

**AGREEMENT BETWEEN FOX METRO WATER RECLAMATION DISTRICT
AND THE CITY OF AURORA
FOR THE
OPERATION AND MAINTENANCE OF THE
CITY OF AURORA COMBINED SEWER OVERFLOW TREATMENT
FACILITY
AT 400 NORTH BROADWAY, 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, the CITY is the Owner of a Combined Sewer Overflow Treatment Facility (CSO FACILITY), located at 400 North Broadway Avenue, Aurora, designed to provide screening, primary treatment, disinfection and dechlorination of CSO flows prior to discharge into the Fox River, for the purpose of enhancing the water quality of the river, and

WHEREAS, the DISTRICT is the licensed agency responsible for the treatment of wastewater discharged into its collection system, within the DISTRICT’S Facility Planning Area; and

WHEREAS, the CITY is in need of assistance in maintaining and operating the CSO TREATMENT FACILITY; and

WHEREAS, the DISTRICT has the capability of providing services needed by the CITY, such as licensed operator, qualified personnel, specialized equipment, laboratory facilities, outside vendors, and other services; and

WHEREAS, the CSO FACILITY requires preventive maintenance during non-operation of the facility and sampling, cleaning, sludge handling, reporting and other services during and after combined sewer overflow events;

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

- 1.0 The DISTRICT agrees to provide its personnel, equipment, expertise, and facilities to operate and maintain the CSO FACILITY for a period of five (5) years, from the date of execution of this Agreement. The CITY and the DISTRICT shall have the option to extend the terms of this Agreement, by mutual consent, under the same terms and conditions of this Agreement.
- 2.0 The CITY agrees to reimburse the DISTRICT, for all associated costs and expenses incurred by the DISTRICT to operate and maintain the CSO FACILITY, as follows:
 - 2.1 Labor costs the DISTRICT may incur as a result of operating and maintaining the CSO FACILITY.
 - 2.2 Laboratory analytical costs performed by the DISTRICT and/or outside laboratories for the constituents of concerns listed in the IEPA NPDES Permit.
 - 2.3 Operation costs of vehicles owned by the DISTRICT and utilized exclusively for the CSO FACILITY.
 - 2.4 Rental and/or purchase costs of tools and/or equipment, not readily available to the DISTRICT, and specific to the operation and maintenance of the CSO FACILITY, stored permanently on the property for the use of the DISTRICT's personnel.
 - 2.5 Disposal costs of sludge and grit generated at the CSO FACILITY and stored in specialized containers on the Property.
 - 2.6 Chemical costs purchased by the DISTRICT to disinfect and dechlorinate the combined sewer flows.
 - 2.7 Costs of repair parts, devices, apparatus and/or replacement of mechanical, electrical and underground equipment, emergency equipment, pumps, generators, machinery, etc., including engaging the services of specialized outside consultants and/or contractors.
- 3.0 The DISTRICT agrees to provide the CITY with a detailed summary, on a monthly basis, of all costs associated with Article 2.0.

- 4.0 The CITY shall be responsible for all costs related to the following:
- 4.1 Utility billings shall be invoiced by the Utility Companies directly to the CITY. Utility expenses may include telephone, electricity, natural gas, cable and others.
- 4.2 Lawn mowing, ground maintenance, snow removal, trees and shrubbery trimming, painting of manmade structures and others.
- 5.0 The CITY agrees to maintain customary insurance on the premises of the CSO FACILITY to insure against loss suffered by the DISTRICT or DISTRICT's employees resulting from conditions on the premises.
- 6.0 The CITY agrees to indemnify and hold harmless the DISTRICT, its officers, agents and employees from and against all liability including costs and expenses for the activities of the DISTRICT, excluding those costs and expenses arising from the negligence or misconduct of the DISTRICT, its officers, agents or employees, during the performance of this AGREEMENT.
- 7.0 The DISTRICT will use its best effort to operate and maintain the CSO FACILITY in compliance with all federal and state rules and regulations. The parties agree to make mutual disclosure of any fact relating to non-compliance or potential noncompliance with any rule or regulation. The CITY agrees to maintain responsibility for all costs associated with preventing or remedying any noncompliance issues, excluding those costs arising from the negligence or misconduct of the DISTRICT, its officers, agents or employees.
- 8.0 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.

9.0 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