

INTERGOVERNMENTAL AGREEMENT BETWEEN THE HIGHLAND HILLS
SANITARY DISTRICT, THE FLAGG CREEK WATER RECLAMATION DISTRICT
AND THE COUNTY OF DUPAGE, ILLINOIS FOR REVIEW OF ACCOUNTS, AND
OPERATIONS IN PREPARATION FOR DISSOLUTION

RECITALS

THIS AGREEMENT is entered into this _____ day of _____, 2017 between the Flagg Creek Water Reclamation District, (hereinafter referred to as “FLAGG CREEK”), with offices located at 7001 N. Frontage Rd., Burr Ridge, Illinois 60527 the Highland Hills Sanitary District, (hereinafter referred to as “HIGHLAND HILLS”), with offices located at 566 E. 13th Place, Lombard, Illinois 60148, and the County of DuPage, Illinois, a body politic, (hereinafter referred to as the “COUNTY”) with offices located at 421 N. County Farm Road, Wheaton, Illinois 60187.

WHEREAS, the County of DuPage (hereinafter “COUNTY”) is a body politic existing under the constitution and laws of the State of Illinois, duly organized pursuant to 55 ILCS 5/1-1001, et seq.; and

WHEREAS, pursuant to authority granted by the Illinois General Assembly at 55 ILCS 5/15000, *et seq.*, the COUNTY operates potable water distribution (“waterworks”) and sanitary sewerage systems located throughout the territory of DuPage County, Illinois; and

WHEREAS, the Highland Hills Sanitary District, (hereinafter “HIGHLAND HILLS”), is a sanitary district duly organized pursuant to 70 ILCS 2805/1, et seq., and, pursuant to said authority, operates a waterworks and a sanitary sewerage system servicing an area of DuPage County located in York Township; and

WHEREAS, the Flagg Creek Water Reclamation District, (hereinafter “FLAGG CREEK”), is a sanitary district duly organized pursuant to 70 ILCS 2405/1, et seq., and, pursuant to said authority, operates a sanitary sewerage system servicing an area of DuPage County located in York and Downers Grove Townships; and

WHEREAS, the COUNTY’S York Township Water Distribution System is located immediately adjacent to the HIGHLAND HILLS’ water distribution system; and

WHEREAS, FLAGG CREEK’S sanitary sewerage system is located immediately adjacent to, and interconnected with, HIGHLAND HILLS’ sanitary sewerage system and, further, by a prior agreement between those parties, FLAGG CREEK provides wastewater treatment for HIGHLAND HILLS’ sanitary sewerage system; and

WHEREAS, the COUNTY, HIGHLAND HILLS and FLAGG CREEK are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act", as specified at 5 ILCS 220/1, *et seq.*, and are authorized by Article 7 Section 10 of the Constitution of the State of Illinois to cooperate for public purpose; and

WHEREAS, the 1970 Constitution of the State of Illinois and the Intergovernmental Cooperation Act encourage and provides for public agencies to cooperate and enter into agreements for their mutual benefits; and

WHEREAS, a majority of the HIGHLAND HILLS' residents and the HIGHLAND HILLS Board of Trustees favor dissolving that district and ceasing operations; and

WHEREAS, the Illinois General Assembly passed Public Act 98-126, effective August 2, 2013, which added Division 5-44 to the Counties Code, Local Government Reduction and Efficiency (hereinafter referred to as the "ACT"); and

WHEREAS, the ACT was passed in order to provide for a streamlined method to consolidate government functions and to dissolve units of local government; and

WHEREAS, as part of DuPage County's (hereafter "COUNTY") Accountability, Consolidation and Transparency Initiative (hereinafter referred to as "DUPAGE ACT"), HIGHLAND HILLS was identified as a possible governmental agency appropriate for dissolution and that additional operational and fiscal investigation may be warranted based upon the duplicative nature of services provided by other governmental units, and potential operational cost saving opportunities; and

