

AMENDED AND RESTATED AGREEMENT FOR RETAIL SANITARY SEWER SERVICE TO
THE VILLAGE OF KILDEER

Entered Into By and Between

The County of Lake

and

The Village of Kildeer

As of

_____, 2014

**AMENDED AND RESTATED AGREEMENT FOR RETAIL
SANITARY SEWER SERVICE TO THE VILLAGE OF KILDEER**

THIS AGREEMENT is made and executed as of this ___ day of _____, 2014 (the "**Execution Date**"), and is made and entered into by and between the COUNTY OF LAKE, an Illinois unit of local government, hereinafter referred to as the "County," and the VILLAGE OF KILDEER, an Illinois municipal corporation, hereinafter referred to as the "Village."

RECITALS

1. The public health, welfare, and safety of the residents of the County and the Village require the development of coordinated and adequate systems for the collection and treatment of sewage so as to eliminate pollution of lakes and streams.

2. Pursuant to "An Act in Relation to Water Supply, Drainage, Sewage, Pollution, and Flood Control in Certain Counties," as amended, and other applicable statutory authority, the County has established a Department of Public Works for the purpose of performing the function of sewage disposal and has prepared a comprehensive plan for the disposal of sewage from areas of the County, including portions of the Southeast Lake Facilities Planning Area established pursuant to the Illinois Water Quality Management Plan, and has prepared plans and programs for providing such services and the related facilities.

3. Pursuant to such plans and programs, the County owns and operates a system of interceptor sanitary sewers and wastewater treatment facilities to transport and treat sewage in limited portions of the Southeast Lake Facilities Planning Area.

4. The Village owns and operates a sanitary sewer system used for the collection and transportation of sanitary sewage.

5. The County and the Village have entered into, and are currently operating under, an Agreement for Sewage Disposal, dated July 9, 1991, as amended, (the "**Wholesale Agreement**") and the Agreement for Retail Sanitary Sewer And Water Supply Services, dated _____, 2006 (the "**Retail Agreement**") (the Wholesale Agreement and the portions of the Retail Agreement that relate to Sanitary Sewer Service shall be collectively known as the "**Prior Sewage Agreements**"), under which the County has agreed to collect, transport, and treat sanitary sewage within the Village.

6. The Village has requested the County to assume the ownership and operation of the Village's sanitary sewer collection and transport system and to provide retail sanitary sewer service throughout the Village.

7. The County's assumption of the Village's sanitary sewer system will ensure continued cost-effective and environmentally sound sanitary sewage collection, transport and treatment to the users of the Village system.

8. In order to effect the transfer of the Village's sanitary sewer system to the County and continue the provision of sanitary sewer service to the users of the Village system, the County and the Village desire to enter this restated and amended agreement for sewage disposal, which would supersede the Prior Sewage Agreements.

9. Connection to and continued use of the County's sanitary sewer system is the most cost-effective and environmentally protective solution to the long-term sanitary sewage treatment needs of the users of the Village system.

10. Subject to the terms, conditions, and limitations herein specified, the County and the Village desire to enter into this agreement to permit the users of the Village system to obtain sanitary sewer services from the County's sanitary sewer system serving the Southeast Lake Facilities Planning Area and to transfer ownership and control of the Village's sanitary sewer system to the County.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein, the County and the Village do hereby agree as follows:

ARTICLE I

RECITALS

The foregoing recitals are, by this reference, fully incorporated into and made a part of this Agreement.

ARTICLE II

DEFINITIONS

2.1 Biochemical Oxygen Demand (B.O.D.).

The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory test procedures in five days at 20°C.

2.2 Collection.

The receipt of Sewage directly from the service connection of an individual Customer and the delivery of such Sewage to the County Southeast Interceptors or to any other provider of Transport or Treatment services.

2.3 Connection Charges.

The charges from time-to-time imposed by the County on Customers newly connecting to the County Southeast Sewerage as a condition of such connections.

2.4 County Sewer Ordinances.

An ordinance entitled "An Ordinance Regulating the Use of Public and Private Sewer and Drains, Private Sewage Disposal, the Installation and Connection of Building Sewers, and the Discharge of Waters and Wastes into the Public Sewer Systems of the County of Lake in the State of Illinois," enacted by the County on and dated February 9, 1988, together with all such amendments thereto as have been or may be enacted from time-to-time, and any and all other ordinances adopted by the County relating in any way to the County Southeast Sewerage System or to the Collection, Transport, Pretreatment, or Treatment of Sewage in the County, including, but not limited to the fats, oils, and grease regulations established by County Ordinance No. 06-75, as may be amended from time-to-time.

2.5 **County Southeast Interceptors.**

The system of Sanitary Sewer interceptors, and related facilities, together with such extensions of, and additions to, such system of interceptors and facilities, all as are or may be owned and operated by the County, located in or near the Village, that are tributary to the County Southeast Plant and receive Sewage from the Kildeer Retail Sewage Collection Facilities and other Collection facilities in the Southeast Regional Area.

2.6 **County Southeast Plant.**

The treatment plant, commonly known as the Des Plaines River Water Reclamation Facility that is owned and/or operated by the County, together with any associated facilities and additions to or extensions of such plant or of such facilities.

2.7 **County Southeast Sewerage System.**

The County Interceptors, County Southeast Plant, and all other Sanitary Sewers, lift stations, connection facilities, and related facilities, as well as associated land, easements, and rights-of-way, that the County, from time-to-time, owns or operates for the purpose of, or related to, Collecting, Transporting and Treating Sewage within the Southeast Regional Area. In addition, upon the County's acceptance of ownership of the Kildeer Retail Sewage Collection Facilities, or any portion of them, such facilities, or such portion of them as are assumed by the County, shall become part of the County Southeast Sewerage System.

