

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE KISHWAUKEE WATER RECLAMATION DISTRICT REGARDING WASTE TREATMENT BUILDINGS, IMPROVEMENTS, AND APPURTENANCES LOCATED WITHIN THE CITY OF DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the City and the Kishwaukee Water Reclamation District (the "KWRD") negotiated an agreement for the development of the KWRD's property in the same or substantially similar form as Exhibit A attached hereto and incorporated herein (the "Agreement"); and

WHEREAS, the City's corporate authorities find that approving the Agreement is in the City's best interests for the protection of the public health, safety, and welfare; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The recitals to this resolution are adopted and incorporated herein as Section One to this resolution.

SECTION 2: The City's corporate authorities approve, authorize, and direct the City Manager to execute the Agreement attached hereto and incorporated herein as Exhibit A, and further direct the City Manager to perform such acts which may be necessary to effect the Agreement.

SECTION 3: This resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent this resolution is inconsistent with any non-preemptive state law, this resolution shall supersede state law in that regard within its jurisdiction.

SECTION 4: This resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 24th day of October 2022 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Verbic, Favre, Barnes. Nay: None.




COHEN BARNES, Mayor

ATTEST:



Ruth A. Scott, Executive Assistant

**INTERGOVERNMENTAL COOPERATION AGREEMENT
BETWEEN CITY OF DEKALB AND
KISHWAUKEE WATER RECLAMATION DISTRICT
REGARDING WASTE TREATMENT BUILDINGS, IMPROVEMENTS AND
APPURTENANCES LOCATED WITHIN THE CITY**

This Agreement (the “Agreement”) is entered into as of the 24th day of October 2022 (the “Effective Date”), by and between the City of DeKalb (“the City”) and the Kishwaukee Water Reclamation District (“the District”), with the City and the District collectively referred to hereafter as (“the Parties”).

RECITALS

WHEREAS, 5 ILCS 220/1, *et seq.*, entitled the “Intergovernmental Cooperation Act”, provides that any power or powers, privileges or authority exercised, or which may be exercised, by a unit of government may be exercised and enjoyed jointly with any other unit of local government; and

WHEREAS, 5 ILCS 220/1, *et seq.*, provides that any one or more public agencies may contract with any one or more public agencies to perform any governmental service, function, activity, or undertaking which any public agency entering into the contract is authorized by law to perform, provided that such contract will be authorized by the governing body of each party to the contract; and

WHEREAS, the Illinois Constitution and the Illinois statutes encourage and provide for units of local government to cooperate and enter into intergovernmental agreements in any manner not prohibited by law or ordinance to their mutual benefits; and

WHEREAS, the City is a Home Rule municipality organized under the Illinois Municipal Code, as amended, 65 ILCS 5/1-1-1, *et seq.*, possessing full and complete authority to enter into intergovernmental agreements with other units of local government; and

WHEREAS, the District is a Sanitary District organized under the Sanitary District Act of 1917, as amended, 70 ILCS 2405, *et seq.*, possessing full and complete authority to enter into intergovernmental agreements with other units of local government; and

WHEREAS the City and the District, being coequal units of local government in the State of Illinois, in the spirit of intergovernmental cooperation, and pursuant to Article 7, Section 10 of the Constitution of the State of Illinois, and pursuant to 5 ILCS 220/1, *et seq.*, desire to work together to resolve issues of joint concern identified below; and

WHEREAS, the Parties acknowledge that the District will, from time to time, need to construct, improve, repair, or re-construct buildings and infrastructure on its property which may be located within the City’s corporate limits; and

WHEREAS, it is anticipated that the District may need to expand its treatment plant(s) or construct other infrastructure which will be within the City's corporate limits; and

WHEREAS, for any such project, the District will employ licensed professional engineers to design and oversee the construction, which should obviate the need for strict oversight of such projects by the City, avoid duplication of effort, and ensure maximum efficiency for the City, the District, and the community at large; and

WHEREAS, the Parties recognize that the District has a unique and primary mission to gather and treat waste in an environmentally regulated manner which goes beyond a framework for which the City's regulatory structure is particularly suited; and