WHEREAS, the COUNTY retained the services of Crowe Horwath, LLC to perform an audit of some local governmental units in DuPage County, in order to determine whether any of those units of local government were potential candidates for dissolution; and

WHEREAS, one of the units of local government that Crowe Horwath, LLC found to be a potential candidate for dissolution was HIGHLAND HILLS; and

WHEREAS, based upon the findings by Crowe Horwath with respect to HIGHLAND HILLS, the COUNTY pursuant to its statutory authority, commissioned the "Highland Hills Sanitary District Operations and Consolidation Study" (the "STUDY"), to investigate and evaluate the costs, benefits and feasibility of shared services, streamlining of existing operations, merging, consolidating and/or transferring certain operations and, or, system components of HIGHLAND HILLS to alternate service providers; and

WHEREAS, pursuant to the ACT, dissolution of a sanitary district involves passage and publication of an ordinance proposing the dissolution, preparation of an audit report of all claims against the dissolving agency, including all receipts, an

inventory of all real and personal property owned by it, or under its control or management, and any debts against it, enactment of an Ordinance dissolving the agency, and in response to a petition, an order entered by the Circuit Court designating a Trustee in Dissolution invested with certain powers and duties, including the power to enter into an intergovernmental agreement with one or more governmental entities to utilize existing resources, and to sell the property of the unit; and

WHEREAS, the time to accomplish dissolution can be between twelve to eighteen months, and

WHEREAS, the Parties anticipate that HIGHLAND HILLS will be dissolved and that the COUNTY will provide Lake Michigan water to HIGHLAND HILLS' residents, and acquire its water system and related assets and infrastructure; and FLAGG CREEK will acquire HIGHLAND HILLS' sanitary sewer water system related assets and infrastructure; and

WHEREAS, it is to the benefit of the Parties and Highland HILLS' residents that the COUNTY and FLAGG CREEK have access to HIGHLAND HILLS' facilities prior to its dissolution in order to assess the condition of its water system and sanitary sewer system, and recommend necessary repairs and corrective work; and

WHEREAS, the COUNTY and FLAGG CREEK are willing and capable of taking over HIGHLAND HILLS' water and sewerage systems after HIGHLAND HILLS has been dissolved, based upon the terms and conditions set forth herein; and

WHEREAS, in order to facilitate HIGHLAND HILLS' eventual dissolution, the Parties desire to enter into this Agreement providing for access to HIGHLAND HILLS' facilities prior to its dissolution, and receiving information necessary for evaluation of HIGHLAND HILLS' operations.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1.0 INCORPORATION AND CONSTRUCTION

- 1.1 The representations and recitations set forth in the foregoing preambles are material to this Agreement and are hereby incorporated into and made a substantive part of this Agreement as if they were fully set forth herein.
- 1.2 The following exhibits, either attached hereto or adopted by reference, shall be deemed a substantive part of this Agreement as if they were fully set forth herein:

Exhibit A – Current Limits of Highland Hills Service Area
Exhibit B – Highland Hills Sanitary Sewer System Map
Exhibit C – Highland Hills Water System Map

