest in property owned by the District as are reasonably requested by the City for the construction, use and maintenance of the Project; and

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WHEREAS, the City commits to providing the remaining funds necessary for the construction of the Project; and

WHEREAS, on _____, 2015 the City Council adopted an ordinance published in the Journal of the Proceedings for said date at pages _____ to _____, which, among other things, authorizes the execution of this Agreement;

NOW THEREFORE, it is agreed, as follows:

ARTICLE ONE: INCORPORATION OF RECITALS The recitals set forth above are incorporated herein by reference and made a part hereof.

ARTICLE TWO: THE PROJECT

1. The City has caused to be prepared construction drawings, specifications, and details (the "Construction Documents") pursuant to the Design IGA.
2. The City shall construct the project in accordance with the Construction Documents.
3. The City shall advertise, bid, award and administer the construction contract and a construction management contract.
4. The construction contract bid documents will use City templates regarding general contracting language, including MBEAA/BE, insurance, typical front end documents and specifications. The City has reviewed MWRD's MBEAA/BE policies and exhibits and has determined that the City's MBE/WBE regulations meet or exceed the District's policies. The City does not use a flat percentage for MBE/WBE, but determines project specific goals based on type and complexity of construction, tasks and labor divisions entailed in the construction and availability of suitable and qualified MBE and WBE contractors, based on a review of the City's and Illinois Unified Certification databases of minority contractors
5. The District may ask to review all bids and advise on contract award.
6. The District will have the right to review all submittals, requests for information, and any other documents generated by the contractor, engineering designer or construction manager.
7. The District will review and be sent record copies of the contractor's monthly progress invoices.
8. The District may attend all weekly construction progress update meetings and other meetings during construction as necessary.
9. The District shall be named as "additional insured" against all claims under the construction

contractor's insurance policy.

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10. At the end of the Project, the City will send the District "As-Built" drawings of the completed tunnel.

11. The City shall own all of the improvements constructed for the Project pursuant to this Agreement, including but not limited to the Diversion Tunnel, except for certain park-related improvements. None of the funds provided by the District may be used for construction of those park-related improvements. Rather, the City shall pay for the construction of those improvements with money from its share of the Project funding. Additionally, after those improvements are constructed, the City will turn them over to the Chicago Park District (the "Park District"). The City agrees to provide a copy of such turnover document to the District, and shall ensure that such turnover to the Park District includes an acknowledgement by the Park District that it will own, use, and maintain such improvements in accordance with the Lease Between Metropolitan Sanitary District of Greater Chicago and the Chicago Park District dated April 12, 1962, as amended. Nothing in this Agreement shall be construed as creating an ownership or property interest of the District in any of the improvements constructed by the City pursuant to this Agreement.

12. The City shall be responsible for operations and maintenance of the Diversion Tunnel and will have on file an operations and maintenance manual, subject to review but not approval of the District.

13. The District shall reimburse the City up to Twenty-Four Million Seven Hundred Fifty Thousand Four Hundred Three Dollars (\$24,750,403) ("Maximum Reimbursement Amount") for the construction of the Project. For purposes of this Agreement, "construction" shall mean all work necessary to build the Project as depicted in the Construction Documents. The City shall be solely responsible for change orders, overruns or any other increases in cost of the Project. Additionally, the City shall be solely responsible for any portion of the construction dedicated to park-related improvements as set forth in paragraph 11 above. The District shall disburse funds to the City in accordance with the following schedule:

- a. Up to 25% of the Maximum Reimbursement amount at receipt of invoices for 25% completion of construction:
- b. Up to 25% of the Maximum Reimbursement Amount at receipt of invoices for 50% completion of construction;'
- c. Up to 25% of the Maximum Reimbursement amount at receipt of invoices for 75% completion of construction; and
- d. .Up to 25% of the Maximum Reimbursement amount at receipt of invoices for 100% completion of construction after final inspection by the District.

14. As a condition for reimbursement, the City shall submit copies of construction invoices to the District for the District's review and approval.

15. The City shall return all funds provided by the District if the Project is not completed within two years of award of the construction contract, unless the District approves extension(s); such approval shall not be unreasonably withheld. In the event that the City does not use all of

the District's disbursed funds for the Project, the City shall return any unused funds to the District within sixty (60) days.

ARTICLE THREE: TAX EXEMPT STATUS

The City shall not use or permit to be used or operate the Project in any manner or for any purpose or take any action or omit to take any action, which could result in loss of the exclusion from gross income for federal income tax purposes of the interest on any obligations of the District or the loss of any credit payment or tax credit to the District or any other party from the United States Treasury (such as, for example, was available to units of local government for "build America bonds") (any of such advantages being "Tax Advantaged Status"), as such Tax Advantaged Status is governed by the federal income tax laws, as amended from time to time, including but not limited to, Sections 54 through 57, 103, and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations or any rulings promulgated there under or decisions of any court of competent jurisdiction (collectively, the "Tax Laws").

The City agrees to provide a certification and agreement, in the form as attached to this Agreement as Exhibit 1, regarding compliance with the Tax Laws (the "Tax Agreement"). In the event modification of such form of certification is required, such modification shall be passed upon by bond counsel to the District.

ARTICLE FOUR: PROPERTY INTERESTS

1. Upon execution of this Agreement and the District's approval of appropriate plats and legal descriptions prepared and submitted by the City, at the City's expense, the District shall, without the payment of compensation, duly execute and deliver to the City an Easement Agreement substantially in the form set forth in Exhibit 2 (the "Easement Agreement"), which is attached and incorporated. The City shall obtain any consent from lessee or licensee of any property leased or licensed by the District to third parties, except that with respect to the lease by the District to North Park University ("North Park Lease"), the District will deliver a written notice for the Project in accordance with Section 5.01 of the North Park Lease.. The City shall take the property "as is" with no warranties of title by the District.

2. The delivery of the Easement Agreement shall take place at a closing at a time and place that are mutually agreed by the City and the District.

3. The District also agrees to provide the City with rights of entry or similar temporary access to other District lands reasonably requested by the City in order to construct and install the Project, subject to the rights of any third parties who have an interest in the land.

4. The value of the grant and the value of the rights of entry shall not be deemed a reimbursable expense under Article 2 of this Agreement. The District agrees to provide a donation letter, waiver of appraisal, and such other acknowledgements of the land acquisition procedures, terms and conditions as shall be reasonably requested by the City in connection with the proposed funding of the Project.

5. In addition to the Easement Agreement described in paragraph 1 of this Article, the city shall, prior to construction, make best efforts to acquire from applicable property owners

such temporary or permanent easements, license agreements, or fee simple title ("Other Property Interest") to the extent reasonably necessary for construction of, maintenance of, and access to the Project. This shall be the sole responsibility of the City and shall occur without cost to the District.

6. The City shall pay for the recording of all easements, licenses or deeds acquired for the Project.

ARTICLE FIVE: MAINTENANCE

1. The City, at its sole cost and expense, shall perpetually maintain and operate the Project for the entire duration of this Agreement in accordance with the Operations and Maintenance Plan attached to this Agreement as Exhibit 3, and shall deliver to District a copy of the inspection and maintenance report therein described.

2. The District shall have the right (including any necessary right of access) to conduct its own annual inspection of the constructed Project upon reasonable notice to the City.

3. In the event that the City fails to maintain and/or operate the Project as specified in the Operations and Maintenance Plan as described above to the satisfaction of the District, the District may issue a thirty (30) day written notice by certified or registered mail to the City directing the City to perform such maintenance and/or operate the Project. If maintenance has not been accomplished and/or operation resumed on or before thirty (30) days after such notice, or such other period reasonably necessary to perform the work, whichever is longer, the City shall pay the District the actual cost to the District of performing the required maintenance and/or operating the Project.

4. In the event that the City fails to operate the Project anytime during the next 30 years (calculated from the date written on the first page of this Agreement), the District may demand that some or all of the funding it provided under this Agreement be returned to the District. However, this paragraph shall not apply if: (a) the City replaces the Project with improvements that are deemed by the District to have equal or greater stormwater benefit to the public; and (b) the cost of the Project has been amortized prior to its replacement in a manner consistent with terms of Article 3 of this Agreement and the corresponding Tax Agreement, attached hereto as Exhibit 1

ARTICLE SIX: TERM

Subject to the terms and conditions of Articles 9 and 10 below, this Agreement shall remain in full force and effect until 99 years from the date of this Agreement.

