

AGREEMENT FOR ACCESS TO GEOGRAPHIC INFORMATION SYSTEMS DATA

This **AGREEMENT** is entered into as of the ^{17th day of} November 2020, by and between the **GEOGRAPHIC INFORMATION SYSTEMS CONSORTIUM ("Consortium")** and the **METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO ("District")**, a unit of local government and body corporate and politic organized and existing under the laws of the State of Illinois.

WITNESSETH:

WHEREAS, in November 2004, the Illinois General Assembly passed Public Act 093-1049, as amended by Public Act 098-0652, which declares that stormwater management in Cook County is under the general supervision of the District;

WHEREAS, on June 18, 2020, The District's Board of Commissioners granted authority to enter into an Agreement with the Consortium; and

WHEREAS, the Consortium is an organization created pursuant to Section 10 of Article VII of the Illinois Constitution of 1970 and Section 3 of the Illinois Intergovernmental Cooperation Act to reduce costs and risk associated with achieving the full benefits of Geographical Information Systems ("**GIS**" or "**Systems**") through the sharing of ideas, innovations, experiences, and costs among its Member Communities;

WHEREAS, the District and the Consortium's Member Communities have developed geospatial data for the jurisdictions they serve and the facilities they maintain, which is the basis for their respective Systems;

WHEREAS, the District has compiled GIS Data for its underground facilities including and intercepting sewers, force mains, connecting structures, outfalls, TARP structures and appurtenances;

WHEREAS, the Consortium has compiled GIS Data from its Member Communities for their underground facilities, including sewers, force mains, outfalls, water mains and other infrastructure;

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

WHEREAS, the Consortium and the District have expressed interest in accessing each other's underground facility GIS Data to increase coordination of operation between the District and the Member Communities and improvement of the Parties' Systems;

WHEREAS, the District, in the spirit of cooperation, desires to make the GIS Data available, efficiently and without charge, to the Consortium for use by its Member Communities in performing their official functions and to access the Consortium's GIS Data, efficiently and without charge through the mutual establishment of GIS Data Query Services in accordance with the terms and conditions of this Agreement;

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

SECTION 1: INCORPORATION OF RECITALS.

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

SECTION 2: DEFINITIONS.

For the purposes of this Agreement, the following terms shall have the meanings set forth in this Section 2:

"Query Services": Secured ESRI REST map services to be published by each Party allowing for the visualization, querying, and filtering of the Party's GIS Data by the other Party.

"GIS Data": Those geospatial datasets and related data dictionaries which may be shared between the Parties based on the mutual agreement of the Parties.

"Member Communities": Those municipalities that are members of the Consortium and have indicated their authorization to share GIS Data for their jurisdictions by executing an Agreement and Consent to License pursuant to Section 3 of this Agreement.

"Official Purposes": Any purpose arising from, directly related to, or in pursuit of the Parties' public business. "Official Purposes" does not include dissemination to third-parties for commercial, advertising, or other purely private purposes.

"Service Provider": Any third-party consultant or vendor that the Consortium or District has entered in an agreement with to operate and maintain their respective GIS systems.

SECTION 3: PARTICIPATION OF CONSORTIUM MEMBER COMMUNITIES.

The benefits, rights, and obligations set forth in this Agreement will only inure and apply to Member Communities of the Consortium that have executed and delivered to the Consortium an Agreement and Consent to License in the form attached to this Agreement as **Exhibit A**. Any benefit, right, or obligation attributed to the Consortium herein shall only inure and apply to those Member Communities that have elected to participate in this Agreement.

SECTION 4: STATEMENT OF OFFICIAL PURPOSES.

The Consortium and the District agree that the mutual licenses for GIS Data granted by this Agreement are conditioned upon and provided as set forth in this Agreement solely for the Parties' use in performing their Official Purposes. Any other use of the GIS Data, without express written consent is strictly prohibited.

SECTION 5: MUTUAL GRANT OF LICENSE.

A. Subject to the terms and conditions set forth in this Agreement, the Parties hereby grant to each other, and each Party accepts from the other, a non-exclusive, nontransferable, revocable license to use the GIS Data solely and exclusively for official purposes, pursuant to and in accordance with the terms and provisions of this Agreement ("**License**").

B. Except as set forth in this Agreement the Parties shall have no legal, beneficial, or equitable interest in the GIS Data of the other Party, whether in its native state or in an altered or derivative form, including but not limited to title or copyright to the GIS Data. The Parties acknowledge that the title, copyright and all other rights to the GIS Data remain with the original developer of the data, whether it be the Consortium or the District. The Parties reserve the right to withdraw from the GIS Data any item or part of an item for which it no longer retains ownership rights or which it has reasonable grounds to believe infringes copyright or is unlawful or otherwise objectionable. Nothing in this Agreement shall be interpreted to prevent the Parties from granting other persons and entities access to or the right to use their own GIS Data.

C. The Parties agree that they may only access the GIS Data of the other Parties through the Query Services and they will make all reasonable efforts to maintain other Parties' access the Query Services during the term of this Agreement.

D. The Parties will, by mutual written agreement, establish the geospatial datasets and related data dictionaries that will constitute the GIS Data subject to this License. The Parties may, from time to time, add, subtract, or otherwise alter the datasets and dictionaries that constitute the GIS Data by mutual written agreement, a fully executed copy of which will be provided to all Parties and participating Member Communities.

SECTION 6: TERM, EXTENSION, AND TERMINATION.

A. Term. This term of this Agreement is for ten years, effective from the date of execution. It may be extended for no more than two additional ten-year periods. At least 30 days prior to the expiration of any term, either party must notify the other in writing of its intent not to renew the Agreement. The Parties may terminate this Agreement by mutual consent at any time.