- 1.3 The headings of the paragraphs and subparagraphs of this Agreement are inserted for convenience of reference only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.
- 1.4 For the purpose of this Agreement the following terms shall having the meaning stated thereafter:
- 1.4.1 “Dissolution date” (also “date of dissolution”) shall mean the date on which the dissolution of the HIGHLAND HILLS SANITARY DISTRICT occurs by operation of law.
- 1.4.2 “Assets” shall mean any real property owned or leased by HIGHLAND HILLS, any easements, licenses, access rights, options to purchase or lease, and all other property rights granted to, or held by, HIGHLAND HILLS and any improvements and fixtures located thereon; any personal property owned or leased by HIGHLAND HILLS, any equipment, machinery, materials, vehicles, supplies, bank deposits, investments, petty cash, accounts receivable, options to purchase or lease. The limits of the HIGHLAND HILLS current service area are shown in *Exhibit A – Current Limits of Highland Hills Service Area*.
- 1.4.3 “Effective Date of this Agreement” shall mean the date on which the Agreement has been approved by the governing boards for each of the signatory parties.
- 1.4.4 “Infrastructure” shall mean any wells, pumps, water treatment mechanisms, ditches, pipes, drains, sewers, vaults, catch basins, buffalo boxes (b-boxes), mains, conduits, laterals, hydrants, manholes, culverts, equipment, appurtenances, cathodic protection devices, meters, antennae and any buildings, structures or towers housing such items.
- 1.4.4.a “Sanitary Sewer System” shall mean any Infrastructure components used to collect, convey, store and transport wastewater and/or sewage. The current extent of the HIGHLAND HILLS sanitary sewer system is shown in *Exhibit B – Highland Hills Sanitary Sewer System Map*
- 1.4.4.b “Water system” shall mean any Infrastructure components used to pump, convey, store and distribute potable water. The current extent of the HIGHLAND HILLS water system is shown in *Exhibit C – Highland Hills Water System Map*

1.4.5 “Parties” shall mean the COUNTY, FLAGG CREEK and HIGHLAND HILLS jointly and “Party” shall mean the COUNTY, FLAGG CREEK or HIGHLAND HILLS individually.

1.4.6 “Service Transition Date” shall mean the date on which the COUNTY commences supplying Lake Michigan water to the HIGHLAND HILLS water system.

2.0 TRANSMISSION OF RECORDS AND INFORMATION

2.1 HIGHLAND HILLS represents, warrants to and covenants with the COUNTY and FLAGG CREEK:

2.1.1 HIGHLAND HILLS has not received notice of any environmental, health, zoning, building code or other violation or pending special assessment, condemnation, rezoning, or annexation from any governmental body. In the event HIGHLAND HILLS subsequently receives notice of any of the foregoing matters, HIGHLAND HILLS shall notify the COUNTY and FLAGG CREEK of such matter(s) within three (3) business days.

2.1.2 HIGHLAND HILLS has the full power, authority, and legal right to enter into and perform this Agreement and all other instruments required hereunder, and the execution, delivery and performance hereof, including any acts undertaken by HIGHLAND HILLS’ agents, shall be duly authorized by all necessary action on the part of HIGHLAND HILLS.

2.2 Within thirty (30) days of the Effective Date of this Agreement, HIGHLAND HILLS endeavors to provide the COUNTY and FLAGG CREEK with copies of, or otherwise make available to those parties for copying, the following materials, provided such materials are in the possession of HIGHLAND HILLS or HIGHLAND HILLS’ officials, officers, employees, agents or contractors:

2.2.1 Records pertaining to the HIGHLAND HILLS’ properties including proof of title to all real and, or, personal property owned by the HIGHLAND HILLS, in whole or in part, deeds, titles, title reports, title insurance policies, closing documents, surveys, easement grants, licenses, access agreements, lease or rental agreements, options to purchase or lease, real estate tax bills and, or, real estate tax exception certificates; and