WHEREAS, the Parties agree that the City's regulatory restrictions should not be unnecessarily applied to impair construction of improvements upon District property, provided the intent of the use of the property is in furtherance of the District's mission, and

WHEREAS, the Parties acknowledge that the City shall be kept apprised of the District's construction projects taking place within the City and the Parties are desirous of enhanced and continuous communications in this regard, in furtherance of cooperation in the development of property within the City and the District; and

WHEREAS, on the 22nd day of May 2017, the Parties entered into an Intergovernmental Cooperation Agreement regarding the "Treatment Plant Modernization" that facilitated the Phase 1B plant upgrades which have now been completed, and the Parties contemplated at that time that there would be a follow-up agreement addressing further development by the District, and

WHEREAS, the Parties are now desirous of replacing the previous agreement with the terms of this agreement; and

WHEREAS, the agreements, acknowledgments and representations made herein are collectively found to be in the best interest of both the City and the District.

NOW, THEREFORE, the City and the District, in consideration of the foregoing recitals incorporated in this Agreement by reference, and in consideration of the provisions and covenants contained herein, do hereby agree as follows:

- 1) **Prior Agreement Void.** The Parties agree that the Intergovernmental Cooperation Agreement between them dated the 22nd day of May, 2017 relating to the Treatment Plant Modernization at 303 Hollister Drive is hereby declared null and void and superseded by this Agreement. Nothing in this agreement, however, is intended to modify or supersede any other agreements the City and the District have with each other including, but not limited to, the current Billing Agreement between the Parties.

- 2) **District Property.** The District currently owns four (4) parcels of property located within, or contiguous to, the City's corporate limits: 1) the main plant at 1301 Sycamore Road in DeKalb (the "Main Plant Property"), 2) the 52 acres of farmland and sludge storage facility located south of the tollway (the "Sludge Storage Property"), 3.6 acres of land including a lift station at Buena Vista Golf Course, and 4) the "South Slope" property located north of the tollway and adjacent to south Annie Glidden Road (the "South Slope Property"), which are collectively referred to herein as the "District Property". The District may, in the future, acquire other land within the City's corporate limits, and all terms and conditions of this Agreement will apply to any such land so acquired, such that all such future property shall be included as "District Property" within the meaning of this Agreement. Within 90 calendar days of the Effective Date, the District and City agree to annex the South Slope Property into the City pursuant to the terms and conditions of annexation agreement to be separately executed by the Parties (the "Annexation Agreement"); provided, however, that the Annexation Agreement shall: (1) adopt and incorporate this Agreement as a section of the Annexation Agreement; and (2) not conflict with the terms and provisions of this Agreement, or in the case of any such conflict, the terms and provisions of this Agreement shall prevail. Furthermore, the Annexation Agreement shall also provide that the City shall: (1) waive any and all of its fees typically assessed in connection with the annexation of the South Slope Property; and (2) approve the Annexation Agreement and the annexation of the South Slope Property within 30 calendar days upon receipt of the District's annexation petition that fully complies with the requirements of 65 ILCS 5/7-1-8.
- 3) **Zoning.** Within 60 calendar days of the Effective Date, the District shall petition the City for (1) a text amendment to the City's Unified Development Ordinance (the "UDO") to create a new zoning district to treat the District Property as a self-regulating public utility with zoning allowing the District's current uses of the District purposes and other such uses as may be consistent with the District's purposes (the "Zoning Text Amendment"), and (2) a zoning map amendment from the District Property's existing zoning to the Zoning Text Amendment (the "Zoning Petition"). Within 30 calendar days upon receipt of the Zoning Petition, the Parties agree to take any and all steps legally necessary to adopt the Zoning Petition. Except to the extent that future District projects on District owned property will necessarily impact surrounding properties in a manner to cause nuisance issues relating to noise, odor, or light, the City shall not exert zoning or other land use authority over the District and the District's projects during the term of this agreement.
- 4) **Cooperation.** The Parties agree that they will cooperate with each other on any and all future development projects to the extent they reasonably can. The City agrees that to the extent it can do so without violation of confidentiality requested by a third-party, the City will share with the District on a timely basis plans for development of property within the City or property which may be annexed to or pre-annexed to the City in order to provide as much notice as is reasonable to the District of the need for sanitary sewer service to such property. As developments