2.8 **Customer.**

Any dwelling, business, office, industrial, institutional, or other building, facility, or entity located in the Southeast Regional Area that discharges Sewage, either directly or indirectly, into the County Southeast Sewerage System.

2.9 **Effective Date.**

The date on which this Agreement shall become effective pursuant to Subsection 10.8.A of this Agreement.

2.10 **Force Majeure.**

Strikes; lock-outs; acts of God; inability to obtain labor or materials; changes in applicable law; orders of the United States, State of Illinois, or other civil or military authority; enemy action; civil commotion; fire; unavoidable casualty; or other similar events or circumstances.

2.11 **Kildeer Retail Service Area.**

Such portions of the area outlined and shaded on Exhibit A attached hereto as are, from time-to-time, located within the Village limits and the Southeast Regional Area, which consist of all of the Kildeer Retail Service Subareas.

2.12 **Kildeer Retail Service Subarea.**

Each of the North, Central, and South Subareas that collectively compose the Kildeer Retail Service Area as are depicted on Exhibit A, attached hereto.

2.13 **Kildeer Retail Sewage Collection Facilities.**

All Sanitary Sewers, lift stations, connection facilities, and related facilities (as well as associated land, easements, and rights-of-way), whether located within or outside of the Kildeer Retail Service Area, necessary to Collect Sewage from individual Customers located within the Kildeer Retail Service Area and to deliver such Sewage, directly or indirectly, to the County Southeast Interceptors in accordance with the County Sewer Ordinances, all other applicable laws, ordinances, and regulations, and sound engineering practices. The Kildeer Retail Sewage Collection Facilities include all Subsystems, as well as all existing facilities that are subject to the transfer provisions in Section 3.3 of this Agreement and all future facilities that may be constructed or installed pursuant to Sections 3.1 and 3.2 of this Agreement. The Kildeer Retail Sewage Collection Facilities shall be included within the definition of County Southeast Sewerage System as provided in Article III of this Agreement.

2.14 **Kildeer Retail Sewage Collection Facilities Cost.**

The entire actual cost of designing, constructing, installing, and placing in operation any Kildeer Retail Sewage Collection Facilities or a portion of such Facilities necessary or convenient to serve a particular property for which Sanitary Sewer Service is being sought.

2.15 **Industrial Waste.**

Liquid and water-carried waste discharged by any non-residential Customer.

2.16 **Infiltration.**

Water other than wastewater that enters a sewerage system from the ground through such means as defective pipes, pipe joints, connections, or manholes.

2.17 **Inflow.**

Water other than wastewater that enters a sewerage system from sources such as roof leaders, drains, manhole covers, cross connections between storm and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage.

2.18 **Meter.**

Any device used to measure flow.

2.19 **Population Equivalent (P.E.).**

The calculated population that would normally produce 100 gallons of Sanitary Sewage per day containing 0.17 pounds of B.O.D. and 0.20 pounds of total Suspended Solids. The P.E. for a discharger of Industrial Waste shall be based on the highest of the flow, B.O.D., and total Suspended Solids.

2.20 **Pretreated Sewage.**

Sanitary Sewage or Industrial Waste that has been subjected to Pretreatment.

2.21 **Pretreatment.**

The process, or any portion of the process, of changing the physical, chemical, or biological character of Sanitary Sewage or Industrial Waste so as to meet the pretreatment standards promulgated under Section 307(b) and 307(c) of the Federal Clean Water Act, or any amendment thereto, as well as any pretreatment standards heretofore or hereafter established in the County Sewer Ordinances.

2.22 **Properly Shredded Garbage.**

Garbage that has been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.

2.23 **Sanitary Sewage.**

Liquid and water-carried waste and Properly Shredded Garbage discharged from the plumbing fixtures of dwellings and other buildings, but not including Industrial Waste.

2.24 **Sanitary Sewer.**

Any sewer that carries Sewage.

2.25 **Sanitary Sewer Service.**

The Collection, Transport, Pretreatment, and Treatment of Sewage, or any combination of one or more of such activities.

2.26 **Sewage.**

Sanitary Sewage, Industrial Waste, and Pretreated Sewage, together with such Infiltration Water as may be permitted under the County Sewer Ordinances.

2.27 **Sewer User Fee.**

The standard rate charged by the County for Collection, Transport, and Treatment of Sewage of a specified volume, strength, and composition.

2.28 **Southeast Regional Area.**

The Southeast Lake Facilities Planning Area as established in the Illinois Water Quality Management Plan, as such plan may be amended from time-to-time.

2.29 **Subsystem.**

Those portions of the Kildeer Retail Sewage Collection Facilities that (i) serve a particular Kildeer Retail Service Subarea, (ii) are currently owned by the Village, and (iii) will be transferred to the County under Section 3.3 of this Agreement. The elements of the Subsystems are identified on Exhibit B.

2.30 **Suspended Solids.**

Nonfilterable solids that either float on the surface of, or are in suspension in, Sewage or other liquids.

2.31 **Transport.**

The conveyance of Sewage from the point or points of discharge of the Kildeer Retail Sewage Collection Facilities to the County Southeast Plant or to any other provider of Treatment service.

2.32 **Treatment.**

The process, or any portion of the process, of changing the physical, chemical, or biological character or composition of Sanitary Sewage or Industrial Waste not requiring Pretreatment under the standards of the County Sewer Ordinances or the Federal Clean Water Act, or of Pretreated Sewage, so as to meet regulatory requirements.