- 2.2.2 Records pertaining to the location, design, construction and maintenance of the HIGHLAND HILLS infrastructure, including but not limited to any surveys, maps, atlases, plan sets, design drawings, architectural and engineering drawings, modeling, GIS databases, televised inspection photographs or recordings, maintenance and inspection logs, leak inspections, studies, analysis, reports, permits, permit applications and regulatory submittals; and
- 2.2.3 Records pertaining to any liabilities and obligations of HIGHLAND HILLS, including but not limited to any flooding or sewer back-up incident reports, suits, claims, demands, grievances, liens, lien notices, lien waivers, outstanding contracts, closed contracts for goods or services executed within the past ten (10) years, bills and invoices for any goods or services received or obtained by HIGHLAND HILLS during the past two (2) years, payroll and benefits records for all HIGHLAND HILLS' employees, any pending court actions, and any court actions closed with the prior five years; and
- 2.2.4 Records pertaining to HIGHLAND HILLS' Assets, including but not limited to any audits, accountings, balance sheets, bank records, check ledgers, insurance policies, warranties or guaranties in effect for any goods or services received or obtained by HIGHLAND HILLS, accounts receivable, investments and all other financial records; and
- 2.2.5 Records pertaining to HIGHLAND HILLS' customer service accounts, including but not limited to any customer contact information, meter reads, usage data, billing history, service history, special service agreements, free or reduced service arrangements, outstanding payments due and connection fee payments/refund history. All new or terminated accounts that occur during the period of time prior to the formal dissolution of the HIGHLAND HILLS shall be reported to the COUNTY and FLAGG CREEK within forty-eight (48) hours.
- 2.2.6 Records within the prior ten years pertaining to minutes of Board of Trustees meetings minutes of Board of Local Improvements meetings, minutes of executive session meetings, Resolutions, Ordinances, correspondence to or from the Illinois Environmental Protection Agency and the US Environmental Protection Agency, including but not limited to reports, notices and communications of combined sewer overflows, sanitary sewer overflows, outstanding contracts or agreements and all outstanding agreements with independent consultants.

- 2.3 Upon completion of a reasonably thorough search of HIGHLAND HILLS' records for materials responsive to Paragraph 2.2, above, (including sub-parts 2.2.1 through 2.2.6), HIGHLAND HILLS shall provide a certification to the COUNTY and FLAGG CREEK attesting that HIGHLAND HILLS has complied with Paragraph 2.2 to the fullest extent possible and that any records not produced or made available for inspection either: i) no longer exist; or ii) no longer remain in the possession or control of the HIGHLAND HILLS, or in the possession or control of HIGHLAND HILLS' officers, officials, employees, contractors, agents or legal representatives, and that the whereabouts of such records cannot be ascertained upon a reasonably diligent inquiry.
- 2.4 HIGHLAND HILLS hereby authorizes the COUNTY and FLAGG CREEK, including the COUNTY'S and/or FLAGG CREEK'S respective officials, employees, contractors and consultants, to access HIGHLAND HILLS' property, easements and infrastructure for the purpose of performing any inspection, examination, televising of lines, review, evaluation, assessment, appraisal, audit, survey, test, soil boring, or sampling (collectively "Preliminary Investigations"), without charge. The COUNTY and FLAGG CREEK may each undertake a Preliminary Investigations at their own expense (except as provided in Paragraph 2.5 below), but shall limit such activities to weekdays during routine business hours with prior notice to HIGHLAND HILLS. The COUNTY and FLAGG CREEK shall require any third-party contractors and, or, consultants performing any Preliminary Investigations to agree to indemnify and insure HIGHLAND HILLS from and against liability arising out of the contractors' or consultants' acts or omissions. In the event either party undertakes smoke-testing, the party performing such testing shall first alert HIGHLAND HILLS' residents.
- 2.5 The Preliminary Investigation may include the following matters:
- 2.5.1 The DuPage County Auditor, personally or through the use of a third-party vendor, shall conduct a fixed asset inventory of HIGHLAND HILLS' property (real and personal) and an audit of HIGHLAND HILLS' financial records.
- 2.5.2 The COUNTY, using COUNTY staff or a third-party vendor, shall undertake a leak detection survey of HIGHLAND HILLS' water system. HIGHLAND HILLS agrees to reimburse the COUNTY for the costs of said leak detection survey. FLAGG CREEK may undertake a review of HIGHLAND HILLS' sewer system, including televising and performing inspections of the system. HIGHLAND HILLS agrees to reimburse FLAGG CREEK for the costs of said televising and inspection.