come into the City, the District agrees that it will serve such properties and take such steps as are reasonably necessary to ensure sufficient capacity to treat the effluent from such developments – it being understood that certain effluent generated by future developers may require pre-treatment or other controls on the flows or strength of the waste generated. The Parties agree that they will work cooperatively to ensure sewer service and water service available to those desirous of bringing their developments to the City. In addition, the District agrees that it shall also provide additional sewer capacity as may be needed by the City for new development, redevelopment, or change in use, given a reasonable amount of time if the existing infrastructure to provide such capacity is not already in place.

- 5) **South Slope.** The Parties agree that they will work cooperatively to find reasonable uses for the South Slope Property including, but not limited to, the City’s current license to dump snow and ice onto the South Slope Property, the possibility of generation of power through solar energy gathering equipment, recreational uses, or other mutually beneficial opportunities.
- 6) **UDO & Building Codes.** Pursuant to the foregoing, the City agrees that the City’s UDO and Building Code, as adopted and amended by the City, shall only apply to District projects involving the construction of planned occupied buildings (the “Occupied Buildings”), which shall mean any publicly accessible structure erected and intended for continuous or periodic habitation, occupancy, or use by human beings, and from which structure sanitary sewage and industrial wastes, or either thereof, is or may be discharged. Notwithstanding the foregoing to the contrary, all District projects shall be subject to self-certification in the same or substantially similar form as the” Certification Statement and Hold Harmless Letter” attached hereto and incorporated herein as Exhibit A (the “Self-Certification”), the City’s review, or modification to ensure compliance with the City’s Building Codes for fire or other public safety emergency access.
- 7) **District To Share All Plans With City.** The District agrees that notwithstanding the above and foregoing, it will share with the City all relevant plans and specifications for any buildings it intends to construct within the City’s municipal boundaries. Further, the District agrees that it will construct all buildings to standards meeting or exceeding the requirements of the applicable International Building Code provisions as adopted by the City at the time of any such construction. For any such construction projects, the District agrees to provide and comply with the Self-Certification.
- 8) **Building Permits.** Except for Occupied Buildings, it is understood by the Parties that, during the term of this Agreement, the District shall not be required to obtain permits from the City for any construction or repair of unoccupied buildings, sanitary sewer collection system work or treatment equipment constructed or installed in furtherance of the District’s mission, but the District shall comply with the Self-Certification. This shall include, but is not limited to, tankage or ancillary structures intended primarily for the housing of equipment used in the sewage

treatment process. It is further agreed that the District shall not be required to obtain demolition permits from the City in the event that demolition is necessary for development of District property. Notwithstanding the foregoing to the contrary, the District agrees to comply with any and all City Codes and Regulations as may apply to any such work and comply with the Self-Certification. For Occupied Buildings, the District shall obtain all building permits required by the City and comply in all respects with the City's standards and practices with respect thereto.