ARTICLE SEVEN: PERMITS AND FEES

Nothing in this Agreement shall be construed to require or oblige the District to procure or provide funding for any of the federal, state, or local permits or easements that may be necessary for, or in any way related to, the construction of the Project.

ARTICLE EIGHT: NOTIFICATION

1. Bid Advertisement. The City will provide the District with 30-day notice prior to bid advertisement for the Project.

2. Construction. The City shall provide the District with a construction schedule and provide the District a minimum of 72-hour notice before the following project milestones:

- a) Start of work
- b) Substantial completion
- c) Completion of work

ARTICLE NINE: SIGNAGE

The signage will indicate that the Project is a joint effort between the City and the District designed to alleviate flooding and the damage caused by overtopping flood waters from the North Branch of the Chicago River to public and private infrastructure and disruption to local and regional transportation. Specific details of the signage will be mutually agreed upon by the parties.

ARTICLE TEN: TERMINATION BY THE CITY

Prior to commencement of construction of the Project, the City may, at its option, and upon giving notice to the District in the manner provided in Article 13 below, terminate this Agreement as it pertains to the entire Project.

ARTICLE ELEVEN: TERMINATION BY THE DISTRICT

Prior to bid advertisement of the Project, the District may, at its option, and upon giving notice to the City in the manner provided in Article 13 below, terminate this Agreement as it pertains to the entire Project.

ARTICLE TWELVE: INDEMNITY

City agrees to defend, indemnify and hold harmless the District, its Commissioners, officers, servants, employees and agents from and against any claim, demand, or cause of action for personal injury or death or property damage, which arising or resulting from the City's or its contractor's construction or implementation of the Project or its entry on the District's property as authorized herein, except to the extent such is proximately caused by the negligent, willful and wanton or intentionally tortious actions or omissions of the District or its Commissioners, officers, servants, agents or employees.

Upon receipt by the District of notice of any claim covered under this provision, the District shall notify the City within 30 days and deliver copies of all documents providing such notice. Upon receipt of such notice and documents, the City will appear in a timely manner and vigorously defend all suits brought upon such claim and shall pay all costs and expenses incidental thereto.

The District shall have the right, at its option, to consult in the defense of any claim, without relieving City of its obligations hereunder; provided that the City shall have sole discretion over settlement of any such claim and litigation strategy with respect to defense of such claim. However, any settlement which requires any action on the part of the District must be made only with the prior written consent of the District's General Counsel.

"Losses" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all

of which in any way arise out of or relate to the contractor's breach of any contract related to the Project or the contractor's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, subcontractors or licensees arising out of or as a consequence of the performance of the Project.

To the extent permissible by law, the City waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of the contractor or subcontractor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq., or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corp.*, v 146 Ill. 2d 155 (1991)). The District, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act or any other statute or judicial decision.

ARTICLE THIRTEEN: NOTICE

Notice to District shall be addressed to:

Director of Engineering
Metropolitan Water Reclamation District of Greater Chicago 100 East Erie
Street Chicago, Illinois 60611 FAX: (312) 751.7905

and

General Counsel
Metropolitan Water Reclamation District of Greater Chicago 100 East Erie
Street Chicago, Illinois 60611 Phone: (312) 751.6565

Notice to the City shall be addressed to:

Commissioner
City of Chicago, Department of Transportation 30 North
LaSalle Street, suite 1100 Chicago, Illinois 60602

And

Corporation Counsel City of Chicago, Department
of Law 121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attention: Finance and Economic Development Division Phone: (312)
744.0200

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth above, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram, telecopy or facsimile (FAX) machine; (c) overnight courier; or (d) registered or certified mail, return receipt requested.

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Such addresses may be changed when notice is given to the other party in the same manner as provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received two (2) days following deposit in the mail.

ARTICLE FOURTEEN: ASSIGNMENT; BINDING EFFECT

This Agreement, or any portion thereof, shall not be assigned by either party without the prior written consent of the other.

This Agreement shall inure to the benefit of and shall be binding upon the City, the District and their respective successors and permitted assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the parties hereto and such successors and permitted assigns.

ARTICLE FIFTEEN: MODIFICATION

This Agreement may not be altered, modified or amended except by written instrument signed by all of the parties hereto.

ARTICLE SIXTEEN: COMPLIANCE WITH LAWS

The parties hereto shall comply with all federal, state and municipal laws, ordinances, rules and regulations relating to this Agreement.

ARTICLE SEVENTEEN: GOVERNING LAW AND SEVERABILITY

This Agreement shall be governed by the laws of the State of Illinois. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

ARTICLE EIGHTEEN: NECESSARY DOCUMENTS

Each party agrees to execute and deliver all further documents, and take all further action reasonably necessary to effectuate the purpose of this Agreement. Upon the completion of the Project, the City shall provide the District with a full sized copy of "As-Built" drawings for the Project. The drawings shall be affixed with the "As-Built" printed mark and must be signed by both the resident engineer and the contractor.

ARTICLE NINETEEN: COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original.

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ARTICLE TWENTY: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties.

ARTICLE TWENTY-ONE: AUTHORITY

Execution of this Agreement by the City is authorized by an ordinance adopted by the City Council on , 20 . Execution of this Agreement by the District is authorized by order of the Board of Commissioners on August 29, 2013. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

ARTICLE TWENTY-TWO: HEADINGS

The headings and titles of this Agreement are for convenience only and shall not influence the

construction or interpretation of this Agreement.

ARTICLE TWENTY-THREE: DISCLAIMER OF RELATIONSHIP

Nothing contained in this Agreement, nor any act of the City or the District shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City and the District.

ARTICLE TWENTY-FOUR: CONSTRUCTION OF WORDS

The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, the masculine form shall include feminine and neuter, and the feminine form shall include masculine and neuter.

ARTICLE TWENTY-FIVE: NO PERSONAL LIABILITY

No officer, member, official, employee or agent of the City or the District shall be individually or personally liable in connection with this Agreement.

ARTICLE TWENTY-SIX: NON-WAIVER

Either party's failure to require strict performance by the other party of any provision of this Agreement will not waive a party's right to demand strict compliance with any other provision of this Agreement or such provision at any other time. Any waiver of any terms of this Agreement must be in writing and shall not diminish the future enforceability of this Agreement.

ARTICLE TWENTY-SEVEN: REPRESENTATIVES

Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact

For the District: Director of Engineering
Metropolitan Water Reclamation District of Greater Chicago 100 East Erie Street
Chicago, Illinois 60611 Phone: (312) 751-3169 FAX: (312)751.7905

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For the City: Commissioner
City of Chicago, Department of Transportation 30 North
LaSalle Street Chicago, Illinois 60602 Phone: (312) FAX:
(312)

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

[Signature Page Follows]

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IN WITNESS WHEREOF the Metropolitan Water Reclamation District of Greater Chicago and City of Chicago, the parties hereto, have each caused this Agreement to be executed as of the date first above written by their duly authorized officers, duly attested and their seals hereto affixed this IGA, which shall become effective upon the date it is signed by both parties.

CITY OF CHICAGO

By:

Name

Commissioner of the Department of Transportation

ATTEST:

By:

Name:

Clerk

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

By:

Name:

Chairman of the Committee on Finance

By:

Name:

Executive Director

ATTEST:

By:

Clerk

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APPROVED AS TO ENGINEERING:

Name:

Assistant Director of Engineering

Name:

Director of Engineering

APPROVED AS TO FORM AND LEGALITY

Name :

Head Assistant Attorney

Name:

General Counsel

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EXHIBIT 1 Form of
Tax Exemption Certificate and Agreement (See Attachment)

Tax Exemption Certificate and Agreement

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

The City is aware that the District has limited resources and might be unable to fund the Facilities without this Tax Agreement.

Section 1. Definitions and Appendices. Attached hereto are four Appendices, made a part hereof. Appendix A contains certain covenants and representations that may or may not impose burdens on the City. Appendix B contains a glossary of definitions applicable to the tax covenants, including Appendix A. Appendix

C, if any, includes a description of certain funds or accounts that, as described in Appendix A, may be subject to investment restrictions or rebate payments. Appendix D lists or describes the Facilities that are hereby made the subject of restrictions described herein.