2.5.3 The COUNTY shall prepare a survey (evaluation questionnaire) for HIGHLAND HILLS customers to assist the COUNTY with identifying infrastructure and, or, customer billing problems. HIGHLAND HILLS shall distribute said survey to its customers and shall undertake subsequent follow-up distributions for all non-responsive customers as requested by the COUNTY. The COUNTY shall provide all collected responses to the other Parties.

2.6 The COUNTY and FLAGG CREEK will endeavor to conclude their respective Preliminary Investigation within one hundred twenty (120) days of the Effective Date of this Agreement. Within twenty (20) days of concluding their respective Preliminary Investigation, the COUNTY and FLAGG CREEK shall meet and jointly decide whether their due diligence efforts have revealed any condition, defect, deficiency, liability, encumbrance or other matter that, in either Party's sole discretion, would cause that Party to terminate this Agreement. If the COUNTY and FLAGG CREEK decide to terminate this Agreement, they shall thereafter give HIGHLAND HILLS a joint written notice of their decision to discontinue such efforts and terminate this Agreement.

2.7 In the event the Agreement is terminated, each Party's obligations hereunder shall cease, excepting HIGHLAND HILLS' obligation to reimburse the COUNTY and, or, FLAGG CREEK in accordance with Paragraph 3.3 below.

3.0 HIGHLAND HILLS SANITARY DISTRICT RESPONSIBILITIES

3.1 Effective immediately, HIGHLAND HILLS shall grant the COUNTY and FLAGG CREEK licenses for the purposes set forth in paragraph 2.4. The licenses hereby granted shall be understood to allow access, to HIGHLAND HILLS' property by said Parties' officers, officials, employees, contractors, sub-contractors and consultants.

3.2 Following completion of the activities listed in Paragraph 2.2 above, HIGHLAND HILLS shall provide to the COUNTY and FLAGG CREEK billing system information for HIGHLAND HILLS' service customers. Specifically, HIGHLAND HILLS shall provide its billing data to the other Parties.

3.3 If deficiencies in the water system or sewer system are identified, the COUNTY or FLAGG CREEK, in their sole determination shall require correction thereof prior to the Dissolution Date. The COUNTY or FLAGG CREEK will transmit to HIGHLAND HILLS a Notice Deficiency stating the deficiencies discovered in the Water System and Sanitary Sewer System. Within 60 days, HIGHLAND HILLS will

endeavor to undertake efforts to correct such deficiencies. If the estimated cost of the work is below HIGHLAND HILLS' competitive bidding threshold as defined by state law, the County will assist HIGHLAND HILLS in selecting a contractor to perform the work. HIGHLAND HILLS will enter into an agreement or issue a purchase order for such work within 60 days of the date that a contractor is selected. If the estimated cost of the work exceeds HIGHLAND HILLS' competitive bidding threshold as defined by state law, the County will assist HIGHLAND HILLS to advertise for bids, receive and review bids, and award a contract for the work and/or to provide construction site supervision. The COUNTY also will assist HIGHLAND HILLS if it is necessary to retain a consultant to prepare contract specifications for the work. At its sole option, the County may elect to perform the work with its own forces, or through its contractors. All the costs of such contracting work, and performance of the corrective work will be paid for by HIGHLAND HILLS. Corrective work includes, but is not limited to

3.3.1 Maintenance, repairs and Infrastructure upgrades.

3.3.2 A Water System and Sanitary Sewer System leak detection survey and the repair of any leaks detected as a result of said survey. The leak detection survey and leak repairs are not subject to HIGHLAND HILLS' pre-approval, regardless of cost.

3.3.3 The COUNTY'S installation of AMR-technology water meters for each HIGHLAND HILLS water service customer. The installation of such meters by the COUNTY shall be fully reimbursed by HIGHLAND HILLS.

