



**Protecting Our Water Environment**

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**Metropolitan Water Reclamation District of Greater Chicago**

100 EAST ERIE STREET CHICAGO, ILLINOIS 60611-3154 312-751-5600

Michael G. Rosenberg  
Attorney

312-751-6565 FAX 312-751-6598

April 2, 2004

**OFFICIAL FILE**I.C.C. DOCKET NO. 04-614Joint Exhibit No. 25

Witness \_\_\_\_\_

Date 6-17-05 Reporter J.Y.

Via Fax at (312) 240-4765

Mr. Ralph Barbikoff  
Peoples Energy  
130 E. Randolph Drive  
Chicago, IL 60601Re: Peoples Energy's Request to Enter District Land to Install Natural Gas Facilities  
at 3152 South California Avenue in Chicago, IL

Dear Mr. Barbikoff:

I received your March 23, 2004, letter to Mr. John Koty regarding RSI and its request for natural gas services at its leasehold site at the subject location. Your letter indicates that Peoples Energy is ready, willing and able to provide natural gas service to RSI as soon as RSI provides Peoples Energy with reasonable access to its site.

As you know, the Metropolitan Water Reclamation District of Greater Chicago owns the land upon which Peoples must install its natural gas facilities. This particular area of land is not under lease by RSI, but is rather under lease by a third party, Connelly-GPM, Inc. It is therefore not possible for RSI to "provide Peoples Gas with access to the property." Access must be granted by the District. The District is willing to grant such access to Peoples Energy. Additionally, your March 23<sup>rd</sup> letter to John Koty addresses specific concerns of Peoples Gas with the District's easement agreement. RSI and John Koty are not in a position to negotiate or address specific provisions in the District's easement agreement. Rather, the District must correspond with Peoples Energy on such issues.

Accordingly, below are the District's comments to Peoples Energy's concerns outlined in your March 23<sup>rd</sup> letter as follows:

1. Attached is the Exhibit of the site and the client information referred to in the easement.
2. The District does not, in any case, grant perpetual easements. Rather, the easement would have to be extended after 36 years.

Mr. Ralph Barbikoff  
Peoples Energy  
April 2, 2004  
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3. Staff will recommend to the District's Board of Commissioners that the easement fee be nominal (\$10.00). Also, I am unaware of any easement granted by the District that is subject to real estate taxes. Although the easement provides for Peoples to assume responsibility for such payments, the language is written "in the event" such taxes or assessments are imposed, then the easement grantee will assume those liabilities.

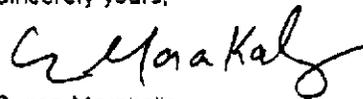
As stated above, I am unaware of any easement granted by the District for utilities that have been assessed by the County Assessor and tax liability has been imposed.

As far as insurance, the District must protect itself and would be remiss as a landowner if it did not require such protection.

4. The intent of the environmental provisions is to set forth the obligations that Peoples Energy is already liable for under the law. The District is not trying to impose any liabilities upon Peoples Energy other than for any acts or omissions caused directly by Peoples Energy or its agents or assigns. Peoples Energy will not be expected to assume liabilities or indemnify the District against acts caused by the District.

I would like to point out that Peoples Energy has entered into the District's standard easement form on numerous other occasions. The current instance should not be an exception. The District is, however, willing to address any further concerns of Peoples Energy.

