

**AGREEMENT BETWEEN
FOX METRO WATER RECLAMATION DISTRICT
AND THE CITY OF AURORA
FOR THE INVESTIGATION AND REPAIR OF
COMBINED AND SEPARATED SEWERS
AT VARIOUS LOCATIONS
AURORA, IL**

THIS AGREEMENT entered into this _____ day of _____, 2017 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, the CITY and the DISTRICT currently cooperate on work related CSO Controls via intergovernmental agreements, such as the CSO Treatment Facility located at 400 N. Broadway (CITY Resolution R13-343, DISTRICT Resolution 916) and CSO Control Policies (CITY Resolution R14-025, DISTRICT Resolution 917); and

WHEREAS, there is a mutual benefit of combining resources for the purpose of reducing costs to investigate and repair the combined and separated sewers of the CITY and DISTRICT;

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 perform jointly the investigation and repair of the combined and separated sewer systems as follows:
 - 1.1 Investigate the sewer system by performing flow monitoring and smoke testing, reviewing sewer television tapes; inspecting manholes, entering buildings for sump pump surveys; locating outfall pipes discharging into the

river and creeks: mapping sewer pipes and structures utilizing GPS/GIS and other investigative tasks not listed herein.

- 1.2 Report the result of the investigation in writing by identifying the type and size of defects, the amount of infiltration and inflow (I&I) entering the sewer system, the source of inflow from the outfall pipes discharging into the river and creeks, the recommended solutions to correct the defects, and an estimated cost to rehabilitate the system. Engineer's opinion of probable construction costs, prepared as part of the investigative report, shall be separated and totaled based on the ownership of the sewer system.
 - 1.3 Prorate the cost of performing the investigation and reporting the results in items 1.1 and 1.2 by using the actual footage of sewers owned and operated by each government entity and/or by utilizing the number of dwellings investigated in each government territory. For example, the cost of televising 10,000 linear feet of sewer in the CITY and 5000 linear feet in the DISTRICT shall be divided 67% CITY and 33% DISTRICT and the cost of surveying 50 buildings in the CITY limits and 10 buildings outside CITY limits shall be divided 83% CITY and 17% DISTRICT.
 - 1.4 The CITY may utilize the DISTRICT's Sewer Maintenance Contract, or other contracts that the DISTRICT may enter into, for cleaning, televising, and repairs to the CITY's sewer system. The CITY shall reimburse the DISTRICT in full for all costs associated with cleaning, televising and repairs performed on the CITY's sewer system.
- 2.0 The DISTRICT and the CITY may jointly design, bid and construct sewer and manhole rehabilitation projects for the purpose of reducing costs on larger bid quantities. Either the DISTRICT or CITY, by mutual consent, may act as the lead agency responsible for the completion of the design, bidding and construction tasks. Lead agency will be responsible to ensure that said bidding process and associated documents comply with the laws of the State of Illinois, and invitations to bid include, at a minimum: the time, date and location of the bid; material conditions and requirements of the contract; detailed specifications; and a proposal sheet requiring the bidder's signature.
 - 3.0 All work conducted in accordance with Parts 1.0 and 2.0 shall require approval from the owner of the sanitary sewer system, CITY or DISTRICT respectively, prior to commencement.
 - 4.0 This Agreement shall be valid for a period of 5 years and can be extended by mutual consent of the CITY and the DISTRICT.
 - 5.0 The DISTRICT shall invoice the CITY on a monthly basis the CITY's costs and expenses associated with Part 1.0 of this Agreement. The Lead Agency shall invoice

the other entity on a monthly basis the other entity's costs and expenses associated with Part 2.0 of this Agreement.

6.0 This Agreement may be terminated by either the CITY or the DISTRICT for convenience, provided 60 days' notice is given as provided in section 7.0. In the event of termination by either party, the DISTRICT shall be entitled to be reimbursed for those services performed to the date of termination.

7.0 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: Dallas Ingemunson
 Attorney for Fox Metro Water Reclamation District
 226 South Bridge Street
 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.

6.0 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 Clerk and Secretary 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. Neither the DISTRICT nor CITY shall assign or transfer any rights under or interest in this Agreement without the written consent of the other and except

to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- I. This Agreement shall be governed by the laws of the State of Illinois and the DISTRICT and CITY will at all times comply with all applicable laws, rules, and regulations that may affect the subject matter of this Agreement or the parties hereto.
- J. The parties agree that the Kendall County Circuit Court shall be the sole venue for any litigation arising from this agreement.
- K. 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.
- L. 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 _____, 2017.

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: _____
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 C. Irvin, personally known to me to be the Mayor of the City of Aurora, and _____, 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 _____, 2017.

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 _____, personally known to me to be the President of the Fox Metro Water Reclamation District, and _____, personally known to me to be the Clerk of the Fox Metro Water Reclamation 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 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 _____, 2017.

Notary Public