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

Section 3. Purpose of Cost Share. The Facilities listed in Appendix D have been or are being acquired by the City with funds transferred by the District (the "Cost Share ") to allow the City and District to better manage stormwater. The City, and not the District, will own and control the operation and use of these Facilities, except for annual inspections and except that District may perform needed maintenance (at the expense of the City) if the City does not. In the event that the City does not adequately maintain such Facilities, all amounts transferred to the City will be repaid on demand of the District.

Section 4. Cash Transfer. The District will transfer cash. Such cash transfers will either be to reimburse (in whole or in part) the City for acquiring the Facilities for the control of stormwater within the area served by the District or to provide the funds to construct such Facilities. In either case, the City will add any such Facilities to Appendix D before such Facilities become operational.

In the case of reimbursement, the City will not accept such cash more than 18 months after the expenditure to be reimbursed. The City also understands that the District will be unable to make such a transfer if the expenditure was made prior to a date¹ set by the District.

If any cash is transferred for capital expenditures not made by the City on or prior to the date of the transfer or involving a current outlay of cash for a capital expenditure the City will segregate such funds for investment and tracking purposes. Such funds will be invested and disbursed only in accordance with Appendix A and any supplemental tax agreement. In order to establish that cash transferred to the City on a particular date which involves a current outlay of the same amount of cash by the City, the City will either confirm to the District that it reasonably expects on the date of receipt of funds that it will disburse all amounts to the appropriate individual or entity within five business days or it will acknowledge increased investment tracking, computation and payment obligations related to such funds.

Section 5. Payments to District, Security for District Debt. Unless the City executes a separate supplemental tax agreement indicating otherwise, the City will not provide any security for any debt of District and the City will not make payments to District that could be used by District to pay or secure its debt. No fees will be paid by the City for use of the Facilities. No repayments will be required. This section will not be read to limit future contractual arrangements including separate tax covenants. Under the intergovernmental agreement between District and the City, if the City does not properly maintain the Facilities, the District may perform maintenance on the Facilities and charge the City for such maintenance costs.

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

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

Section 8. Records. The City agrees to keep and retain or cause to be kept and retained adequate records with respect to the investment and expenditure of all amounts transferred by the District to the City and provide such records to the District on reasonable request. The City further agrees to maintain sufficient records to demonstrate compliance with all of the covenants set forth herein. Such records will be maintained at least until _____, 20__² or such later date provided by the District. If, as expected, cash is only transferred to the City as reimbursement for prior expenditures or for current outlay, records to that effect will be sufficient investment and expenditure records.

Date will be 60 days before adoption of reimbursement resolution or bond issuance.

Use 3 years after final maturity date of financing bonds. If unknown, use best estimate. If a longer period is required, the longer period will be provided by Notice from District to the City.

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Section 9. Investment Restrictions. Any money transferred by the District to the City that is not immediately allocated to an expenditure, must be invested in investments purchased at the market price, therefore, at all times to the greatest extent practicable, and no amounts may be held as cash or be invested in zero yield investments other than obligations of the United States of America purchased directly from the United States of America. In the event moneys cannot be invested, other than as provided in this sentence due to the denomination, price or availability of investments, the amounts shall be invested in an interest bearing deposit of a bank with a yield not less than that paid to the general public or held uninvested to the minimum extent necessary. Except as provided in Appendix A, all moneys transferred by the District to the City shall be invested at a Yield not in excess of a Yield to be provided by the District (which may be revised by notice to the City). Appendix A contains further details related to investment restrictions.

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

with no contract.

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

Section 11. No Sale of the Project. Except as provided in Appendix A, none of the Facilities is expected to be sold or otherwise disposed of (other than to another unit of state or local government) prior to the earlier of (i) the last date of the economic life of the property or (ii) a date to be provided by Notice to the City.

Section 12. Use Contracts. Except as provided herein, the City will not enter into any contract with any other person that provides special legal entitlements in any of the Facilities. The City will not allow another entity to manage, control, or operate any of the Facilities. The City will not contractually provide that any of the Facilities will be used to manage stormwater of a specific non-governmental entity. The City may enter into a management contract or other contract concerning the Facilities if it establishes that such contract does not create private use in excess of use permitted under Section 10 and it delivers to the District an opinion of Bond Counsel to that effect with a copy of the contract.

Section 13. Cooperation. The City will cooperate with the District at the expense of the City in defending any examination of bonds of the District that financed any of the Facilities. Except to the extent that public safety concerns dictate otherwise, the City will allow site visits by the District, its counsel, and personnel of the Internal Revenue Service in response to an examination of such bonds.

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

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

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

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

By _____;
Authorized Signature for the City of
Chicago
Dated: _____, 20__

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Appendix A

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

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

Appendix A, Section 2. Project Moneys Received. The City will hold all amounts received from the District not allocated to a capital expenditure paid by the City prior to receipt or within five business days of receipt in a segregated fund or account herein referred to as the District Project Fund.

The District Project Fund shall be invested in U.S. Treasury obligations (including SLGS) or other investments permitted in writing by the District in a Notification to the City. The District Project Fund will not be left uninvested except for amounts under \$10,000 or amounts that are to be allocated to expenditure or investment within 5 business days.

Amounts will be withdrawn from the District Project Fund only to the extent allocated to capital expenditures for costs of the Project. Except as described above, investment earnings on the District Project Fund shall be retained in the District Project Fund.

The City shall provide the District with the balance of the District Project Fund on each date that the District provides funds to the City and on such other dates provided by the District in a Notification to the City. If any amounts or investments remain in the District Project Fund after a date provided by the District in a Notification to the City then the City will invest and disburse such amounts only in accordance with

instructions provided in a supplemental Tax Agreement or in a Notification by the District to the City.

On the dates provided by the District in a Notification to the City, the City will provide rebate and yield reduction payment computations to the District based on yields provided by the District in Notifications. If any computations show amounts owed on such investments, the City shall promptly pay such amounts to the District.

Appendix A, Section 3. Market Price Investment Restrictions. The City will not invest any of the amounts received from the District in any investment that has specifically negotiated withdrawal or reinvestment provisions and, a specifically negotiated interest rate, or any agreement to supply investments on two or more future dates (including any guaranteed investment contract, forward supply contract, repurchase agreement, or any similar agreement) unless it awards such investment contract pursuant to competitive bidding in a manner approved by the District and its counsel.

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

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

Appendix A, Section 5. Rebate. Amounts received from the District except as noted herein are subject to the Rebate requirement. The City is responsible for calculating the amount of rebate if any, due on such funds or accounts including those listed in Appendix C. Such rebate calculations shall be based on bond yields equal to yields provided from time to time by the District. Such rebate computations shall be based upon a bond year ending on dates provided by the District, and installment computation dates provided by the District, and such other dates as may be provided by the District from time to time. Such computations shall ignore "rebate credits" and shall not reflect any hold back amount permitted under the regulations. For example, the rebate amount shall be 100% on each computation date, not reduced to 90% as might be permitted under regulations. The City shall pay to the District the amount of rebate due with respect to each such account no later than 50 days after each installment computation date.

Appendix A, Section 6. Records. The City shall retain records relating to each computation performed and all other investment records of amounts identified in Appendix A, Sections 1 and 2.

Such records shall include: (a) purchase price; (b) purchase date; (c) type of investment; (d) accrued interest paid; (e) interest rate; (f) principal amount; (g) maturity date; (h) interest payment date; (i) date of liquidation; and (j) receipt upon liquidation. If an investment becomes

Same date as in Section 3 above.

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allocable to one of the funds or accounts described in Section 7 of the Tax Covenants on a date other than the date such investment is purchased, the records required to be kept shall include the fair market value of such investment on the date it becomes so allocated. Amounts or investments will be segregated whenever necessary to maintain these records. Upon request of the District, such records will be provided to the District.