3.4 As the COUNTY installs new water meters, or replaces existing water meters, and commences making bi-monthly meter readings of HIGHLAND HILLS' customer accounts, HIGHLAND HILLS shall begin issuing service bills to those customer accounts based on the COUNTY-supplied meter reading data. HIGHLAND HILLS shall be further responsible for collecting amounts owed on such customer accounts. After the COUNTY has completed its new meter installations and, or, replacements, HIGHLAND HILLS shall bill and collect customer accounts, sharing said account information with the COUNTY and FLAGG CREEK.

3.5 Following the completion of the installation of new meters and all required leak repairs, the COUNTY, at its sole discretion, may elect to transition the HIGHLAND HILLS water system from well water to Lake Michigan water. This transition is predicated upon the proper permits and authorizations being issued by the DuPage Water Commission ("DWC"), Illinois Environmental Protection Agency and any other local

governmental entities. The date of this transition shall become the Service Transition Date.

- 3.6 Concurrently with the Service Transition Date, HIGHLAND HILLS' governing board shall adopt, by ordinance, a rate and fee schedule for potable water and sanitary sewer services matching the rates and fees charged by the COUNTY and FLAGG CREEK for such services, which rates and fees shall be effective on the date of adoption. Such rates and fees for sanitary sewer service shall include a capital recovery charge of \$12.80 bi-monthly per bill charge. A copy of said resolution shall be distributed to the other Parties and each of HIGHLAND HILLS' customers

- 3.7 Within thirty (30) days of the Service Transition Date HIGHLAND HILLS shall perform the following acts:
 - 3.7.1 HIGHLAND HILLS shall make application, as required under Illinois law, to archive all crucial records and to dispose of any remaining records. This shall be completed in coordination with the COUNTY and FLAGG CREEK.
 - 3.7.2 HIGHLAND HILLS shall reasonably cooperate with the COUNTY and FLAGG CREEK making the appropriate notifications to the Illinois Environmental Protection Agency (IEPA) concerning the dissolution by HIGHLAND HILLS to the COUNTY and FLAGG CREEK.
 - 3.7.3 HIGHLAND HILLS shall issue notices to all parties having contracts with it (excepting the COUNTY and FLAGG CREEK) informing those parties of HIGHLAND HILLS' dissolution, or allow to expire, all contract(s) which allow for, and require notice of, early termination and, or, non-renewal.
 - 3.7.5 HIGHLAND HILLS shall work with the COUNTY and FLAGG CREEK to formally complete the dissolution process for the HIGHLAND HILLS SANITARY DISTRICT in a manner that meets all applicable legal and statutory requirements required for such an action.

- 3.8 In the event the Service Transition Date occurs before March 1, 2018, HIGHLAND HILLS shall not levy real estate taxes for the 2018 tax year, payable in 2019, and if such taxes have already been levied, then by appropriate corporate act HIGHLAND HILLS shall abate such levy. In the event the Service Transition Date occurs after March 1, 2018,

HIGHLAND HILLS agrees to refrain from levying real estate taxes for any tax year following 2018. It should be noted that the 2017 taxes, payable in 2018, shall still be levied and collected.

- 3.9 Prior to its dissolution, HIGHLAND HILLS shall settle all litigation and claims involving that Party, including specifically all tax rate objection cases. This shall be coordinated with the DuPage County Office of the States Attorney.

4.0 COUNTY RESPONSIBILITIES

- 4.1 Following the Effective Date of this Agreement, the COUNTY shall:

4.1.1 Have a leak detection survey performed for the HIGHLAND HILLS' water system. All costs to be reimbursed to the COUNTY by HIGHLAND HILLS.

4.1.1 Install and, or, replace existing water meters for HIGHLAND HILLS' customers that require meter replacements as determined by the COUNTY. The COUNTY shall make all meter installations and, or, replacements using AMR-technology meters. All costs to be reimbursed to the COUNTY by HIGHLAND HILLS.