Sincerely yours,



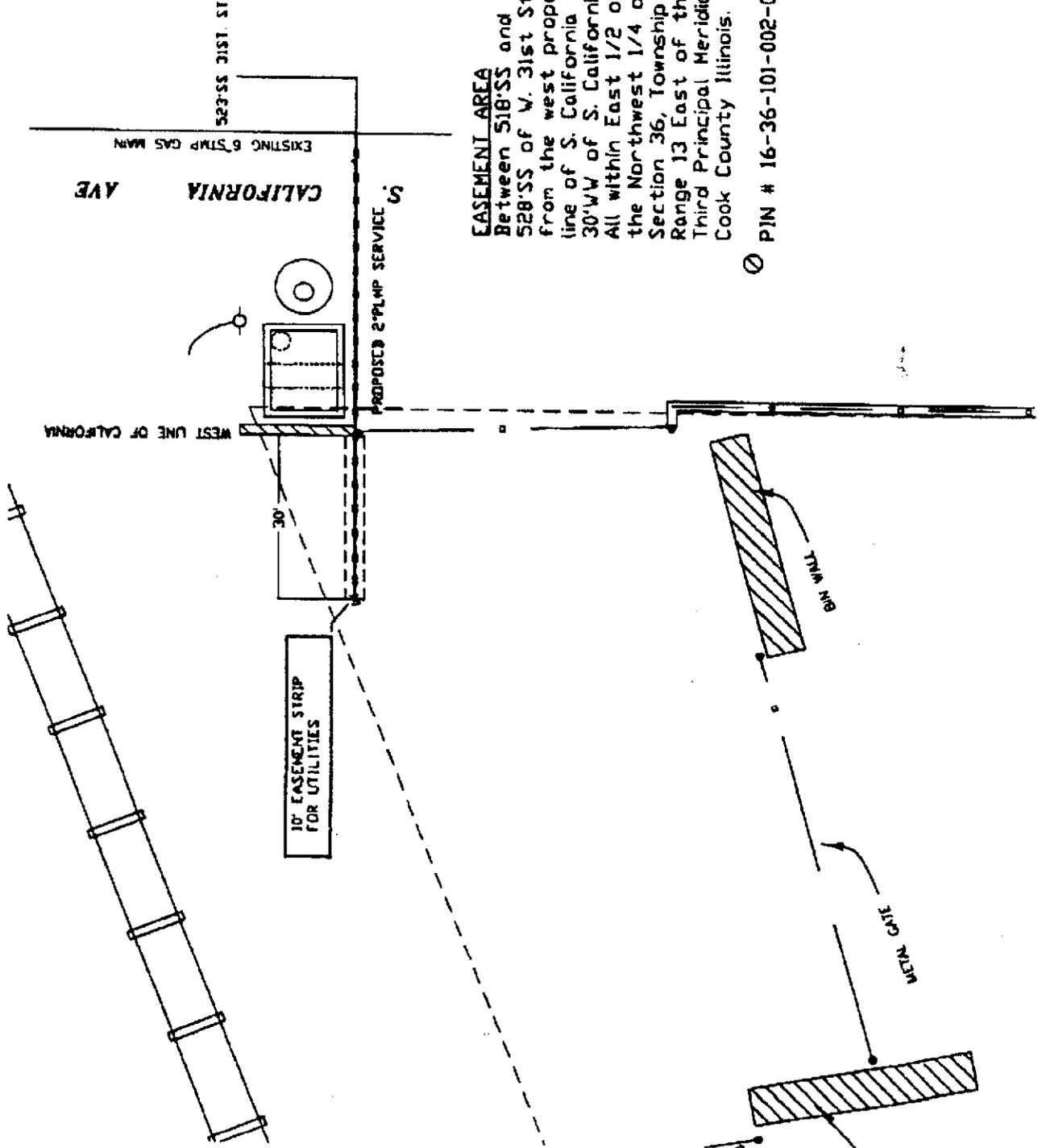
Susan Morakalis  
Senior Assistant Attorney

Enclosures

cc: John Koty (Via Fax 708-460-2157)  
Elizabeth Ritscherle (Via Fax 312-849-8787)

SM:bb

3152 S. CALIFORNIA AV.  
UTILITY EASEMENT  
EXHIBIT A



**EASEMENT AREA**  
 Between 518' SS and 528' SS of W. 31st St. from the west property line of S. California to 30' WW of S. California Av. All within East 1/2 of the Northwest 1/4 of Section 36, Township 39, Range 13 East of the Third Principal Meridian in Cook County Illinois.