ARTICLE III

Facilities

3.1 **Kildeer Retail Sewage Collection Facilities.**

A. **Village Obligations.**

The Village shall adopt, approve, and from time-to-time amend all ordinances, regulations, and agreements and take all other action necessary (the "***Extension Rules***") to require all owners, subdividers, and developers of property not currently located within in the Kildeer Retail Service Area, as a condition of development or subdivision of such property, to effect the design, construction, installation, and dedication to the County of all portions of the Kildeer Retail Sewage Collection that are deemed necessary by the County to serve such property in accordance with this Agreement, the County Sewer Ordinances, all other requirements of law, and sound engineering practices (a "***Service Extension***") in accordance with the Service Extension Requirements as hereinafter defined. The Village must require a Service Extension to be completed as a condition to a property owner or developer receiving any subdivision, planned development, or other development approval for such property from the Village if the Property is not currently connected to and receiving service from the County but is located within the Kildeer Retail Service Area and the property wishes to receive Sanitary Sewer Service for such property from the County Southeast Sewerage System. As part of any Service Extension, a property owner or developer must undertake, or cause to be undertaken, at least the following work relating to the Kildeer Retail Sewage Collection Facilities as the County deems necessary or convenient to serve such property (collectively, the "***Service Extension Requirements***"):

1. Obtain engineering services, from a firm acceptable to the County, for the design, plans and specifications, and construction of the Kildeer Retail Sewage Collection Facilities necessary or convenient to serve such property;
2. Obtain and convey to the County, on such forms as may be acceptable to the County, all easements, rights-of-way, licenses, and other property rights that are necessary or convenient to construct, install, operate, and maintain the Kildeer Retail Sewage Collection Facilities necessary or convenient to serve such property, including the preparation of appropriate surveys, agreements, and other relevant documents;

3. Negotiate, prepare, and enter into, on such forms as may be acceptable to the County and with firms acceptable to the County, all contracts necessary in connection with the construction and installation of the Kildeer Retail Sewage Collection Facilities necessary or convenient to serve such property;
4. Secure, on behalf of itself, the County, the Village, and all other necessary parties, all permits, approvals, and authorizations that may be necessary or appropriate to construct, install, and operate the Kildeer Retail Sewage Collection Facilities necessary or convenient to serve such property;
5. Submit to the County, for the County's review and approval, all preliminary and final engineering plans, drawings, and specifications, all contract documents, and all permit applications for all portions of the Kildeer Retail Sewage Collection Facilities necessary or convenient to serve such property;
6. Convey, or caused to be conveyed, to the County all right, title, and interest in all portions of the Kildeer Retail Sewage Collection Facilities necessary or convenient to serve such property as and when such facilities, or portions of them, have been completed in accordance with the requirements of this Agreement and have been approved by the County as being in full compliance with this Agreement, all applicable contracts, plans, and specifications, the County Sewer, and all other requirements of law; and
7. Perform all other activities necessary or convenient in connection with the design, construction, installation, and placing into service of all portions of the Kildeer Retail Sewage Collection Facilities necessary or convenient to serve such property, including associated administrative activities.
8. Reimburse the County for all of the County's costs and expenses associated with a Service Extension or the completion of the Service Extension Requirements.
9. Demonstrate to the County's satisfaction that any such Service Extension shall not require the County to collect or accept Sewage from any Kildeer Retail Service Subarea in excess of the amounts identified on Exhibit D.

B. County Rights.

The Extension Rules shall provide for and require the orderly expansion of the County Southeast Sewerage System in accordance with the County Sewer Ordinances, all other requirements of law, and sound engineering practices and shall, when necessary for such purpose, require appropriate oversizing of facilities and may, in connection with such oversizing, provide rights of recapture to the extent permitted by Illinois law. Such Extension Rules shall further provide that the County shall have the following rights with respect to all work required pursuant to this Subsection 3.1.A:

1. The right to review, comment on, and approve all designs, all plans and specifications, all contract documents, and all easements, rights-of-way, licenses and other property rights required to be prepared or supplied pursuant to this Subsection 3.1.A;
2. The right to review, comment on, and approve all permit applications required to be filed pursuant to this Subsection 3.1.A; and

3. The right to conduct such inspections of the work required to be performed pursuant to Subsection 3.1.A as the County may deem necessary or appropriate to protect its interests.
4. The right to refuse to approve any proposal to extend the Kildeer Retail Sewage Collection Facilities to areas outside a Subarea or in an amount or manner inconsistent with the limitations set forth in Exhibit D.
5. The right to require any developer to submit a letter of credit to the County for the amount of 130% of the cost of the construction of the facilities necessary for a Service Extension.

C. **County Obligations.** Subject to the conditions and limitations set forth in Article V and to the other terms and conditions of this Agreement, the County shall have the following obligations with respect to such work:

1. The obligation to approve, when completed in accordance with this Agreement, the County Sewer Ordinances, all other requirements of law, and sound engineering practices, all designs, plans, specifications, contract documents, easements, rights-of-way, licenses, and other transfers of property rights required to be prepared or supplied pursuant to Subsection 3.1.A above;
2. The obligation to execute, when completed in accordance with this Agreement, the County Sewer Ordinances, all other requirements of law, and sound engineering practices, all permit applications required to be filed pursuant to Subsection 3.1.A above, but only when the signature of the County is required by the permitting agency; and
3. The obligation to accept ownership of the Kildeer Retail Sewage Collection Facilities, or portions of them, when, but only when, satisfied, in its sole and absolute discretion, that (a) the Kildeer Retail Sewage Collection Facilities, or portions of them, have been completed in accordance with the requirements of this Agreement and are in full compliance with this Agreement, the County Sewer Ordinances, all other requirements of law, and sound engineering practices, as well as all plans, specifications, and contract documents, and (b) all costs and expenses associated with the Kildeer Retail Sewage Collection Facilities, or the portion of them to be accepted by the County, have been paid in full.