Appendix A, Section 7. Sale of the Project. The City shall not sell or otherwise dispose of any portion of the Facilities identified on Appendix D without prior written approval of the District or as specifically allowed as described below:

(a) Other than as provided in the next sentence, no Facility identified on Appendix D nor any portion thereof has been, is expected to be, or will be sold or otherwise disposed of, in whole or in part (other than to another unit of state or local government for public use), prior to the earlier of (i) the last date of the reasonably expected economic life to the City of the property or (ii) a date provided by the District in a Notice to the City.² The City may dispose of property in the ordinary course of an established government program to another unit of state or local government; or prior to the earlier of (i) the last date of the reasonably expected economic life to the City of the property or (ii) a date³ provided by the District in a Notice to the City, provided: (A) the reasonably expected period of use of that property for governmental purposes is not less than a number of years⁴ provided by the District by notification to the City; (B) the City reasonably expects on receipt of the property that the fair market value of that property on the date of disposition will be not greater than 25 percent of its cost; (C) the property is no longer suitable for its governmental purposes on the date of disposition; and (D) the City deposits amounts received from the disposition in a commingled fund with substantial tax or other governmental revenues and the City reasonably expects to spend the amounts on governmental programs within six months from the date of the commingling.

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

Appendix A, Section 8. Maintenance of Tax Exemption. The City recognizes that investors in tax exempt bonds are relying on these covenants, and will contact the District if the City determines that it may have violated any covenant or if it is unsure of any action required of it. The District may under such circumstances provide the City with additional instructions.

Final maturity date of bonds financing Cost Sharing. Final maturity
date of bonds financing Cost Sharing.

District to compute and provide WAM on bonds financing the Cost Share. If more than one, use shortest.

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

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Appendix B

Glossary

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

"Bond Counsel" means any nationally recognized firm of attorneys experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds.

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

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

- a) to approve and to remove without cause a controlling portion of the governing body of a Controlled Entity; or
- b) to require the use of funds or assets of a Controlled Entity for any purpose.

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

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

"Facilities " means the properties and/or facilities identified on Appendix D.

"District" means the Metropolitan Water Reclamation Agency of Greater Chicago.

"Non-AMT Tax-Exempt Investments" (i) any obligation described in Section 103(a) of the Internal

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

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Code of any owner thereof for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed by Section 55 of the Code; and (iii) certificates of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 C.F.R. part 344 (to the extent permitted by law).

"Project" means the properties and/or facilities identified on Appendix D. "Related

Person " means a member of the same controlled group.

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

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Appendix C

Funds or Accounts Containing Money Transferred from District to the City

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Appendix D Facilities Subject to Use Restrictions

1. Inlet structure, including but not limited to: overflow weir, trash racks, sluice gate, and protective fencing/railings.
2. Inlet dropshaft.
- 3: 18-foot diameter rock tunnel.
4. Outlet dropshaft.
5. Outlet structure, including but not limited to: trash racks, wing walls, concrete apron, and rip rap.
6. Dewatering pumps.
7. Electrical building (located near the outlet structure and housing power and controls for the dewatering pumps).

Form of Notification of Key Dates and Numbers

For purposes of compliance with the Tax Exemption Certificate and Agreement executed on _____, 201__ by the City of Chicago (the "City") and the Metropolitan Water Reclamation District of Greater Chicago (the "District") the District hereby notifies the City of the following dates and values:

Tax Agreement Section 4. Earliest Expenditure Date: //

Tax Agreement Section 8. Record Maintenance Date: // (This is 3 years after the final maturity date of the financing bonds.) This date may be revised further.

Tax Agreement Section 11. Sale of Facilities Date: // (This is the final maturity date of bonds financing the Facilities.)

Appendix A Section 2. Rebate Yield(s): %
 Restriction Yield(s): %
 Rebate Computation Date: III

Appendix A Section 3. Investment Restriction Date: / /201

Appendix A Section 4. Investment Restriction Date: / / 7201

Dates used for Section 3 and Section 4 are both 3 years after the earliest issuance of bonds financing the Facilities

Appendix A Section 5 Bond Yield: %.

Appendix A Section 7.

Earliest Sale date of any financed property 7 720 :

This is the final maturity date of bonds financing the Facilities in both places.

Appendix A Section 8. Minimum Useful Life years:

This is the number that when multiplied by 120% equals the weighted average maturity of bonds financing the Facilities.

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Acknowledgement of Receipt of Funds

The City of Chicago (the "City") provides this receipt for \$ received by the City
on //

This amount is allocable to the following post, current or future expenditures check one:

| No. | Amount | Party Paid or to be Paid | Date Paid or Expected to be Paid | Check One | | | |
|-------|--------|--------------------------------|--|-----------|--------|--------|------------------|
| | | | | Past | Curren | Future | Future Amount |
| 1. | \$ | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |
| 4. | | | | | | | |
| 5. | | | | | | | |
| Total | \$ | | | | | | \$ |

The expenditures described above may exceed (but not be less than) the amount received by the City.

The City will hold the sum of future expenditures in the District Project Account to be invested and tracked as described in the Tax Agreement.

The City confirms that all such expenditures are for the Project and that they are not being permanently financed from any other source.

City of Chicago

By_

Its:

EXHIBIT 2 Form of Easement Agreement (See Attached)

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REV. -11-14-14

EASEMENT AGREEMENT
(Annual Increase-Environmental)

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, a body corporate and politic organized and existing under the laws of the State of Illinois, hereinafter called the "District" and the City of Chicago, a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the Illinois Constitution of 1970, hereinafter called the "Grantee."

WHEREAS, the Grantee desires permanent and temporary easements to construct, reconstruct, operate, maintain, repair and remove a stormwater diversion tunnel and related appurtenances in, on, over and through the real estate legally described and depicted in Exhibit A which is attached hereto and made a part hereof; and

WHEREAS, the District is willing to grant to the Grantee the easement aforesaid upon the conditions hereinafter set forth;

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

ARTICLE ONE

1 The District hereby grants unto the Grantee a permanent easement, right, privilege and authority for the sole and exclusive purpose to construct, reconstruct, operate, maintain, repair and remove a stormwater diversion tunnel and related appurtenances hereinafter called "Improvements and Facilities", in, on, over and through the real estate legally described and depicted in Exhibit A which is attached hereto and made a part hereof, hereinafter called the "Permanent Easement Premises".

The District hereby grants unto the Grantee a temporary easement, right, privilege and authority commencing on the date hereof, and terminating on the fifth anniversary of such date or the completion of the Improvements and Facilities, whichever occurs first for the sole and exclusive purpose to construct and install the Improvements and Facilities in, on, over and through the real estate legally described and depicted in Exhibit B which is attached hereto and made a part hereof, hereinafter called the "Temporary Easement Premises". The Permanent Easement Premises and the Temporary Easement Premises are together hereinafter called the "Temporary Easement Premises".

2 The District reserves the right of access to and use of the surface of the easement premises to the extent it does not interfere with the use and enjoyment of

the permanent easement and the temporary easement granted herein ("Easements").

1.03 The Grantee covenants and agrees in consideration of the grant of said easement to pay to the District an easement fee in the amount of TEN AND 00/100 DOLLARS (\$10.00) which has been paid contemporaneously with Grantee's execution and delivery hereof.

1.05 In addition to the aforesaid, the Grantee shall also pay, when due, all real estate taxes and assessments that may be levied, charged or imposed upon or against the Easement Premises as a result of the Easements and submit to the District evidence of such payment within 30 days thereafter.

ARTICLE TWO

1 The construction and installation of the Improvements and Facilities of the Grantee on the Easement Premises shall be in accordance with plans and specifications therefor prepared at Grantee's expense and supplied to the District by the Grantee as provided in an intergovernmental agreement between the Grantee and District dated March 4, 2014 (the "Design IGA"). NO work on District land shall commence until said plans and specifications have been approved in writing by the Executive Director of the District.

2 The construction and installation of the Improvements and Facilities by the Grantee on the Easement Premises shall be done to the reasonable satisfaction of the Executive Director of the District that they are in compliance with the intergovernmental agreement between the Grantee and District dated _____, 2015 (the "Construction IGA").

