

**AGREEMENT BETWEEN FOX METRO WATER RECLAMATION DISTRICT  
AND THE CITY OF AURORA  
FOR THE  
WORK RELATED TO THE CSO CONTROL POLICIES  
AURORA, IL**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the FOX METRO WATER RECLAMATION DISTRICT, a unit of local government (hereinafter referred to as “DISTRICT”), and the CITY OF AURORA, a municipal corporation (hereinafter referred to as “CITY”);

**WITNESSETH**

WHEREAS, the CITY has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the 1970 Illinois Constitution (Article VII, Section 10) and 5-ILCS 1992 Sec. 220/1-220/9, provide authority for intergovernmental cooperation and intergovernmental agreements; and

WHEREAS, there are 15 permitted CSO outfalls in the City of Aurora, that are monitored on a continuous basis, in accordance with the CITY’s NPDES permit; and

WHEREAS, the DISTRICT owns the CSO Interceptor that transports dry weather flows and a portion of wet weather flows to the DISTRICT’s wastewater treatment plant; and

WHEREAS, the CITY and the DISTRICT have historically shared costs and expenses related to the monitoring of CSO outfalls and reporting of CSO events to the IEPA; and

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OTHER MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO AGREE TO THE FOLLOWING:

- 1.0 The CITY and the DISTRICT agree to share costs and expenses related to CSO Control Policies for a period of five (5) years from the date of execution of this Agreement for work including, but not limited to, the following:

- 1.1 Payment to consultant(s) attending meetings with CITY and DISTRICT staff and their representatives on a monthly basis at the rate of 50% each.
  - 1.2 Paying yearly membership fees to the Wet Weather Partnership (formerly the CSO Partnership) at the rate of 50% each.
  - 1.3 Payment to consultant(s) monitoring of all CSO outfalls with flow monitors and rain gauges, including installation, maintenance, replacement, downloading data and providing data collection to both entities, at the rate of 70% CITY and 30% DISTRICT.
  - 1.4 Payment to consultant(s) for assessing results of the flow monitors and rain gauge data during CSO events and reporting the results on Discharge Monitoring Reports (DMR) to the IEPA, at the rate of 70% CITY and 30% DISTRICT.
- 2.0 This Agreement can be extended by mutual consent of the CITY and the DISTRICT.
  - 3.0 The DISTRICT shall invoice the CITY on a monthly basis for all of the above CSO costs and expenses associated with this Agreement.
  - 4.0 Notices: Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be personally delivered to or mailed by United States Certified Mail, postage prepaid and return receipt requested, as follows:

For the City of Aurora:      City of Aurora  
   Law Department  
   44 East Downer Place  
   Aurora, IL 60507-2067

For Fox Metro Water Reclamation District:

Fox Metro Water Reclamation District  
682 State Route 31  
Oswego, IL 60543  
Attn: Judith Sotir, President

With a copy to:              Ingemunson Law Offices Ltd.  
   Attorney for Fox Metro Water Reclamation District  
   759 John Street, Suite A  
   Yorkville, IL 60560

or such addresses that any party hereto may designate in writing to the other parties pursuant to the provisions of this paragraph.

5.0 Miscellaneous:

- A. Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenants, agreement or condition, but the same shall continue in full force and effect.
- B. Where CITY approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the respective parties unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met, unless such requirements are inconsistent with this Agreement.
- C. Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.
- D. The Mayor and President and City Clerk and District Clerk of the respective parties hereby warrant that they have been lawfully authorized by the governing boards of the respective parties to execute this Agreement. The parties shall, upon request, deliver to each other at the respective time copies of all resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective parties.
- E. This Agreement sets forth all the promises, inducements, agreements, conditions or understanding between the parties hereto relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law, reduced in writing and signed by them.
- F. This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
- G. In the event of any default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the party in default or violation, which notice shall be in writing and shall specify the particular violation or default. The parties reserve the right to cure any violation of this Agreement or default hereunder within sixty (60) days following written notice of such default unless such default is a monetary default in which event such monetary default must be cured within thirty (30) days. If such default is so cured within said applicable cure period, all

terms and conditions of this Agreement shall remain in full force and effect. If the party in default cannot cure a non-monetary default or violation hereof within said sixty (60) day period, then the other party shall grant a reasonable extension of the cure period, said extension not to exceed sixty (60) days, provided that the party in default or violation is diligently pursuing completion and/or cure and tenders proof of such diligence to the non-defaulting party upon request. The non-defaulting party may, at its sole discretion, grant such additional extensions beyond the aforementioned sixty (60) day extension period as may, in the sole discretion of the non-defaulting party, be reasonably necessary to cure said default.

- H. If any provision of this Agreement is held invalid by a court of competent jurisdiction, or in the event such a court shall determine that either party does not have the power to perform any such provision the entire Agreement shall be null and void.
  
- I. The CITY and the DISTRICT agree that neither shall bring any suit or any other legal proceeding of any nature whatsoever to contest the validity of this Agreement or any portion thereof. In the event any third party challenges the validity of this Agreement, the City will defend any such lawsuit and the parties will share equally in cost thereof.

IN WITNESS WHEREOF, the parties hereto have had their duly authorized officers execute this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

City of Aurora  
An Illinois Municipal Corporation

ATTEST:

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

By: \_\_\_\_\_  
City Clerk

Fox Metro Water Reclamation District,  
A duly organized Illinois Sanitary District

ATTEST:

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

By: \_\_\_\_\_  
District Clerk

**ACKNOWLEDGMENTS**

STATE OF ILLINOIS)  
  )SS  
COUNTY OF KANE )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Richard Irvin, personally known to me to be the Mayor of the City of Aurora, and Wendy McCambridge, personally known to me to be the City Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the City Council of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS    )  
  )SS  
COUNTY OF KENDALL)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Judith Sotir, personally known to me to be the President of Fox Metro Water Reclamation District, and Christopher Childress, personally known to me to be the District Clerk of said Illinois sanitary district, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and District Clerk, they signed and delivered the said instrument and caused the corporate seal of said Illinois sanitary district to be affixed thereto, pursuant to authority given by the Board of Trustees of said Illinois sanitary district, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois sanitary district, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public