3.2 **Payment and Guaranty of Costs.**

The Village shall adopt and approve all ordinances, regulations, and agreements, and take all other action necessary, to require the owner, subdivider, or developer of any property in the Kildeer Retail Service Area, in connection with the development of such property and as a condition to receiving (i) any subdivision, planned development, or other development approval for such property from the Village or (ii) Sanitary Sewer Service for such property from the County Southeast Sewerage System, to pay, or cause to be paid, the full Kildeer Retail Sewage Collection Facilities Cost for all portions of the Kildeer Retail Sewage Collection Facilities necessary or convenient to serve such property. As a condition to granting any subdivision, planned development, or other development approval for any property that will connect to the County Southeast Sewerage System within the Kildeer Retail Service Area, the Village shall require the owner, subdivider, or developer seeking such approval to deposit with the Village or with the County a letter of credit, in a form satisfactory to the County and with a bank approved by the County, in the amount of 130 percent of the aforesaid Kildeer Retail

Sewage Collection Facilities Costs, which letter of credit shall be so conditioned, to the satisfaction of the County, as to ensure completion of those portions of the Kildeer Retail Sewage Collection Facilities necessary or convenient to serve such property.

3.3 **Transfer of Existing Kildeer Retail Sewage Collection Facilities.**

A. **Transfer of Existing Facilities.** Contemporaneously with the execution of this Agreement, the Village and County shall enter an agreement to provide for the transfer of ownership and control of all existing Kildeer Retail Sewage Collection Facilities (the "***Transferred Facilities***") from the Village to the County (the "***Transfer Agreement***"). The Transfer Agreement shall be in substantially the form of that attached hereto as Exhibit C, and shall provide for the assignment of all necessary rights and interests in the Transferred Facilities to the County to allow for the County's ownership and operation of the Transferred Facilities. Upon (i) the execution of this Agreement, (ii) the execution of the Transfer Agreement, and (iii) satisfactory completion of all matters to be accomplished on or before the Closing Date under the Transfer Agreement, the Transferred Facilities shall be owned, operated, and controlled by the County and shall be a part of the County Southeast Sewerage System. Until such time that the County takes ownership, operational responsibility, and control of the Transferred Facilities, the Village shall be fully responsible for such Transferred Facilities.

B. **Retirement or Defeasance of Bonds.** Prior or contemporaneously with to the execution of the Transfer Agreement, the Village agrees to make appropriate payments to retire or defease fully all outstanding bonds related to the South Service Area Subsystem. The Village shall deliver to the County such documentation that satisfactorily demonstrates to the County the Village's compliance with this Subsection 3.3.B.

C. **Subsystem Maintenance and Improvements.** The Village acknowledges that the County will be taking ownership and control of the Subsystems, which may vary in age and condition from the County Southeast Sewerage System. To the extent any Subsystem, or any portion thereof, is cited with any violation of any federal or state law or the County Sewer Ordinances, and requires remediation, or otherwise requires extraordinary repair or maintenance, the County may establish and impose a surcharge specific to that Subsystem, or any portion thereof, in addition to Connection Charges or Sewer User Fees to the Customers connected to or wishing to connect to the Subsystem in order to remediate any such violation or effect any required repairs or maintenance.

D. **Transfer of Funds.** As consideration for the County's entry into this Agreement and the Transfer Agreement, and in addition to all rights transferred to the Village in the Transfer Agreement, the Village will transfer all remaining balances and accounts receivable as of the Effective Date of this Agreement in the Village's proprietary sanitary sewer funds to the County.

ARTICLE IV

SANITARY SEWER SERVICE

4.1 County Obligations.

A. Service

The County will provide direct retail Sanitary Sewer Service to Customers currently connected to the Kildeer Retail Sewage Collection Facilities within the Kildeer Retail Service Area, subject to and in accordance with the County Sewer Ordinances and the terms of this Agreement. Any Customer not currently connected to and receiving service from the County Southeast Sewerage System must meet the conditions established in this Agreement prior to receiving Sanitary Sewer Service.

B. Operation and Maintenance.

After the Kildeer Retail Sewage Collection Facilities, or any portion of them, have been conveyed to, accepted, and placed in service by the County pursuant to Article III of this Agreement, the County shall, subject to the conditions precedent and limitations set forth in Article V of this Agreement, and to the other terms and conditions of this Agreement, use its best efforts to operate and maintain the County Southeast Sewerage System, and the Transferred Facilities that have been placed in service pursuant to Article III of this Agreement, in accordance with its customary practices and good engineering practices. Use of the County Southeast Sewerage System shall be governed by the County Sewer Ordinances and this Agreement.

4.2 Village Obligations.

Except as provided in Section 4.3 of this Agreement or with the prior written consent of the County, the Village shall not, at any time during the term of this Agreement, (i) offer, authorize, or permit any Sanitary Sewer Service within the Kildeer Retail Service Area other than such Service as is delivered by the County by and through the County Southeast Sewerage System; (ii) construct, or cause, permit, or consent to the construction of, any Sanitary Sewers or Treatment facilities (other than the County Southeast Sewerage System) within the Kildeer Retail Service Area; or (iii) deliver, or permit the delivery of, Sewage from the Kildeer Retail Service Area to any Sanitary Sewer or Treatment facility other than the County Southeast Sewerage System.