4.1.2 Install all necessary and required water system interconnections between HIGHLAND HILLS' water system and an existing COUNTY water system, at such location(s) to be determined by the COUNTY. All inter-connections shall be installed in conformity with the standards and requirements set by the DuPage Water Commission ("DWC"). HIGHLAND HILLS agrees to reasonably cooperate with the COUNTY and DWC to facilitate said inter-connections including, as required by the DWC, granting or assigning the DWC easement(s) over the inter-connection site(s). All costs to be reimbursed to the COUNTY by HIGHLAND HILLS.

- 4.2 As the COUNTY installs and, or, replaces meters for each HIGHLAND HILLS' customer using AMR-technology, the COUNTY shall commence bi-monthly meter readings for that customer. COUNTY-collected meter readings shall be promptly transmitted to both HIGHLAND HILLS and FLAGG CREEK in an agreed upon electronic format. The COUNTY shall continue to provide HIGHLAND HILLS with meter-reading data until the Service Transition Date at no cost to HIGHLAND HILLS or FLAGG CREEK. Following the Service Transition Date, the COUNTY shall commence issuing billings for the (former) HIGHLAND HILLS water service customers using, and converting over to, the COUNTY's parallel

billing system. The COUNTY shall continue providing meter reading data to FLAGG CREEK for that Party's own billing purposes at the applicable meter reading expenses as outlined by the DuPage County Wastewater Treatment Ordinance.

4.3 Following the completion of the COUNTY'S installation and, or, replacement of meters for HIGHLAND HILLS' customers, and further following the COUNTY'S and FLAGG CREEK'S issuance of the Paragraph 2.6 notice, the COUNTY shall set the Service Transition Date following consultation with the other Parties (and to be coordinated with HIGHLAND HILLS' billing cycle). The COUNTY shall then issue a written sixty (60) day notice to the other Parties of the Service Transition Date unless a shorter period of time is agreed to by all Parties. On the Service Transition Date the County shall commence distributing Lake Michigan water through the (former) HIGHLAND HILLS water distribution system.

4.4 The COUNTY, at the discretion of the Superintendent and with concurrence from HIGHLAND HILLS, may assume the responsibility for operations and maintenance of the HIGHLAND HILLS water and sewer systems following the Service Transition Date through written notice to HIGHLAND HILLS and FLAGG CREEK. All expenses associated with these actions shall be reimbursed by HIGHLAND HILLS. This operational condition shall be considered temporary until such time that the HIGHLAND HILLS dissolution is completed and FLAGG CREEK would take over the operations of the sanitary sewer. During this interim operational period, HIGHLAND HILLS would still be owner of record and would assume all liability of operations.

4.5 Under no circumstances, during the term of this agreement, shall COUNTY cause HIGHLAND HILLS to reimburse them an amount that would violate their statutorily required reserve funding levels. Should the COUNTY expend an amount that would require HIGHLAND HILLS to fall below their required funding levels, the COUNTY will not bill these amounts until such time as additional funding would become available.

4.5.1 Nothing in this Agreement shall deprive HIGHLAND HILLS of its ability to satisfy all of their financial agreements and obligations existing before dissolution.

5.0 FLAGG CREEK RESPONSIBILITIES

5.1 Following the Effective Date of this Agreement, FLAGG CREEK shall cooperate with the COUNTY to identify necessary repairs and maintenance work to HIGHLAND HILLS' sanitary sewer system,

including both ordinary maintenance, capital improvements, and emergency work.

- 5.2 After the COUNTY has completed its installations and/or replacements of meters for HIGHLAND HILLS' customer, COUNTY-collected meter readings shall be promptly transmitted to both HIGHLAND HILLS and FLAGG CREEK in an agreed upon electronic format. HIGHLAND HILLS shall issue billings for its sanitary sewer customers using COUNTY-supplied meter-reading data until the Dissolution Date. FLAGG CREEK shall immediately inform the COUNTY and HIGHLAND HILLS in the event of any apparent discrepancy or error with said billings.

6.0 NOASSUMPTION OF OBLIGATIONS

- 6.1 The COUNTY and FLAGG CREEK do not by entering into this Agreement assume any liabilities associated with the operation or maintenance of HIGHLAND HILLS' Water System or Sanitary Sewer System.