⊙ PIN # 16-36-101-002-0000

STM: 04/02/04

FORM REV. 11/21/03

**EASEMENT AGREEMENT**  
*(Annual Increase-Environmental)*

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, a municipal corporation organized and existing under the laws of the State of Illinois, hereinafter called the "District" and a PEOPLES ENERGY, hereinafter called the "Grantee."

WHEREAS, the Grantee desires a 35-year non-exclusive easement to construct, reconstruct, operate, maintain, repair and remove a 30-foot portion of a natural gas main and/or appurtenances related thereto on the real estate commonly known as 3154 South California Avenue in Chicago, Illinois and 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**

1.01 The District hereby grants unto the Grantee a non-exclusive easement, right, privilege and authority for 35 years commencing on \_\_\_\_\_, 2004, and terminating on June 14, 2039, for the sole and exclusive purpose to construct, reconstruct, operate, maintain, repair and remove a 30-foot portion of a natural gas main and/or appurtenance related thereto hereinafter for convenience sometimes called "Improvements and Facilities" the real estate legally described and depicted in Exhibit A which is attached hereto and made a part hereof, hereinafter called the "Easement Premises".

1.02 The District reserves the right of access to and use of the surface of the easement premises.

1.03 The Grantee covenants and agrees in consideration of the grant of said easement to pay to the District an initial annual easement fee in the amount of TEN AND NO/100 DOLLARS (\$10.00) the first annual installment of which is payable contemporaneously with Grantee's execution and delivery hereof. (This fee requires approval of the District's Board of Commissioners).

1.04 In addition to the aforesaid, the Grantee shall also pay, when due, all real estate taxes and assessments that may be levied, charged or imposed upon or

against the Easement Premises described in Exhibit A and submit to the District evidence of such payment within 30 days thereafter.

## ARTICLE TWO

2.01 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. No work shall commence until said plans and specifications have been approved in writing by the Chief Engineer of the District.

2.02 The construction and installation of the Improvements and Facilities by the Grantee on the Easement Premises shall be done to the satisfaction of the Chief Engineer of the District.

2.03 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.

2.04 The Grantee shall compensate the District for any additional costs that the District may sustain in any future construction of sewers, reservoirs or any other surface or underground structures caused by the presence of the Improvements and Facilities of the Grantee on the Easement Premises.

2.05 The Grantee shall relocate or remove the Improvements and Facilities existing or constructed upon the Easement Premises at no cost to the District:

- A. In the event that the subject premises are adjacent to any channel, waterway or reservoir, and said channel, waterway or reservoir is to be widened by the District or any other governmental agency; or
- B. In the event that any agency of government, having jurisdiction over said channel, waterway or reservoir requires the relocation or removal of said improvements; or
- C. In the event that said relocation or removal is required for the corporate purposes of the District.

## ARTICLE THREE

3.01 The District expressly retains its interest in and rights to the use and occupation of the Easement Premises subject to the easement rights herein granted, and the District may grant further easements, assign, sell or lease the same to other parties subject to the Grantee's right of use and a reasonable means

of access to said Improvements and Facilities for construction, reconstruction, operation, maintenance, repair or removal thereof.

3.02 The Grantee shall be solely responsible for and shall defend, indemnify, keep and save harmless the District, its Commissioners, officers, agents and employees, against all injuries, deaths, losses, damages, claims, patent claims, liens, suits, liabilities, judgments, costs and expenses which may in any wise accrue, directly or indirectly, against the District, its Commissioners, officers, agents or employees, in consequence of the granting of this Easement, or which may in anywise result therefrom or from any work done hereunder, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Grantee or Grantee's contracts, subcontractors or their agents and the Grantee shall, at Grantee's sole expense, appear, defend and pay all 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 purposes for which this Easement is granted, shall procure, maintain and keep in force, at Grantee's expense, the following public liability and property damage insurance in which the District, its Commissioners, officers, agents and employees, are a named insured as well as fire and extended coverage, and all-risk property insurance ("CLAIMS MADE" policies are unacceptable) in which the District is named loss payee from a company to be approved by the District, each aforementioned policy shall have limits of not less than the following:

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

and

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

Prior to entering upon said premises, and thereafter on the anniversary date of such policies, the Grantee shall furnish to the District certificates of such insurance or other suitable evidence that such insurance coverage has been procured and is maintained in full force and effect. Upon District's written request, 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 4.02 above, or

3.03 (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 provisions of this Easement (Article Four, Paragraph 4.02) above; and that such statement is issued in lieu of policies of insurance or certificates of 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

4.01 In the event of any default on the part of the Grantee to faithfully keep and perform all singular the covenants, agreements and undertakings herein agreed by it to be kept and performed, or if said Improvements and Facilities are abandoned, the District shall give the Grantee notice in writing of such default or abandonment; and if such default or abandonment shall not have been rectified within thirty (30) days after receipt of such notice by the Grantee, all rights and privileges granted herein by the District to the Grantee may be terminated by the District; and upon such termination, the Grantee shall immediately vacate the Easement Premises and remove its Improvements and Facilities from said real estate and restore the land to its condition prior to Grantee's entry thereon, all at the sole cost of the Grantee.

4.02 The Grantee shall have the right to give the District written notice to cease and terminate all rights and privileges under this agreement. In the event of such termination, the Grantee shall have a period of one-hundred twenty (120) days from and after such termination date to remove the Improvements and Facilities and to restore the land to its original condition at no cost to the District.

The expiration of said removal and restoration date shall in no event extend beyond the expiration date of this Easement.

4.03 The Grantee understands and agrees that upon the expiration of this Easement, Grantee shall have removed or caused to be removed its Improvements and Facilities and any other things which Grantee has erected or placed upon said Easement Premises. Grantee further agrees to yield up said Easement Premises in as good condition as when the same was entered upon by the Grantee. Upon Grantee's failure to do so, the District may do so at the sole expense and cost of Grantee.

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

4.05 Grantee expressly understands and agrees that any insurance protection or bond 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 additional work which the District would not have had to incur if this Easement had not been executed, then, in that event, the Grantee agrees to pay to the District such additional expense as determined by the Chief Engineer of the District, promptly upon rendition of bills therefor to the Grantee.

5.02 The Grantee covenants and agrees that it will reimburse the District, make all necessary repairs at its sole cost and expense and otherwise keep and save harmless the District from any loss, cost or expense arising out of the granting of this Easement suffered to property of the District by way of damage to or destruction thereof, caused by any act or omission of the Grantee, Grantee's agents, employees, contractors, subcontractors, or anyone else acting through or on behalf of Grantee, its agents, employees, contractors, or subcontractors.

5.03 During the term of this Easement, the District shall not be liable to the Grantee for any loss, cost or expense which the Grantee shall sustain by reason of any damage to its property or business caused by or growing out of the construction, repair, reconstruction, maintenance, existence, operation or failure of any of the sewers, structures, channels or other works or equipment of the District now located or to be constructed on said Easement Premises, or on the land of the District adjacent to said Easement Premises.

## ARTICLE SIX

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

6.02 On or before the commencement of the last five-year period of the leasehold term hereunder, Grantee shall lodge with the Grantor its Environmental Site Restoration/Remediation Bond in the penal sum of \$5,000.00, secured either by cash, irrevocable letter of credit or a commercial bond with surety to secure Grantee's performance of and compliance with the provisions and intent of Article 10 of this Lease. A cash payment securing the bond hereunder will be placed in an interest bearing account established by the Grantor specifically for this purpose. Any interest paid on account of said deposit shall be the property of and payable periodically to the Grantee. Such account shall be drawable only by Lessor upon its unilateral act. At no time shall the amount on deposit in said account be less than the penal sum of this Bond. Any commercial bond with surety shall be fully prepaid by the Grantee and documented as such at the time it is lodged with the Grantor. Said Bond shall be in a form approved by the Grantor and shall be maintained in full force and effect until such time as Grantee has demonstrated and documented to the reasonable satisfaction of Grantor (and Grantor has executed its written release thereof to the issuer), full compliance with all Environmental Laws, relating to Grantee's use or occupancy of the Demised Premises and its environmental res-

toration or remediation. This provision shall survive the termination/expiration of this Lease.