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

ARTICLE THREE

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

2 The Grantee shall be solely responsible for and shall defend, indemnify, keep and save harmless the District, its Commissioners, officers, agents and employees, against all losses claims, patent claims, liens, suits, liabilities, judgments, costs and expenses for personal injuries, deaths, damage or destruction of property, or other losses based on claims of tortious conduct, which may in any wise accrue, directly or indirectly, against the District, its Commissioners, officers,

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agents or employees, in consequence of the granting of this Easement, or which result therefrom or from any work done hereunder, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Grantee or Grantee's contracts, subcontractors or their agents, except to the extent caused by the negligent, willful and wanton or intentionally tortious

conduct of the District. Upon receipt of notice of a claim as described below, the Grantee shall, at Grantee's sole expense, appear, defend and pay all charges of Attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the District, its Commissioners, officers, agents or employees, in any such action, the Grantee shall, at the Grantee's sole expense, satisfy and discharge the same provided that Grantee shall first have been given prior notice of the suit in which judgment has been or shall be rendered, Grantee shall have been given an opportunity to defend the same and the District shall have given Grantee its full cooperation. Grantee expressly understands and agrees that any performance bond or insurance protection required by this Easement, or otherwise provided by Grantee, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the District as herein provided.

3.03 (a) The Grantee, prior to entering upon said premises and using the same for the construction or installation of the Improvements and Facilities, shall procure, maintain and keep in force, at Grantee's expense, the public liability and property damage insurance described in Exhibit C which is attached and incorporated, and for which the District, its Commissioners, officers, agents and employees, shall be named as additional insured

Prior to the City or its contractors entering upon said Permanent or Temporary Easement Premises for installation or construction of the Improvements and Facilities, and thereafter on the anniversary date of such policies, the Grantee shall furnish to the District certificates of such insurance or other suitable evidence that such insurance coverage has been procured and is maintained in full force and effect. Upon District's written request, Grantee shall provide District with copies of the actual insurance policies within ten (10) days of District's request for same. Such certificates and insurance policies shall clearly identify the 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 District. The provisions of this paragraph shall in no wise limit the liability of the Grantee as set forth in the provisions of paragraph 3.02 above, or

(b) The Grantee prior to entering upon said premises and using the same for the purposes for which this Easement is granted, shall prepare and transmit to the District an acknowledged statement that the Grantee is a self-insurer, and that it undertakes and promises to insure the District, its Commissioners, officers, agents, servants and employees on account of risks and liabilities contemplated by the indemnity obligations of this Easement (Article Four, Paragraph 4.02) above; and that such statement is issued in lieu of policies of insurance or certificates of

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insurance in which the District, 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 Easement Premises) in the amount of not less than \$4,000,000.00 per Occurrence.

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

ARTICLE FOUR

1 In the event of any default on the part of the Grantee to faithfully keep and perform all singular the covenants, agreements and undertakings herein agreed by it to be kept and performed, or if said Improvements and Facilities are abandoned, the District shall give the Grantee notice in writing of such default or abandonment; and if such default or abandonment shall not have been rectified within thirty (30) days after receipt of such notice by the Grantee, or such longer period as is reasonable for more significant defaults not capable of cure within 30 days, the District may enter the Easement Premises and perform the work required to cause compliance and the Grantee shall pay such amounts actually incurred to bring the Improvements and Facilities into compliance.

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

ARTICLE FIVE

5.01 The Grantee also agrees that if the District incurs any additional expense for maintenance of its existing facilities or the design of future facilities of the District which expenses the District would not have had to incur if the

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Improvements and Facilities had not been authorized to occupy the Permanent Easement Premises, then, in that event, the Grantee agrees to pay to the District the actual additional expense of such additional maintenance or design work, promptly upon rendition of bills therefor to the Grantee.

5.02 The Grantee covenants and agrees that, upon completion of construction of the Improvements and Facilities, it will restore the existing facilities of the MWRD and upon completion of any maintenance of the Improvements and Facilities restore the then existing facilities of MWRD, but in either case only to the extent such MWRD facilities are not in violation of the Easements.

ARTICLE SIX

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

6.03 Any notice herein provided to be given shall be deemed properly served if delivered

in writing personally or mailed by registered or certified mail, postage prepaid, return receipt requested to the District in care of the Executive Director, 100 East Erie Street, Chicago, Illinois 60611, or to the Grantee in care of:

Commissioner of Transportation City of
Chicago 30 North LaSalle Street Suite 1100
Chicago, Illinois 60602

With a copy to:

Corporation Counsel City of
Chicago 121 North LaSalle Street
Room 600
Chicago, Illinois 60602

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

ARTICLE SEVEN

7.01 The Grantee, prior to entering upon said Easement Premises and using the same for the purposes for which this Easement is granted, shall, at Grantee's sole cost and expense, obtain all permits, consents and licenses which may be required under any and all statutes, laws, ordinances and regulations of the District,

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the United States of America, or the State of Illinois, and furnish to the District suitable evidence thereof.

2 The Grantee covenants and agrees that it shall strictly comply with any and all applicable statutes, laws, ordinances and regulations of the District, the United States of America, and the State of Illinois,, which in any manner applies to this Easement, any work done hereunder or control or limit in any way the actions of Grantee, its agents, servants and employees, or of any contractor or subcontractor of Grantee, or their employees.

3 The Grantee agrees to protect all existing District facilities within the Easement Premises, including, but not limited to, intercepting sewers, sludge lines, utility lines, dropshafts, connecting structures, siphons and manholes.

4 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.

ARTICLE EIGHT

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

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

3 Any attempted assignment or transfer of any type not in compliance with these sections shall be void and without force and effect.

ARTICLE NINE

GENERAL ENVIRONMENTAL PROVISIONS

9.01 DEFINITIONS

- A. "Environmental Laws" shall mean all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations and similar items, of all government agencies, departments, commissions, boards,

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bureaus, or instrumentalities of the United States, state and political subdivisions thereof with jurisdiction 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 applicable requirements, including, without limitation, those pertaining to notification, warning, reporting, licensing, permitting, investigation, and remediation of the presence, creation, manufacture, processing, use, management, distribution, transportation, treatment, storage, disposal, handling, or release of Hazardous Materials;
- 2) all requirements pertaining to the protection of employees or the public from exposure to Hazardous Materials or injuries or harm associated therewith; and
- 3) the Comprehensive Environmental Response, Compensation and Liability Act (Superfund or CERCLA) (42 U.S.C. Sec. 9601 et seq.), the Resource Conservation and Recovery Act (Solid Waste Disposal Act or RCRA) (42 U.S.C. Sec. 6901 et seq.), Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), the Rivers and Harbors Act of 1988 (33 U.S.C. Sec. 401 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Safe Drinking Water Act (42 U.S.C. Sec. 300 (f) et seq.), the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and all rules, regulations and guidance documents promulgated or published thereunder, Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.) and all similar state, local and municipal laws relating to public health, safety or the environment.

B. "Hazardous Materials" shall mean:

- 1) any and all asbestos, natural gas, synthetic gas,
- 1) liquefied natural gas, gasoline, diesel fuel,
- 1) petroleum, petroleum products, petroleum
- 1) hydrocarbons, petroleum by-products, petroleum
- 1) derivatives, crude oil and any fraction of it,
- 1) polychlorinated biphenyls (PCBs),
- 1) trichloroethylene, ureaformaldehyde and radon
- 1) gas;
- 2) any substance (whether solid, liquid or gaseous in nature), the presence of which (without regard to action level, concentration or quantity threshold requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law;
- 3) any substance (whether solid, liquid or gaseous in nature) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or dangerous;
- 4) any substance (whether solid, liquid or gaseous in nature) the presence of which could cause or threaten to cause a nuisance upon the area subject to easement or to adjacent properties or pose or threaten to pose a hazardous threat to the health or safety of persons on or about such properties;
- 5) any substance (whether solid, liquid or gaseous in nature) the presence of which on adjacent properties could constitute trespass by or against Grantee or District;
- 6) any materials, waste, chemicals and substances, whether solid, liquid or gaseous in nature, now or hereafter defined, listed, characterized or referred to in any Environmental Laws as "hazardous substances," "hazardous waste," "infectious waste," "medical waste," "extremely hazardous waste," "hazardous materials," "toxic chemicals," "toxic substances," "toxic waste," "toxic materials," "contaminants," "pollutants," "carcinogens," "reproductive toxicants," or any variant or similar designations;

- 7) any other substance (whether solid, liquid or gaseous in nature) which is now or hereafter regulated or controlled under any Environmental Laws (without regard to the

action levels, concentrations or quantity thresholds specified herein); or

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

C. "Phase I Environmental Assessment" shall mean:

- (1) an assessment of the Easement Premises and a reasonable area of the adjacent premises owned by the District performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Easement Premises, a review of the utilization and maintenance of hazardous materials on the Easement Premises review of the Easement Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Easement Premises, site interviews and site history evaluations, basic engineering analyses of the risks to human health and the environment of any areas of identified concerns, and preparation of a written report which discusses history, site land use, apparent regulatory compliance or lack thereof and which includes historical summary, proximity to and location of USTs, LUSTs, TSDFs, CERCLA site flood plain, maps, photograph log references, conclusions and recommendations.