4.3 Alternative Sanitary Sewer Services.

A. Limited Right to Use Other Facilities. If, at any time prior to the time the Village is delivering to the County Southeast Sewerage System the maximum flow permitted under Sections 5.3(1), 5.3(2), and 5.3(3) of this Agreement, the County is unable or unwilling to provide Sanitary Sewer Service necessary for all Sewage from the Kildeer Retail Service Area in accordance with this Agreement, the Village may, upon proper notice as provided in Subsection B of this Section 4.3, and without the consent of the County, make alternate arrangements for Treatment of such Sewage from the Kildeer Retail Service Area that the County is unable or unwilling to provide.

B. Required Notice. Any notice required pursuant to Subsection 4.3.A of this Agreement shall be in writing and shall be delivered to the County not less than 90 days before the Village enters into any contract or other arrangement for Treatment of Sewage from

the Kildeer Retail Service Area by any Sanitary Sewer Service provider other than the County. Such notice shall specify the amount of Sewage that the Village intends to deliver to any other Sanitary Sewer Service provider and the basis for the Village's conclusion that the County will not or cannot provide Sanitary Sewer Service for such Sewage. If, within 90 days after such notice is delivered to the County, the County agrees in writing to provide the required Sanitary Sewer Service, the Village shall be required to take such Service from the County pursuant to this Agreement rather than from any other service provider.

C. **Septic Systems.** Notwithstanding any provisions in this Agreement to the contrary, residential septic systems serving only one detached single family dwelling on a lot of at least 40,000 square feet in area and any other septic systems that may from time to time receive written approval from the County and the Village shall not be considered to be Treatment facilities for the purposes of this Section.

4.4 **Other Agreements and Laws.**

Nothing in this Agreement shall be construed or interpreted as a waiver by the County of its rights under any other agreement or law governing the County's right to provide Sanitary Sewer Service within any portion of the County, including the Kildeer Retail Service Area.

4.5 **Expansion Limitations.**

A. **Amendment Criteria.** Notwithstanding anything in this Article IV to the contrary, the Village shall not expand the Kildeer Retail Service Area without the express written consent of the County, except as provided in Subsection 4.5.B; in assessing whether to consent to any such expansion, the County shall apply the standards set forth in its "Considerations and Principles Relating To Intergovernmental Agreements For Sewer and Amendments To Existing Agreements," a copy of which is attached hereto as Exhibit E (the "***Amendment Criteria***"). The County reserves the right to demand a new and separate service agreement (or an amendment to this Agreement) for any area served by an expansion of a Kildeer Retail Service Area.

B. **Expansion of South Subarea.** If the currently unincorporated property identified on Exhibit F (the "***Potential Service Area***") is annexed to the Village, the County will provide Sanitary Sewer Service to the Potential Service Area under this Agreement as part of the South Subarea, as identified on Exhibit A, subject to the limitations identified in this Agreement, including but not limited to this Subsection 4.5.B and the Service Limits identified in Section 5.3.2 of this Agreement, and only to the extent the South Subsystem has sufficient capacity to accept such Sanitary Sewage. Currently, both parties acknowledge that the South Subsystem does not have the capacity to reach the service limits identified in Exhibit D. The County has no duty to allow additional connections to the South Subsystem or provide Sanitary Sewer Service to the Potential Service Area if the South Subsystem does not have the capacity to Collect, Transport, or Treat the additional Sanitary Sewage. The County further has no obligation to upgrade the South Subsystem to enhance capacity unless, future special Connection Charges from the Potential Service Area provide sufficient funds to make capacity-related improvements to the South Subsystem. Furthermore, the County will only provide Sanitary Sewer Service to the Potential Service Area if the Potential Service Area is developed solely for nonresidential uses.

ARTICLE V

CONDITIONS OF, AND LIMITATIONS ON, COUNTY PERFORMANCE

5.1 Conditions Beyond County's Control.

The County shall not be responsible for any failure to perform the undertakings, obligations, and commitments assumed by it pursuant to this Agreement caused by a Force Majeure.

5.2 Conditions Precedent to County Performance.

Notwithstanding any other provision of this Agreement, the right of the Village or any Customer located within the Kildeer Retail Area to receive Sanitary Sewer Service from the County pursuant to this Agreement, and the County's obligation to provide Sanitary Sewer Service within the Kildeer Retail Service Area, shall be subject to all of the following conditions precedent having first been satisfied:

1. Receipt by the County, at no expense to the County, of all necessary governmental approvals to operate all of the components of the County Southeast Sewerage System (including the Kildeer Retail Sewage Collection Facilities) as may be necessary to provide Sanitary Sewer Service to the Kildeer Retail Service Area, or the portion of such Service Area for which such Services are being sought, pursuant to this Agreement.
2. Receipt by the County, at no expense to the County and by documents reasonably satisfactory to the County, of any and all easements, licenses, and permits, whether across private property, Village property, or other public property, including public streets, that the County determines in its sole discretion are necessary for the construction, installation, operation, maintenance, repair, removal, or replacement of any of the components of the County Southeast Sewerage System (including the Kildeer Retail Sewage Collection Facilities), or the portions of such System to be placed in service, and any facilities related thereto to be owned or maintained by the County.
3. Construction and dedication to the County, at no expense to the County, of all future portions of the Kildeer Retail Sewage Collection Facilities necessary to provide the Sanitary Sewer Service being sought, including any Service Extension Requirements required under Subsection 3.1.A of this Agreement.
4. Completion of all work required under Section 5.2(3) above:
 - (a) pursuant to applications, designs, plans, specifications, and contract documents that have been reviewed and approved by the County, which approval shall not be unreasonably delayed or withheld;
 - (b) pursuant to permits issued by the County;
 - (c) in accordance with all applicable laws and regulations, including specifically, but without limitation, the County Sewer Ordinances;
 - (d) subject to inspection by the County to ensure compliance with the requirements of this Section 5.2 and with the other terms and conditions of this Agreement and the County Sewer Ordinances; and

(e) in a manner acceptable to the County and in accordance with sound engineering practices.