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 General Superintendent, 100 East Erie Street, Chicago, Illinois 60611, or to the Grantee in care of:

PEOPLES ENERGY  
130 E. Randolph Drive  
Chicago, Illinois 60601

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 premises and using the same for the purposes for which this Easement is granted, shall, at Grantee's sole cost and expense, obtain all permits, consents and licenses which may be required under any and all statutes, laws, ordinances and regulations of the District, the United States of America, the State of Illinois, the county, or the city, village, town or municipality in which the subject property is located, and furnish to the District suitable evidence thereof.

7.02 The Grantee covenants and agrees that it shall strictly comply with any and all statutes, laws, ordinances and regulations of the District, the United States of America, the State of Illinois, the county and the city, village, town or municipality in which the subject property is located, which in any manner affect this Permit, any work done hereunder or control or limit in any way the actions of Grantee, its agents, servants and employees, or of any contractor or subcontractor of Grantee, or their employees.

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

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

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

## ARTICLE EIGHT

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

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

8.03 Grantee shall notify the District in writing not less than sixty (60) 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. The District shall not unreasonably withhold the consent to assignment or transfer.

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

## ARTICLE NINE

### GENERAL ENVIRONMENTAL PROVISIONS

#### 9.01 DEFINITIONS

- A. "Environmental Laws" shall mean all present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, state and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, orders, notices or demands relating to industrial hygiene, and the protection of human health or safety from exposure to Hazardous Materials, or the protection of the environment in any respect, including without limitation:
- (1) all requirements, including, without limitation, those pertaining to notification, warning, reporting, licensing, permitting, investigation, and remediation of the presence, creation, manufacture, processing, use, management, distribution, transportation, treatment, storage, disposal, handling, or release of Hazardous Materials;

- (2) all requirements pertaining to the protection of employees or the public from exposure to Hazardous Materials or injuries or harm associated therewith; and
- (3) the Comprehensive Environmental Response, Compensation and Liability Act (Superfund or CERCLA) (42 U.S.C. Sec. 9601 et seq.), the Resource Conservation and Recovery Act (Solid Waste Disposal Act or RCRA) (42 U.S.C. Sec. 6901 et seq.), Clean Air Act (42 U.S.C. Sec 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec, 2601 et seq.), the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), the Rivers and Harbors Act of 1988 (33 U.S.C. Sec. 401 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Safe Drinking Water Act (42 U.S.C. Sec. 300 (f) et seq.), the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and all rules, regulations and guidance documents promulgated or published thereunder, Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.) and all similar state, local and municipal laws relating to public health, safety or the environment.

B. "Hazardous Materials" shall mean:

- (1) any and all asbestos, natural gas, synthetic gas, liquefied natural gas, gasoline, diesel fuel, petroleum, petroleum products, petroleum hydrocarbons, petroleum by-products, petroleum derivatives, crude oil and any fraction of it, polychlorinated biphenyls (PCBs), trichloroethylene, ureaformaldehyde and radon gas;
- (2) any substance (whether solid, liquid or gaseous in nature), the presence of which (without regard to action level, concentration or quantity threshold requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law;

- (3) any substance (whether solid, liquid or gaseous in nature) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, 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 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, groundwaters and structures, followed by laboratory analysis of these samples and interpretation of the results, and preparation of a written report with boring logs, photograph logs, maps, investigative procedures, results, conclusions and recommendations.

#### **9.02 MANUFACTURE, USE, STORAGE, TRANSFER OR DISTRIBUTION OF HAZARDOUS MATERIALS UPON OR WITHIN THE EASEMENT**

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

Construction or installation of new or reconstruction of any underground interconnecting conveyance facilities for any material or substance is not permitted without the advance written consent of the Chief Engineer of the District.