B. Termination Event. Without prejudice to any other rights and remedies available pursuant to this Agreement, the mutual Licenses granted by this Agreement shall automatically expire upon the occurrence of any of the following:

1. Failure to Comply. A Party's violation of any provision of this Agreement, including but not limited to the use of the GIS Data or the Query Services for any use other than Official Purposes.
2. Use of GIS Data for Unlawful Purposes. Upon the use of the GIS Data or the Query Services by a Party for any unlawful purpose.
3. Withdrawal of a Member Community. In the event that a Member Community terminates its participation in this Agreement by providing notice to the Consortium, the Parties will cooperate and coordinate to remove the GIS Data and generated by the withdrawing Member Community from their respective Systems. A Member Community's access to the Query Services will be terminated immediately upon withdrawal by that Member Community.

In the event of termination, each Party shall destroy all copies of the other Party's GIS Data in their possession.

SECTION 7: DISCLAIMER OF WARRANTIES.

The GIS Data and the Query Services are provided "as is" without any warranty or representation whatsoever, including any representation as to accuracy, timeliness, completeness, infringement of rights of privacy, copyright or trademark rights or disclosure of confidential information. All burdens, including any burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the Party using the GIS Data and the Query Services. The Parties make no warranties, express or implied, as to the use of the GIS Data or the Query Services. There are no implied warranties of merchantability or fitness for a particular purpose. There is no warranty to update any of the information provided hereunder. THE PARTIES EACH EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) RELATING TO THE GIS DATA, INCLUDING BUT NOT LIMITED TO ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, ACCURACY, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Parties acknowledge and accept the limitations of the GIS Data, including the fact that GIS Data is dynamic and is in a constant state of maintenance, correction and update.

SECTION 8: LIMITATION OF LIABILITY.

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

SECTION 9: INDEMNIFICATION.

Each Party shall indemnify, hold harmless, and defend the other Party against any claims, suits, or damages arising from the indemnifying Party's conduct or the indemnifying Party's breach of any obligation under this Agreement.

SECTION 10: APPLICABLE LAW.

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

SECTION 11: CONFIDENTIALITY.

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

SECTION 12: ENFORCEMENT.

The Parties may, in law or in equity, by suit, action, mandamus or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement. The Parties agrees that it will not seek, and does not have the right to seek, recovery of a judgment for monetary damages against each other or any Party elected or appointed officials, agents, representatives, attorneys or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement, and that each Party's only rights under this Agreement are to access and use the GIS Data and the Query Services for the Official Purposes.

SECTION 13: MISCELLANEOUS.

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF the Metropolitan Water Reclamation District of Greater Chicago and GIS Consortium, 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.

MWRDCG SIGNATORY PAGE

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

DocuSigned by:
Catherine A. O'Connor
83D550FE8D4C4EE
Name: Catherine A. O'Connor
Director of Engineering

DocuSigned by:
Brian Perkovich
814773C06867434...
Name: Brian Perkovich
Executive Director

DocuSigned by:
Frank Avila
87B48003D08D43D...
Name: Frank Avila
Chairman of the Committee on Finance

Attest:

DocuSigned by:
Jacqueline Torres
D2E2C8C8E55E4D3
Name: Jacqueline Torres (SEAL)
Clerk/Director of Finance

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
Bonnie Kennedy
43B1569A9D3741F
Name:
Head Assistant Attorney

DocuSigned by:
Susan Morakalis
60AB3D28A7F44AC...
Name:
General Counsel

GIS CONSORTIUM SIGNATURE PAGE

GEOGRAPHIC INFORMATION SYSTEMS CONSORTIUM

By: DocuSigned by:
Brett Robinson
D6683C67ADC5430
Its: President

EXHIBIT A
MEMBER COMMUNITY AGREEMENT AND CONSENT TO LICENSE OF GIS DATA

To: **GIS Consortium ("Consortium")**
Metropolitan Water Reclamation District of Greater Chicago ("District")

WHEREAS, the Village of Tinley Park an Illinois unit of local government, ("**Member Community**") is a member of the GIS Consortium, an organization created pursuant to Section 10 of Article VII of the Illinois Constitution of 1970 and Section 3 of the Illinois Intergovernmental Cooperation Act to reduce costs and risk associated with achieving the full benefits of Geographical Information Systems ("**GIS**" or "**Systems**") through the sharing of ideas, innovations, experiences, and costs among its Member Communities; and

WHEREAS, the Consortium and the District have entered into that "Agreement for Access to Geographic Information Systems Data" ("**Access Agreement**") to allow the District and the Consortium's Member Communities to access and share GIS Data regarding the parties' respective underground facilities; and

WHEREAS, to participate in, and benefit from the Access Agreement, Member Communities are required to execute an agreement and consent to the terms of the Access Agreement; and

WHEREAS, the Member Community desires to evidence to the Consortium and the District its agreement and consent to accept and abide by each of the terms, conditions, and limitations set forth in the Access Agreement;

NOW THEREFORE, the Member Community does hereby agree and covenant as follows:

1. The Member Community shall, and does hereby unconditionally agree to, accept, consent to and abide by all of the terms, conditions, restrictions, and provisions of the Access Agreement in the same manner and to the same extent as the Consortium.
2. The Member Community hereby waives and releases the Consortium from any claims or damages that the Member Community may incur as a result of its participation in the Access Agreement and shall indemnify and hold harmless, indemnify, and defend the Consortium from any third-party claims arising from its participation in the Access Agreement.

IN WITNESS WHEREOF, the parties have hereunto have agreed as set forth herein.

[MEMBER COMMUNITY], an Illinois unit of local government

ATTEST:

By: David Niemeyer
Name: David Niemeyer
Its: Village Manager

By: Lisa Valley
Name: Lisa Valley
Its: Executive Assistant