7.0 MISCELLANEOUS

- 7.1 This Agreement may be modified or amended only by written instrument duly authorized and signed by each Party.
- 7.2 This Agreement contains the entire understanding of the PARTIES with respect to the subject matter hereof and supersedes all prior negotiations, agreements and understandings with respect to such subject matter.
- 7.3 There are no other covenants, warranties, representations, promises, conditions or understandings, either oral or written, other than those contained herein.
- 7.4 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instruments.
- 7.5 This Agreement shall become effective from the date fully executed by the Parties.
- 7.6 Notwithstanding the preceding paragraph, no Party may terminate this Agreement following the completion of the Due Diligence Phase.
- 7.7 Any required notice shall be sent to the following addresses and Parties:

a) If to the COUNTY:

COUNTY OF DUPAGE
Department of Public Works
421 N. County Farm Road
Wheaton, IL 60187
ATTN: Nicholas Kottmeyer, P.E. - Superintendent

If to FLAGG CREEK:

FLAGG CREEK WATER RECLAMATION DISTRICT
7001 N. Frontage Road
Burr Ridge, IL 60527
ATTN: Thomas O'Connor, Executive Director

If to HIGHLAND HILLS:

HIGHLAND HILLS SANITARY DISTRICT
566 E. 13th Place
Lombard, IL 60148
ATTN: James Worden, President

- 7.8 All notices required to be given under the terms of this Agreement shall be in writing and either (a) served personally during regular business hours; (b) served by facsimile transmission during regular business hours; or (c) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices served personally or by facsimile transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each Party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph, and without compliance to the amendment procedures set forth in Paragraph 7.1, above.
- 7.9 This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance. The venue for resolving any disputes concerning the Parties' respective performance, or failure to perform, under this Agreement, shall be the judicial circuit court for DuPage County.
- 7.10 The Parties agree that the waiver of, or failure to enforce, any breach of this Agreement by the remaining Party shall not be construed, or otherwise operate, as a waiver of any future breach of this Agreement. Further the

failure to enforce any particular breach shall not bar or prevent the remaining Party from enforcing this Agreement with respect to a different breach.

- 7.11 In the event either Party believes that either of the other Parties has, in any way, breached the terms of this Agreement, that Party (non-breaching Party) shall give the other Party (breaching Party) notice specifying the nature of the alleged breach. A Party alleged to be in breach of this Agreement shall have at least thirty (30) days to cure such breach without being in default of this Agreement.
- 7.12 In the event, any provision of this Agreement is held to be unenforceable or invalid for any reason, by any court or administrative agency having jurisdiction over the Parties and subject matter, within thirty (30) days of such determination either: a) the Parties may elect to construe the remainder of this Agreement as if not containing the particular provision and agree that the Agreement shall continue in full force, effect, and enforceability, in accordance with its terms; or b) the Parties may amend the Agreement to remedy the particular defect and agree that the Agreement shall thereafter continue in full force, effect, and enforceability, in accordance with its amended terms; or c) either Party may give notice of that Party's intent to terminate the Agreement
- 7.13 Whenever the review, consent or approval of any Party is required under this Agreement, such review, consent or approval of that Party shall not be unreasonably withheld, delayed, conditioned or denied.

IN WITNESS WHEREOF, the Parties set their hands and seals as of the date first written above.

HIGHLAND HILLS
SANITARY DISTRICT

COUNTY of DUPAGE

By: _____
James Worden
President

By: _____
Daniel Cronin
County Board Chairman

Attest

Attest

By: _____
Name:
Title:

By: _____
Paul Hinds
County Clerk

FLAGG CREEK WATER
RECLAMATION DISTRICT

By: _____
Thomas O'Connor
Executive Director

Attest

By: _____
Thomas J. Walsh
Trustee Clerk