#### 9.03 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 may impair the value of the Easement Premises or any part thereof or that could materially increase the dangers, or pose an unreasonable risk of harm, to the health or safety of persons to third parties (on or off the Easement Premises) arising from activities thereon, or that could cause or threaten to cause a public or private nuisance on the Easement Premises or use 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 any emissions, which would require a permit under the Federal Water Pollution Control Act, Section 1251 of Title 33 of the United States Code, or the Clean Air Act, Section 741 of Title 42 of the United States Code, or any similar state law or local ordinance.

#### 9.04 CONDITION OF PROPERTY (ENVIRONMENTAL)

- A. In the event Grantee has used the Easement Premises under a prior easement agreement, Grantee warrants and represents that as a result of the easement grant, the Easement Premises and improvements thereon, including all personal property, have not been exposed to contamination by any Hazardous Materials, that there has not been thereon a release, discharge, or emission, of any Hazardous Materials during its occupancy of the premises as defined by any Environmental Laws, and that the Easement Premises does not contain, or is not affected by underground storage tanks, landfills, land disposal sites, or dumps.
- B. In the event of a release, emission, discharge, or disposal of Hazardous Materials in, on, under, or about the Easement Premises or the improvements thereon, Grantee will take all

appropriate response action, including any removal and remedial action after the execution date of this Easement Agreement.

#### 9.05 INDEMNIFICATION (ENVIRONMENTAL)

- A. In consideration of the execution and delivery of this Easement Agreement, the Grantee indemnifies, exonerates, and holds the District and its officers, officials, Commissioners, employees, and agents ("Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages and expenses incurred in connection with any of these (irrespective of whether any such Indemnified Party is a party to the action for which indemnification is here sought), including reasonable attorney's fees, costs and disbursements, incurred by the Indemnified Parties as a result of or arising out of or relating to (i) the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of Grantee's activities, or (ii) any investigation, litigation, or proceeding related to any environmental response, audit, compliance, or other matter relating to the protection of the environment, or (iii) the release or threatened release by Grantee, its subsidiaries, or its parent company, or any Hazardous Materials, or the presence of Hazardous Materials on or under the Easement Premises, or any property to which the Grantee, its parent company or any of its subsidiaries has sent Hazardous Materials, (including any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under any Environmental Law), if caused by or within the control of the Grantee, its parent company or its subsidiaries, 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. Grantee shall not indemnify the District for the District's own negligence or the negligence of the District's employees, agents and contractors.

#### 9.06 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.

- B. Grantee has been issued and is in compliance with all permits, certificates, approvals, licenses, and other authorizations relating to environmental matters and necessary for its business, if any.
- C. Grantee, to the best of its knowledge, is not a potentially responsible party with respect to any other facility receiving waste of the Grantee (whether or not from the Easement Premises) under CERCLA or under any statute providing for financial responsibility of private parties for cleanup or other actions with respect to the release or threatened release of any Hazardous Materials.
- D. Grantee will take all reasonable steps to prevent a violation of any Environmental Laws. There will be no spill, discharge, leaks, emission, injection, escape, dumping, or release of any toxic or Hazardous Materials by any persons on the area to be used and under the Easement Agreement.
- E. 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, electro-magnets and cable, containing PCBs.
- F. The aforesaid representations and warranties shall survive the expiration or termination of the Easement Agreement.

#### 9.07 COVENANTS (ENVIRONMENTAL)

Grantee shall cause its parent company and each of its respective subsidiaries, contractors, subcontractors, employees and agents to:

- A.
  - (1) Use and operate all of the Easement Premises in compliance with all applicable Environmental Laws, keep all material permits, approvals, certificates, and licenses in effect and remain in material compliance with them;
  - (2) undertake reasonable and cost-effective measures to minimize any immediate environmental impact of any spill or leak of any Hazardous Materials;
- B. Notify District by telephone within two hours of the release of Hazardous Materials, including the extent to which the identity of the Hazardous Materials is known, the quantity thereof and the cause(s) of the release, and provide District within 72 hours of the event, with copies of all written notices by Grantee, its

parent and its subsidiaries that are reported to government regulators or received from the government regulators.