5. Transfer to the County, at no expense to the County and in accordance with the terms of this Agreement or the Transfer Agreement, of all existing and future portions of the Kildeer Retail Sewage Collection Facilities necessary to provide the Sanitary Sewer Service being sought.

6. The ability of the County to provide Sanitary Sewer Services as required by this Agreement without violating any applicable laws or regulations.

7. All other terms and conditions of this Agreement.

5.3 **Limitations on County Service.**

Notwithstanding any other provision of this Agreement, the right of the Village or any Customer located within the Kildeer Retail Service Area to receive Sanitary Sewer Service from the County, and the County's obligation to provide Sanitary Sewer Service within the Kildeer Retail Service Area, shall be subject to the following limitations and conditions:

1. The points of connection between the Kildeer Retail Sewage Collection Facilities and the County Southeast Interceptors shall, unless otherwise authorized in writing by the County Administrator, be made within the limits of the Kildeer Retail Service Area, but the precise number, size, and location of such connections shall be determined by the County after consultation with the Village in accordance with sound engineering practices.

2. Notwithstanding anything in this Agreement to the contrary, the County shall not be required to collect or accept Sewage from any Kildeer Retail Service Subareas in excess of the amounts identified on Exhibit D, attached hereto. To the extent system improvements are needed to accommodate Sanitary Sewage in an amount up to the limits identified on Exhibit D, the County has no obligation to finance such improvements, and shall make such improvements only to the extent that the Village or Customer special Connection Charges or surcharges fully finance the cost of any improvements.

3. The Sanitary Sewer Service to be provided by the County pursuant to this Agreement shall be on a first come-first serve basis and within the limits of available capacity.

4. The Sanitary Sewer Service to be provided by the County pursuant to this Agreement shall be subject to the County Sewer Ordinances and all other applicable laws, ordinances, rules, and regulations, including any Pretreatment standards.

5. The Sanitary Sewer Service to be provided by the County pursuant to this Agreement shall be subject to all other terms and conditions of this Agreement.

ARTICLE VI

COUNTY CHARGES AND FEES

6.1 **Service Conditioned on Payment.**

Notwithstanding any other provision of this Agreement, the County shall have no obligation to provide Sanitary Sewer to any Customer located within the Kildeer Retail Service Area unless all County Connection Charges and Sewer User Fees required by the County for such Services have been paid; except that those Customers receiving Sanitary Sewer Service through the Kildeer Retail Sewage Collection Facilities as of the date of this Agreement shall not be required to pay any Connection Charge with respect to the continuation of such Sanitary Sewer Service.

6.2 **Sanitary Sewer Connection Charges.**

Subject to the terms of Subsections 3.3.A, 3.3.C, 4.5(B), and 5.3(2) above, every Customer located within the Kildeer Retail Service Area hereafter connecting, either directly or indirectly, to the County Southeast Sewerage System shall pay to the County a Connection Charge at the same rate as the County from time-to-time charges for similar Sanitary Sewer Services provided by the County through the County Southeast Sewerage System. The County shall be solely responsible for setting, billing, and collecting all Sanitary Sewer Connection Charges.

6.3 **Sewer User Fees.**

A. **Sewer User Fees.** The County shall issue bills for and shall be entitled to payment of, and every Customer located within the Kildeer Retail Service Area shall pay to the County, Sewer User Fees based upon the actual volume, strength, and composition of Sewage delivered to the County Southeast Sewerage System from such Customer. The County shall be solely responsible for setting, billing, and collecting Sewer User Fees.

B. **Level of Fees.** Subject to the terms of Section 3.3.C above, Sewer User Fees shall be uniform for all similarly-situated Customers of the County Southeast Sewerage System receiving similar service. Factors used to determine whether Customers are similarly-situated may include but are not limited to location of Customer within the Kildeer Retail Service Area, condition of the Kildeer Retail Sewage Collection Facilities, Subsystem, or portion thereof, used for Sanitary Sewer Service to the Customer, and type or volume of Sewage being discharged by the Customer. In any case, to the extent there are any expenses uniquely and specifically related to a particular Customer or subset of Customers, a fee or surcharge sufficient to cover such expenses may be assessed against such Customer or Customers. Such Sewer User Fees shall at all times be set at levels designed to assure that the County revenues from such Fees will always be sufficient, when considered in light of any other monies legally available for and applied to such purposes, (i) to provide adequate and proper levels of service; (ii) to pay the County's costs of maintenance, replacement, and operation; (iii) to pay the principal of, and premiums and interest upon, bonds secured, in whole or in part, by the revenues of the County Southeast Sewerage System; (iv) to provide a reasonable depreciation fund; and (v) to provide such other reserves and sinking funds as may be deemed necessary or desirable by the County for the payment of such bonds and for the replacement, extension, or improvement of the County Southeast Sewerage System. For two years following the Execution Date of this Agreement, the basic rates to be charged by the County shall not be increased from those set forth in the rate table in Exhibit G, except to the extent fees or surcharges are needed for remediation of any Subsystem or portion thereof. Nothing herein shall be a limitation on fees, charges, or surcharges that the Village may impose in accordance with the Transfer Agreement.