- 9) **City to Have No Liability.** Given the provisions as set forth above, the City shall be relieved of all obligation to inspect buildings on District Property within the City, except for Occupied Buildings). All liability and responsibility arising from exemption from permitting or inspection shall be borne by the District, in furtherance of the terms of this Agreement and the Self-Certification with respect to the proper construction, or demolition, of such buildings, and the District expressly releases, discharges, and holds harmless the City with respect to any such construction projects.
- 10) **No Escrows.** Any escrow requirements for fees associated with engagement of third-party consultants on the part of the City shall not be applicable to the District for projects on District Property located within the City.
- 11) **District to Pay for City Involvement When Requested.** Notwithstanding the above and foregoing, nothing in this Agreement shall prevent the District from seeking assistance from the City in the form of plan review, inspections, and associated processes in exchange for payment of fees by the District as the Parties may agree upon on a case-by-case basis.
- 12) **City Input to be Honored.** On any such project, the District shall take into account expressed requests on the part of the City staff for relevant easements for utilities, rights of way, licenses, or design adjustments in order to assure the maximum benefit from utilities (including the City water system) for properties surrounding District Property.
- 13) **Collection System Work.** The Parties agree that no permits shall be required by the City for work by the District on the District Sanitary Sewer System, including work on or under City rights-of-way or City streets. The District shall, however, share any plans for any such work with the City in advance of construction, shall abide by any applicable City codes with respect thereto, and shall cooperate with the City matters involving traffic control, coordination of construction projects, or any other related concern.
- 14) **Indemnity for City.** To the fullest extent permitted by law, the District shall defend, release, hold harmless, and indemnify the City and the City's officers, agents, and employees from and against any and all third-party claims, causes of action, liabilities, losses, damages, fines, penalties, injuries, costs, and attorney's fees arising out of, relating to, resulting from, or caused by this Agreement, the

Parties' respective (non)performance of their obligations pursuant to this Agreement, or otherwise due to the City forbearance from strict enforcement of the terms of its Ordinances relating to the construction of buildings within the corporate limits of the City. Notwithstanding the contractual basis of this Agreement, the Parties shall be entitled to assert any and all defenses and immunities provided by law including, but not limited to, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1, *et seq.* The Parties' obligations under this section shall survive the termination of this Agreement and shall be in addition to the indemnification provided by the Self-Certification.


- 15) **Term.** To the extent allowed by law, this Agreement will have an initial term of Fifty (50) years and the Parties agree not to unreasonably withhold their consent for subsequent renewals for fifty-year periods (the "Extended Terms") thereafter, unless either party notifies the other not less than 60 days prior to the expiration of the initial term or any Extended Term of the desire to terminate this Agreement.
- 16) **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and, as applicable, their respective representatives, successors, and permitted assigns/designees.
- 17) **Amendment and Waiver.** This Agreement may not be modified or amended, nor may any term or provision be waived or discharged except in writing signed by the Party or Parties against whom such amendment, modification, waiver, or discharge is sought to be enforced. The waiver by any Party of any breach by another Party of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision hereof by such Party, nor shall any failure to enforce any provision operate as a waiver of such provision of any other provision.
- 18) **Headings for Convenience.** The headings and subheadings contained in this Agreement are for convenience only and shall not control or effect the meaning, construction, or interpretation of any provision hereof.
- 19) **Choice of Law and Venue.** This Agreement shall be construed and interpreted in accordance with, and be governed by, the laws of the State of Illinois. Venue for any disputes between the Parties will lie exclusively in the State Courts of the 23rd Judicial Circuit, DeKalb County, Illinois.
- 20) **Notices.** Any and all notices and demands by any Party hereto to any other Party, required or desired to be given hereunder shall be in writing and shall be validly given or made only if (i) personally delivered with a receipt obtained from the person receiving the notice, (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (iii) if made by Federal Express or other similar delivery service keeping records of deliveries and attempted deliveries. If delivery is made by personal delivery, it shall be conclusively deemed made upon receipt. If delivery is made by United States mail

or by a delivery service, it shall be conclusively deemed made on the earlier of the first banking day delivery is attempted or upon receipt, whichever is sooner. Any notice or demand to a Party shall be addressed to the addresses contained in the first paragraph of this Agreement. The Parties may change their address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the others, which notice of change of address shall not become effective, however, until the actual receipt thereof by the others.

Entered into and Agreed as of the Effective Date set forth above.

City of DeKalb

By:


Bill Nicklas, City Manager

ATTEST:

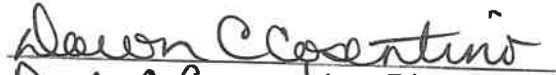

Ruth A. Scott, Executive Assistant

Kishwaukee Water Reclamation District

By:


Print Name: Dennis J. Gilmis
President

ATTEST:


Dawn C. Cosentino District Clerk