- C. Provide such information that District may reasonably request from time to time to determine compliance by the Grantee with this Article.
- D. Grantee covenants and agrees to cooperate with District in any inspection, assessment, monitoring or remediation instituted by District during the Easement Agreement.

#### 9.08 COMPLIANCE (ENVIRONMENTAL)

The Grantee will cause its parent company and each of its subsidiaries, if any, to exercise due diligence to comply with all applicable treaties, laws, rules, regulations, and orders of any government authority.

- A. In the event of a spill, leak or release of hazardous waste carried by Grantee, its employees or its agents 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 sole discretion, may require Grantee, at Grantee's expense, to obtain a Phase II Environmental Assessment with respect to the premises used under the Easement Agreement. 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, Grantee shall take immediate action to remediate the contamination and to restore the Easement Premises described in Exhibit A and adjacent premises owned by the District to a clean and sanitary condition and to the extent required by any and all Environmental Laws.
- B. Capacitators, transformers, or other environmentally sensitive installations or improvements shall be removed by Grantee prior to the end of the Easement Agreement unless directed to the contrary in writing by the District.
- C. If any Environmental Assessment reveals, or District otherwise becomes aware of, the existence of any violation of any Environmental Laws that either Grantee is unwilling to remediate or that District is unwilling to accept, District shall have the right

and option to terminate this Agreement and to declare it null and void.

- 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.
- E. Not less than one (1) year prior to the expiration of the Easement, Grantee shall have caused to be prepared and submitted to the District a written report of a site assessment in scope, form and substance, and prepared by an independent, competent and qualified professional and engineer, registered in the State of Illinois, satisfactory to the District, and dated not more than eighteen (18) months prior to the expiration of the Easement, showing that:
- (1) the Grantee has not caused the Easement Premises and any improvements thereon to materially deviate from any requirements of the Environmental Laws, including any licenses, permits or certificates required thereunder;
  - (2) the Grantee has not caused the Easement Premises and any improvements thereon to contain: (i) asbestos in any form; (ii) urea formaldehyde; (iii) items, articles, containers, or equipment which contain fluid containing polychlorinated biphenyls (PCBs); or (iv) underground storage tanks which do not comply with Environmental Laws;

- (3) the engineer has identified, and then describes, any Hazardous Materials utilized, maintained or conveyed on or within the property, the exposure to which is prohibited, limited, or regulated by any Environmental Laws;
  - (4) if any Hazardous Materials were utilized, maintained or conveyed on the Easement Premises, the engineer has conducted and submitted a Phase II Environmental Assessment of the Easement Premises, which documents that the Easement Premises and improvements are free of contamination by Hazardous Materials;
  - (5) the engineer has identified and then describes, the subject matter of any past, existing, or threatened investigation, inquiry, or proceeding concerning environmental matters by any federal, state, county, regional or local authority, (the Authorities"), and describing any submission by Grantee concerning said environmental matter which has been given or should be given with regard to the Easement Premises to the Authorities; and
  - (6) the engineer includes copies of the submissions made pursuant to the requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986, (SARA) Section 11001 et seq. of Title 42 of the United States Code.
- F. 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 or 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.

### **9.09 INSPECTION AND RIGHT OF INSPECTION (ENVIRONMENTAL)**

- A. In the event Grantee gives notice pursuant to the provisions of Notice of Environmental Problem, within ninety (90) 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 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.

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: \_\_\_\_\_  
Gloria Alitto Majewski  
Chairman of Committee on Finance

**ATTEST:**

\_\_\_\_\_  
Jacqueline Torres, Clerk

**PEOPLES ENERGY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Title: \_\_\_\_\_