6.4 Metering.

The County shall have the right to establish and enforce requirements for all Customers located within the Kildeer Retail Service Area for the installation, calibration, inspection, maintenance, repair, and replacement of Meters to measure each Customer's Sewage or water use for billing and other purposes. Nothing in this Section 6.4 shall be deemed to limit the County's ability to estimate any Customer's water consumption for purposes of establishing Sewer User Fees.

6.5 Cooperation with Service Termination.

A. Public Purpose. The Parties acknowledge and agree that: (i) Customers have an obligation to pay the Sewer User Fees for Sanitary Sewer Service; (ii) Customers have an obligation to abide by the terms of Sanitary Sewer Service that the County establishes from time-to-time; and (iii) the County shall have no duty to continue to provide Sanitary Sewer Service to Customers who fail to pay amounts due with respect to such services, or who otherwise fail to abide by the County's terms of Sanitary Sewer Service (a "**Non-Compliant Customer**"). The Parties further agree that the County shall have the right to terminate Sanitary Sewer Services to Non-Compliant Customers after appropriate notice and opportunity to cure such non-compliance. Because the provision of potable water to a Non-Compliant Customer that does not have the right to receive Sanitary Sewer Services could present significant public health concerns, the Village agrees to cooperate with the County in connection with the termination of water and Sanitary Sewer Service for Non-Compliant Customers as set forth in Section 6.5.B.

B. Termination Procedures. In the event that the Village provides water service to any Customers under this Agreement, the Village agrees to cooperate with the County in terminating water service to any Non-Compliant Customer, provided that: (a) the County has notified the Non-Compliant Customer in writing (with a copy to the Village) at least three times regarding Customer's failure to make full payment of amounts due or failure to abide by the County's terms of Sanitary Sewer Service; (b) the County has notifies the Village in writing regarding the grounds for termination of such Non-Compliant Customer's Sanitary Sewer Service (a "**Sewer Service Termination Notice**"); and (c) the Village provides potable water service to such Non-Compliant Customer. The Village's cooperation shall be further subject to: (d) the Village's customary water service termination procedures; and (e) the County indemnifying and holding the Village and its officers, officials, employees, agents, attorneys, and representatives harmless for any claims, liabilities, damages, or judgments arising from any terminated water service occasioned by a Sewer Service Termination Notice.

ARTICLE VII

OWNERSHIP AND MAINTENANCE

7.1 Ownership, Operation, and Maintenance.

The County shall be the sole owner of, and shall have the duty to maintain, the County Southeast Plant and the County Southeast Interceptors. After the Kildeer Retail Sewage Collection Facilities, or any portion of such Facilities, have been conveyed to, and accepted and placed in service by, the County pursuant to Article III of this Agreement, the County shall be the sole owner of, and shall have the duty to operate and maintain, the Kildeer Retail Sewage Collection Facilities or such portion thereof, as part of, the County Southeast Sewerage System. Nothing in this Agreement shall be construed to give the Village, or any other person or entity, except the County, any ownership or other interest in any part of the County Southeast Sewerage System.

ARTICLE VIII

FPA AMENDMENTS

8.1 Joint Action.

In order to promote sound public sewer planning and the efficient and economical use of County and Village facilities being installed and maintained pursuant to this Agreement:

1. The County shall file, and the Village shall support, any application that may be required to amend the Illinois Water Quality Management Plan with respect to the development of the County Southeast Sewerage System; and
2. Neither the Village, unless authorized pursuant to Section 4.3 of this Agreement, nor the County shall file or support any application to amend, and the County and the Village shall undertake joint and cooperative action to oppose and object to any petition to amend, the Illinois Water Quality Management Plan or the Areawide Water Quality Management Plan for Northeastern Illinois (i) so as to change any of the boundaries of the Southeast Regional Area with respect to any property in the Kildeer Retail Service Area in any manner that is inconsistent with this Agreement; or (ii) so as to prevent the County from serving the Kildeer Retail Service Area, as it exists on the Effective Date of this Agreement and as it may be modified pursuant to this Agreement, in the manner provided by this Agreement.

For purposes of this Section, joint action shall include, without limitation, filing written objections, providing staff support, and retaining such attorneys and consultants as the parties mutually agree are necessary with respect to such objections. To the extent then-current laws or policies of the Illinois Environmental Protection Agency ("*IEPA*") do not require an FPA Amendment, delivery of Sanitary Sewer Service can proceed upon the IEPA's issuance of the appropriate permit and upon the Customer's compliance with all terms of this Agreement.

8.2 **Exception.**

Upon the express written agreement of the County and the Village, the parties may choose not to oppose or object to a specific petition to amend the boundaries of the Southeast Regional Area without otherwise affecting their general obligation to oppose such petitions.

ARTICLE IX

OTHER CONTRACTS AND SERVICE

9.1 **County Rights.**

The County shall have the right to contract with other persons, natural or corporate, private or public, to perform services similar to those to be performed under this Agreement; provided, however, that nothing in this Agreement shall be construed to require the County to provide Sanitary Sewer Service to any area of the Village other than the Kildeer Retail Service Area.

9.2 **Village Acknowledgements.**

The Village acknowledges and agrees that: (i) the County does not act or operate as a public or private utility in its provision of Sanitary Sewer Service; (ii) the County does not act or operate in a business or proprietary capacity in providing Sanitary Sewer Service to the Kildeer Retail Service Area; (iii) the County does not by this Agreement, or its performance pursuant to this Agreement, hold itself out as offering to, and is under no obligation to, provide Sanitary Sewer Service to any property other than the Kildeer Retail Service Area; (iv) the County is under no obligation to provide Sanitary Sewer Service to any property or area other than the Kildeer Retail Service Area; and (v) the County's sole obligation to provide Sanitary Sewer Service to Customers located within the Kildeer Retail Service Area is the contractual obligation set forth in this Agreement.