D. "Phase II Environmental Assessment" shall mean:

- (1) an assessment of the Easement Premises and a reasonable area of the adjacent property owned by the District performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental

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assessments of real estate, bedrock and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to, extensive sampling of soils, ground waters and structures, followed by laboratory analysis of these samples and interpretation of the results, and preparation of a written report with boring logs, photograph logs, maps, investigative procedures, results, conclusions and recommendations.

2 MANUFACTURE, USE, STORAGE, TRANSFER OR DISTRIBUTION OF HAZARDOUS MATERIALS UPON OR WITHIN THE EASEMENT

Grantee, for itself, its successors and assigns covenants that to the extent that any Hazardous Materials are manufactured, brought upon, placed, stored, transferred, conveyed or distributed upon or within the Easement Premises, by Grantee or its successors or assigns, or any of its agents, servants, employees, contractors or subcontractors, same shall be done in strict compliance with all Environmental Laws.

Except for the Improvements and Facilities, construction or installation of new or

reconstruction of any underground interconnecting conveyance facilities for any material or substance is not permitted without the advance written consent of the Executive Director of the District.

3 USE OF PREMISES (RESTRICTIONS - ENVIRONMENTAL)

Grantee shall use the Easement Premises only for purposes expressly authorized by Article 1.01 of this Easement Agreement. Grantee will not do or permit any act that could materially increase the dangers, or pose an unreasonable risk of harm, to the health or safety of persons to third parties (on or off the Easement Premises) arising from activities thereon, or that could cause or threaten to cause a public or private nuisance on the Easement Premises or use Easement Premises in any manner (i) which could cause the Easement Premises to become a hazardous waste treatment, storage, or disposal facility within the meaning of, or otherwise bring the Easement Premises within the ambit of the Resource Conservation and Recovery Act of 1976, Section 6901 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance, (ii) so as to cause a release or threat of release of Hazardous Materials from the Easement Premises within the meaning of, or otherwise bring the Easement Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 9601 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance or any other Environmental Law or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions which would require a permit under the Federal Water Pollution Control Act, Section 1251 of Title 33 of the United States

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Code, or the Clean Air Act, Section 741 of Title 42 of the United States Code, or any similar state law or local ordinance.

4 CONDITION OF PROPERTY (ENVIRONMENTAL)

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

5 INDEMNIFICATION (ENVIRONMENTAL)

In consideration of the execution and delivery of this Easement Agreement, the Grantee indemnifies, defends, and holds the District and its officers, officials, Commissioners, employees, and agents ("Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages and expenses incurred in connection with Grantee's failure to comply with any of these environmental provisions irrespective of whether any such Indemnified Party is a party to the action for which indemnification is here sought, including reasonable Attorney's fees, costs and disbursements or incurred by the Indemnified Parties as a result of or arising out of or relating to (i) the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of Grantee's activities, or (ii) any investigation, litigation, or proceeding related to any environmental response, audit, or compliance in connection with the Improvements and Facilities, or (iii) the release or threatened release by Grantee, of any Hazardous Materials or the discovery of the presence of Hazardous Materials on or under the Easement Premises or any property to which the Grantee, has sent Hazardous Materials (including any losses, liabilities,

damages, injuries, costs, expenses, or claims asserted or arising under any Environmental Law) regardless of whether caused by or within the control of the Grantee, provided that, to the extent District is strictly liable under any Environmental Laws, Grantee's obligation to District under this indemnity shall be without regard to fault on the part of the Grantee with respect to the violation of law which results in liability to District.

6 ENVIRONMENTAL COVENANTS Grantee agrees to and covenants as follows:

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

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

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

D. Grantee will not allow the installation of asbestos on the area described in Exhibit A or any item, article, container or electrical equipment including but not limited to transformers, capacitors, circuit breakers, reclosers, voltage regulators, switches, electromagnets and cable, containing PCBs.

E. Grantee shall be responsible to install "plugs" of compacted impermeable soil material at intervals of no greater than 100 feet between such plugs along utility trenches which have been backfilled with compacted granular materials in order to minimize cross-site and off-site environmental contaminant migration. The spacing of these plugs should be based on the characteristics of the site, the configuration of the trench or trenches, the characteristics (nature and extent) of the site environmental contamination, and/or the potential for site contamination should a surface of subsurface chemical release occur. Special emphasis should be placed on locating these plugs at all utility trenches where they cross: other utility trenches, containment berms or walls, property boundaries, and lease boundaries.

F. The aforesaid representations and warranties shall survive the expiration or termination of the Easement Agreement.

9.07 COVENANTS (ENVIRONMENTAL)

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

A. Use and operate all of the Easement Premises in compliance with all applicable

Environmental Laws, keep all material permits, approvals, certificates, and licenses in effect and remain in material compliance with them;

- B. undertake reasonable and cost-effective measures to minimize any immediate environmental impact of any spill or leak of any Hazardous Materials;

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- C. Notify District by telephone within two hours of the discovery of a release of Hazardous Materials, including the extent to which the identity of the Hazardous Materials is known, the quantity thereof and the cause(s) of the release, and provide the District within 72 hours of the discovery with copies of all written notices by Grantee, its parent, and its subsidiaries that are reported to government regulators or received from the government regulators.
- D. Provide such information that the District may reasonably request from time to time to determine compliance by the Grantee with this Article.
- E. Grantee covenants and agrees to cooperate with the District in any inspection, assessment, monitoring, or remediation instituted by the District during the Easement Agreement.

9.08 COMPLIANCE (ENVIRONMENTAL)

- A. In the event of a spill, leak or release of hazardous waste carried by Grantee, its employees, or its agents Grantee shall conduct a Phase I Environmental Assessment, at its own expense, with respect to the Easement Premises and a reasonable area of the adjacent property owned by the District and submit the written report to the District within 90 days after the spill, leak or discharge. After review of each Phase I Environmental Assessment, District, at its reasonable discretion, may require Grantee, at Grantee's expense, to obtain a Phase II Environmental Assessment with respect to the Easement Premises. The written report of the Phase II Environmental Assessment shall be submitted to District within 120 days of District's request for same. If the Phase II Assessment discloses the presence of any Hazardous Materials contamination on the Easement Premises or adjacent premises caused by said release, Grantee shall take immediate action to remediate the contamination from the release and to restore the Easement Premises described in Exhibit A and adjacent premises owned by the District to as clean and sanitary condition as existed prior to the release and to the extent required by any and all Environmental Laws.
- B. Capacitors, transformers, or other environmentally sensitive installations or improvements shall be removed by Grantee prior to the end of the Easement Agreement unless directed to the contrary in writing by the District.

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- C. If any Environmental Assessment reveals, or District otherwise becomes aware of, the existence of any violation of any Environmental Laws in connection with the Improvements and Facilities that Grantee is unwilling to remediate, District shall have the right and option to terminate this Agreement and to declare it null and void and seek appropriate injunctive relief in

a court with jurisdiction.

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

9.09 INSPECTION AND RIGHT OF INSPECTION (ENVIRONMENTAL)

- A. In the event Grantee gives receives notice pursuant to the provisions of Notice of Environmental Problem, within ninety (90) days Grantee shall submit to District a written report of a site assessment and environmental audit, in scope, form and substance, and prepared by an independent, competent and qualified, professional, registered engineer, satisfactory to the District, showing that the engineer made all appropriate inquiry consistent with good commercial and customary practice, such that consistent with generally accepted engineering practice and procedure, no evidence or indication came to light which would suggest there was a release of substances on the Site or Property which could necessitate an environmental response action, and which demonstrates that the Site and Property complies with, and does not deviate from all applicable

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environmental statutes, laws, ordinances, rules, and regulations, including licenses, permits, or certificates required thereunder, and that the Grantee is in compliance with, and has not deviated from, the representations and warranties previously set forth.