9.3 **Other County Service.**

Nothing in this Agreement shall be construed or interpreted to prevent or limit the right of the County, or to require the consent of the Village, to provide Sanitary Sewer Service to parties other than the Village on such terms and conditions as the County may, in its sole discretion, determine to be appropriate, including, without limitation, Sanitary Sewer Service utilizing the County Southeast Sewerage System.

9.4 **No Third Party Beneficiaries.**

Nothing in this Agreement shall create, or shall be construed or interpreted to create, any third party beneficiary rights.

ARTICLE X

LEGAL RELATIONSHIPS AND REQUIREMENTS

10.1 **Entire Agreement; Supersedence of Prior Sewage Agreements.**

There are no representations, covenants, promises, or obligations not contained in this Agreement, or in any Exhibits attached hereto and incorporated herein, that form any part of this Agreement or upon which any of the parties is relying in entering into this Agreement. In addition, this Agreement is intended to supersede and render of no further force or effect the Prior Sewage Agreements (including all amendments thereto), except that the portions of the Retail Agreement relating solely to water supply service shall remain in effect.

10.2 **Exhibits.**

Exhibits A through G attached to this Agreement are, by this reference, incorporated into and made a part of this Agreement.

10.3 **Amendments.**

Except as expressly provided otherwise in this Agreement, this Agreement shall not be modified, changed, altered, amended, or terminated without the written and duly authorized consent of the County and the Village.

10.4 **Waivers.**

No term or condition of this Agreement shall be deemed waived by either party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

10.5 **Interpretation and Severability.**

It is the intent of the County and the Village that this Agreement be construed and interpreted so as to preserve its validity and enforceability as a whole. In case of any conflict among the provisions of this Agreement, including the exhibits hereto, the provision that best promotes and reflects the intent of the parties shall control. If any provision of this Agreement is construed or held to be void, invalid, or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect. In addition, the Parties acknowledge that each Party had the opportunity to seek review of this Agreement by counsel prior to its execution and therefore this Agreement shall be deemed to have been drafted mutually by the County and the Village.

10.6 **Regulatory Bodies.**

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed and promulgated by the United States of America, the State of Illinois, or any other governmental body or agency having lawful jurisdiction, or any authorized representative or agent of any of them; provided, however, that this Section 10.6 shall not be construed as waiving the right of any party to challenge the validity of any such rules, regulations, or laws on any basis, including the impairment of this Agreement. The County

reserves the right to adopt ordinances, rules, and regulations governing the design, installation, and use of the County Southeast Sewerage System.

10.7 **Successors; Assignment.**

This Agreement shall be binding on, and shall inure to the benefit of the successors and permitted assigns of the County and the Village. The Village shall not assign this Agreement in whole or in part, or any of its rights or obligations under this Agreement, without the prior express written consent of the County, which consent may be withheld in the sole and unfettered discretion of the County. The County may, upon notice to the Village, assign this Agreement, in whole or in part, or any or all of the County's rights or obligations under this Agreement, without the consent of the Village.

10.8 **Effective Date and Term.**

A. **Effective Date.** This Agreement shall take effect as of the Closing Date under the Transfer Agreement.

B. **Term.** This Agreement shall be in full force and effect for a period of 30 years from and after its Effective Date.

10.9 **Notices.**

All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof when delivered in person or by express mail or messenger at the address set forth below or three business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to the County:

County of Lake
18 North County Street
Waukegan, Illinois 60085
Attn: County Administrator

and

Lake County Department of Public Works
650 Winchester Road
Libertyville, Illinois 60048
Attn: Director of Public Works

For notices and communications to the Village:

Village of Kildeer
21911 Quentin Road
Kildeer, Illinois 60047
Attention: Village Administrator

By notice complying with the foregoing requirements of this Section, each party shall have the right to change the addressees or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

10.10 **Execution in Counterparts.**

This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute one and the same Agreement.

10.11 **Enforcement.**

A. **Remedies.** The parties hereto may in law or in equity enforce or compel the performance of this Agreement, and shall otherwise have all remedies provided by applicable United States of America, State of Illinois, and local laws, ordinances, rules, and regulations, except that neither the Village nor the County shall seek or recover monetary damages against the County or the Village or any of its officials, agents, representatives, attorneys, or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

B. **Attorney Fees.** Notwithstanding the aforesaid limitation on money damages, the prevailing party in any judicial or administrative proceeding brought for enforcement or breach of any provision of this Agreement shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial or administrative proceeding.

[Signature page to follow.]

IN WITNESS WHEREOF, the County and the Village have, by their duly authorized officers, set their hands and affixed their seals on the date first above written.

COUNTY OF LAKE

BY: _____
Chairman, Lake County Board

ATTEST:

County Clerk

(SEAL)

VILLAGE OF KILDEER

BY: _____
President

ATTEST:

Village Clerk

EXHIBIT A

Kildeer Retail Service Area and Subareas

EXHIBIT B

Subsystems

EXHIBIT C
Transfer Agreement

EXHIBIT D

Subarea Service Limits

EXHIBIT E

**Considerations and Principles Relating To
Intergovernmental Agreements For Sewer and Amendments To Existing Agreements**

EXHIBIT F

Potential Service Area

EXHIBIT G

Rate Table