- B. District hereby expressly reserves to itself, its agents, Attorneys, employees, consultants, and contractors, an irrevocable license and authorization to enter upon and inspect the Easement Premises and improvements thereon, and perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and other tests which may physically invade the Easement Premises or improvements thereon as the District, in its sole discretion, determines is necessary to protect its interests to the extent it does not unreasonably interfere with the Easements by Grantee.

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

**METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER
CHICAGO**

By:

**Mariyana T. Spyropoulos Chairman of Committee
on Finance**

ATTEST:

Jacqueline Torres, Clerk

CITY OF CHICAGO

- A. Permanent Easement Premises**
- B. Temporary Easement Premises**
- C. Construction insurance**

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Exhibit A. Permanent Easement Premises

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Metropolitan Water Reclamation District of Greater Chicago PIN: 13-12-305-005
Permanent Easement

Legal Description:

That part of Block 2 in Jackson's Subdivision of the Southeast Quarter of Section 11, and the Southwest Quarter of Section 12, Township 40 North, Range 13 East of the Third Principal Meridian, described as follows using bearings referenced to Illinois State Plane Coordinate System, East Zone, NAD 83 (2011):

Commencing at the northwest corner of said Block 2 in Jackson's Subdivision; thence South 01 degrees 30 minutes 46 seconds East on the west line of said Block 2, a distance of 33.00 feet to the south line of West Foster Avenue and the Point of Beginning; thence North 88 degrees 58 minutes 33 seconds East on said south line of West Foster avenue, 15.06 feet; thence South 00 degrees 00 minutes 00 seconds West, 233.84 feet; thence South 79 degrees 40 minutes 43 seconds West, 8.99 feet to the west line of said Block 2; thence North 01 degrees 30 minutes 46 seconds West on said West line, 235.27 feet to the Point of Beginning, situated in the County of Cook and State of Illinois.

Said Permanent Easement containing 0.064 acre, or 2,805 square feet, more or less.

PF. MWRD doc 2/18/2015

North Park University Chicago PIN: 13-12-305-014;
13-12-305-015; 13-12-305-016; 13-12-199-001
Permanent Easement

Legal Description:

That part of Lot 3 in Jackson's Subdivision of the Southeast Quarter of Section 11, and the Southwest Quarter of Section 12, Township 40 North, Range 13 East of the Third Principal Meridian, described as follows using bearings referenced to Illinois State Plane Coordinate System, East Zone, NAD 83 (2011):

Commencing at the northeast corner of said Lot 3 in Jackson's Subdivision; thence South 01 degrees 30 minutes 46 seconds East on the east line of said Lot 3, a distance of 33.00 feet to the south line of West Foster Avenue and the Point of Beginning; thence continuing South 01 degrees 30 minutes 46 seconds East on said east line, 235.27 feet; thence South 79 degrees 40 minutes 56 seconds West, 198.71 feet; thence North 12 degrees 21 minutes 10 seconds West, 168.71 feet; thence North 76 degrees 41 minutes 55 seconds East, 24.40 feet; thence North 73 degrees 58 minutes 18 seconds West, 32.98 feet; thence westerly, 188.60 feet on a non-tangential curve to the left, having a radius of 107,579.91 feet, the chord of said curve bears North 74 degrees 51 minutes 51 seconds West, a distance of 188.60 feet; thence westerly, 69.63 feet on a non-tangential curve to the left, having a radius of 1,835.68 feet, the chord of said curve bears North 76 degrees 47 minutes 09 seconds West, a distance of 69.63 feet; thence westerly, 90.19 feet on a non-tangential curve to the left, having a radius of 1,486.00 feet, the chord of said curve bears North 79 degrees 52 minutes 01 seconds West, a distance of 90.18 feet to the said south line of West Foster Avenue; thence North 88 degrees 58 minutes 33 seconds East on said south line, 136.44 feet; thence South 75 degrees 01 minutes 08 seconds East, 203.54 feet; thence South 74 degrees 37 minutes 22 seconds East, 84.65 feet; thence northwesterly, 86.44 feet on a non-tangential curve to the right, having a radius of 195.99 feet, the chord of said curve bears North 22 degrees 04 minutes 21 seconds West, a distance of 85.74 feet to the said south line of West Foster Avenue; thence North 88 degrees 58 minutes 33 seconds East on said south line, 189.54 feet to the Point of Beginning, situated in the County of Cook and State of Illinois.

Said Permanent Easement containing 1.370 acres, or 59,663 square feet, more or less.

PE_NPUdoc 3/4/2015

Exhibit B. Temporary Easement Premises

Metropolitan Water Reclamation District of Greater Chicago
PIN: 13-12-305-005
Temporary Construction Easement

Legal Description:

That part of Block 2 in Jackson's Subdivision of the Southeast Quarter of Section 11, and the Southwest Quarter of Section 12, Township 40 North, Range 13 East of the Third Principal Meridian, described as follows using bearings referenced to Illinois State Plane Coordinate System, East Zone, NAD 83 (2011):

Beginning at the intersection of the south line of West Foster Avenue and a line drawn from a point on the south line of said Block 2 that is 210.90 feet east of the southwest corner of said Block 2 to a point in the centerline of West Foster Avenue that is 1407.80 feet east of the centerline of North Kedzie Avenue; thence South 13 degrees 05 minutes 47 seconds East on said drawn line, 529.92 feet; thence North 88 degrees 56 minutes 07 seconds West, 44.74 feet; thence North 36 degrees 33 minutes 47 seconds West, 183.54 feet; thence North 16 degrees 07 minutes 55 seconds West, 139.92 feet; thence North 00 degrees 00 minutes 00 seconds East, 233.84 feet to said south line of West Foster Avenue; thence North 88 degrees 58 minutes 33 seconds East on said south line, 72.88 feet to the Point of Beginning, situated in the County of Cook and State of Illinois.

Said Temporary Construction Easement containing 1.200 acres, or 52,290 square feet, more or less.

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Chicago Park District, a municipal corporation
PIN: 13-12-101-002
Temporary Construction Easement

Legal Description:

That part of the Northwest Quarter of Section 12, Township 40 North, Range 13, East of the Third Principal Meridian, described as follows using bearings referenced to Illinois State Plane Coordinate System, East Zone, NAD 83 (2011):

Commencing at a point on the south line of said Northwest Quarter that is 1,407.80 feet east of the southwest corner of said Northwest Quarter; thence on a line drawn from said point to a point on the north line of said Northwest Quarter that is 860 feet east of the northwest corner of said Northwest Quarter, bearing North 13 degrees 05 minutes 47 seconds West, a distance of 33.75 feet to the north line of West Foster Avenue and the Point of Beginning; thence South 88 degrees 58 minutes 33 seconds West on said north line of West Foster Avenue, 276.80 feet; thence northerly, 55.43 feet on a non-tangential curve to the right, having a radius of 194.74 feet, the chord of said curve bears North 09 degrees 57 minutes 54 seconds West, a distance of 55.24 feet; thence continuing northerly, 28.20 feet on a non-tangential curve to the right, having a radius of 224.10 feet, the chord of said curve bears North 01 degrees 14 minutes 31 seconds East, a distance of 28.19 feet; thence westerly, 0.50 feet on a non-tangential curve to the right, having a radius of 1.68 feet, the chord of said curve bears North 63 degrees 41 minutes 35 seconds West, a distance of 0.50 feet; thence North 09 degrees 51 minutes 11 seconds East, 34.88 feet; thence North 00 degrees 56 minutes 55 seconds West, 71.75 feet; thence North 00 degrees 00 minutes 00 seconds East, 114.84 feet; thence North 90 degrees 00 minutes 00 seconds East, 123.79 feet; thence South 00 degrees 00 minutes 00 seconds East, 215.00 feet; thence North 90 degrees 00 minutes 00 seconds East, 100.00 feet; thence South 88 degrees 28 minutes 00 seconds East, 38.33 feet to the aforesaid line drawn from the south line to the north line of the Northwest Quarter; thence South 13 degrees 05 minutes 47 seconds East on said line as drawn, 84.99 feet to the Point of Beginning, situated in the County of Cook and State of Illinois.

Said Temporary Construction Easement containing 1.155 acres, or 50,308 square feet, more or less.

TK_CPD-Edoc 2/20/2015

Exhibit C. Construction insurance

CONTRACT INSURANCE REQUIREMENTS

Chicago Department of Transportation Albany Park Stormwater
Diversion Tunnel CDOT Project No.: E-2-522

The Contractor must provide and maintain at Contractor's own expense, until Contract completion and during the time period following final completion if Contractor is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to the Contract.

SECTION I

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Contract and Employers Liability coverage with limits of not less than \$1,000,000 each accident, illness or disease. Coverage must include United States Long shore and Harbor Workers, Jones Act, when applicable.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$20,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City of Chicago, the Metropolitan Water Reclamation of Greater Chicago and the Chicago Park District are to be named as additional insured under the Contractor's and any subcontractor's policy. Such additional insured coverage shall be provided on ISO Form CG 2010 for ongoing operations and/or CG 2037 for after project completion or on a similar additional insured form acceptable to the City. The additional insured coverage must not have any limiting endorsements or language under the policy such as but not limited to, Contractor's sole negligence or the additional insured's vicarious liability. Contractor's liability insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available, to the City. Contractor must ensure that the City, the Metropolitan Water Reclamation District of Greater Chicago and the Chicago Park District are named as an additional insured on insurance required from subcontractors.

Subcontractors performing work for the Contractor must maintain limits of not less than \$1,000,000 with the same terms herein.

Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor must provide Automobile Liability Insurance with limits of not less than \$10,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional ■■-insured on a primary, non-contributory basis.

Subcontractors performing work for the Contractor must maintain limits of not less than \$1,000,000 with the same terms herein

Owner's and Contractor's Protective Liability

With respect to the operations performed by Contractor, an Owner's and Contractor's Protective Liability policy designating the City of Chicago as named insured must be provided with limits of not less than \$2,000,000 per occurrence, combined single limit, for losses arising out of bodily injuries to or death of all persons and for damage to or destruction of property.

Builders Risk

When Contractor undertakes any construction, including improvements, betterments, and/or repairs, the Contractor must provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the project. Coverage must include but are not limited to the following material stored off-site and in-transit, flood, water including overflow, leakage, sewer backup or seepage, collapse, landscaping, debris removal, testing, mechanical-electrical breakdown, utility services, loss resulting from faulty workmanship or materials. The City of Chicago is to be named as an additional insured and loss payee.

The Contractor is responsible for all loss or damage to City property at full replacement cost.

The Contractor is responsible for all loss or damage to personal property (including materials, equipment, tools and supplies) owned, rented or used by Contractor.

Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Contract, Valuable Papers Insurance must be maintained in

an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the recreation and reconstruction of such records.

8) Marine Protection & Indemnity

When Contractor undertakes any marine operation in connection with this Contract, Contractor must provide Marine Protection & Indemnity coverage with limits of not less than \$1,000,000. Coverage must include property damage and bodily injury to third parties, injuries to crew members if not provided through other insurance; damage to wharves, piers and other structures, and collision. The City of Chicago is to be named as an additional insured.

B. ADDITIONAL REQUIREMENTS

The Contractor must furnish the City of Chicago, Department of Procurement Services, 121 N. LaSalle Street, Room 806, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. The Contractor must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Contract award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. The failure of the City to obtain certificates or other insurance evidence from Contractor is not a waiver by the City of any requirements for the Contractor to obtain and maintain the specified coverages. The Contractor shall advise all insurers of the Contract provisions regarding

insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Contract, and the City retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

All Insurance Certificates of Coverage must be signed, dated and reference the City Contract number.

The Contractor must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Contractor.

The Contractor hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Contractor under the Contract.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Contract or any limitation placed on the indemnity in this Contract given as a matter of law.

If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

If Contractor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Contractor must require all subcontractors to provide the insurance required herein, or Contractor may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Contractor unless otherwise specified in this Contract. Contractor must ensure that the City is an additional insured on Endorsement CG 2010 of the insurance required from subcontractors.

If Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Contract to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

SECTION II.

A. Owner Controlled Insurance Program

The City has the option, at its sole discretion, of implementing an Owner Controlled Insurance Program [OCIP] in connection with the Project. The OCIP will include any or all of the types of insurance indicated in below insuring the City, Contractor, Subcontractors, and Sub-subcontractors of every tier while performing work at the project site until completion of the project. If City implements an OCIP, the terms, conditions, coverages, and

responsibilities of Contractor, Subcontractors, and Sub-subcontractors in connection with the OCIP shall be set forth in the Owner Controlled Insurance Program Addendum to the Contract, which will be incorporated by this reference. In the event of inconsistencies between this Section II and the Addendum, the Owner Controlled Insurance Program Addendum shall control OCIP Coverage and Terms:

- 1) Named Insureds: City, Construction Manager, Subcontractors, and Sub-subcontractors of every tier enrolled in the OCIP.
- 2) Additional Insureds: as required by written contract.
- 3) Term: Any insurance policies provided under section 11.2 shall be in force until the end of the term of this contract, completion of the project, or termination of the OCIP as determined by the City.
- 4) Completed Operations: The completed operations insurance shall extend for a period of up to ten years (10) past the completion or termination of the project, or cancellation of the OCIP.
- 5) Waiver of Subrogation: Each OCIP Insurer shall waive any right of recovery or subrogation it may have against the Named Insureds and additional Insureds for covered losses arising out of the services performed in the completion of the work.
- 6) Cancellation: All required insurance policies required under this Section II shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days prior written notice to all Named Insureds.
- 7) Loss Sharing: The Contractor and all Subcontractors of every tier involved in a loss which arises from their negligence as determined by City, shall share equally in the first \$10,000 of such loss.
- 8) Primary and non-contributory: Any insurance provided under this Section II shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the named insureds and additional insureds.
- 9) Loss Sharing: The limits of liability provided under the Commercial General Liability insurance apply collectively for all named insureds and additional insureds.
- 10) Insurance Credits: The Contractor and Subcontractors of every tier are to bid with their normal insurance costs for all coverages provided under this Section II. Should the City implement an OCIP, the Contractor and all Subcontractors of every tier will deduct a credit, as specified by the City or its OCIP Administrator, from each enrolled OCIP participant. The credit process will be outlined in the City's Project Insurance Manual.
- 11) Contract Obligations: Any OCIP insurance provided by the City is not intended to, and shall not qualify, limit, or waive any liabilities or obligations of Contractor and Subcontractors, assumed under this contract, or contract between Contractor and Subcontractors.
- 12) Contractor and Subcontractors Insurance: The Contractor and all Subcontractors will continue to be responsible to provide any insurance required under Section I that is not provided by the City under this Section II.
- 13) OCIP Insurance: Prior to the commencement of performance of the Construction Phase the City may, at its sole discretion, furnish any of the project insurance as follows:
 - a. Commercial General Liability: Commercial General Liability (and if required, Excess Liability or Umbrella Liability insurance) written on an occurrence for with limits of not less than \$50,000,000 per occurrence and \$50,000,000 general aggregate for bodily injury and property damage combined, and \$50,000,000 products and completed operations aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall not include exclusions for property damage resulting from explosion, collapse or underground hazard, or the consequences of inadvertent construction

defects.

Workers' Compensation Insurance: State of Illinois statutory workers' compensation insurance for Contractor's, Subcontractors', and Sub-subcontractors' employees who will be engaged in the performance of the work including special coverage extensions where applicable and Employer's Liability with limits of not less than \$1,000,000 for each accident; \$1,000,000 as the aggregate disease policy limit; and, \$1,000,000 as the disease limit for each employee. Additional coverage may be procured and will be outlined in the City's Project Insurance Manual.

EXHIBIT 3 Operations and Maintenance Plan (Attach at Closing)

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OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

April 15, 2015

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, together with Alderman Laurino, an ordinance authorizing the execution of an Intergovernmental Agreement with the Metropolitan Water Reclamation District regarding the Albany Park Storm Tunnel.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

CHICAGO, May 6, 2015

To the President and Members of the City Council:

Your Committee on the Budget and Government Operations, having had under consideration an Ordinance authorizing the execution of an intergovernmental agreement between the City of Chicago and the Metropolitan

Water Reclamation District necessary for the construction of the Albany Park Storm Water Diversion Tunnel; and having had the same under advisement, begs leave to report and recommend that Your Honorable Body pass the Ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the Committee.

(Signed) Cfi^HJL/ Carrie M. Ai Chairman