



Lake County Illinois

Signature Copy

resolution: 10-0634



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Lake County IL Recorder
Mary Ellen Vanderventer Recorder

File **6655754**

File Number: 10-0634

Joint resolution authorizing the execution of an Agreement for Sewage Disposal with the Village of Fox Lake.

WHEREAS, the County of Lake (County) owns and operates a system of interceptor sewers in the Northwest Lake Facilities Planning Area (NWFPA); and

WHEREAS, the Village of Fox Lake (Village) owns and operates a Water Reclamation Facility in the NWFPA that accepts and treats sewage from the County interceptor sewer system; and

WHEREAS, the County and the Village entered into an intergovernmental agreement for sewage treatment and disposal within the NWFPA on or about March 8, 1977, as amended from time-to-time; and

WHEREAS, the 1977 Agreement has expired, and the County and Village wish to enter into a new agreement; and

WHEREAS, this Agreement incorporates many modifications to promote and provide for the efficient and economical use of costly public infrastructure, and address long term compliance issues in response to excessive inflow/infiltration, odor control, fats oils and grease, pretreatment coordination, externality fee, and coordination of regional system operations; and

WHEREAS, execution of an Agreement for Sewage Disposal must be authorized by Resolution of this County Board; and

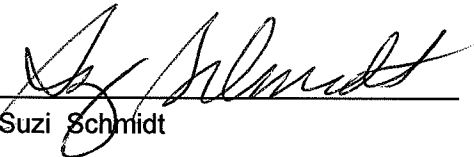
NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County,

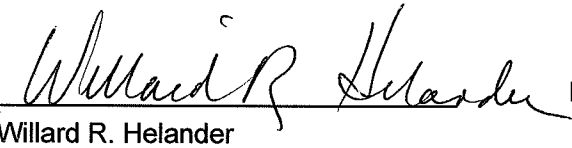
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Illinois that the Chair of the County Board and the Clerk of said County be and they are hereby authorized and directed to execute the Agreement for Sewage Disposal with the Village of Fox Lake in substantially the form attached.

DATED at WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 13th day of July, A.D., 2010.

At a meeting of the Lake County Board on 07/13/2010, a motion was made by Diana O'Kelly, seconded by Bonnie Carter, that this resolution be adopted. The motion passed.

Approved by  Date 9-3-10
Suzi Schmidt

Attest by  Date 9-3-10
Willard R. Helander

Certified by  Date 9-3-10
Willard R. Helander

**AGREEMENT FOR SEWAGE DISPOSAL
Entered Into By and Between
The County of Lake, Illinois
and
The Village of Fox Lake
Effective as of
July 15, 2010**

AGREEMENT FOR SEWAGE DISPOSAL

THIS AGREEMENT is made and entered into this 15th day of July, 2010 (the "Agreement"), between the COUNTY OF LAKE, Illinois (the "County"), and the VILLAGE OF FOX LAKE (the "Village").

RECITALS

WHEREAS, the County is a body politic and corporate and a unit of local government in the State of Illinois established and existing under the Illinois Counties Code, 55 ILCS 5/1-1001 et seq. (2008).

WHEREAS, the Village is an Illinois municipal corporation established and existing within the County under the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq. (2008).

WHEREAS, in order to address their respective needs and objectives and to protect the health, safety, and welfare of the residents of the County, including the residents of the Village, the County and the Village entered into an intergovernmental agreement for sewage treatment and disposal within the Northwest Lake FPA on or about March 8, 1977, as amended from time-to-time (the "1977 Agreement").

WHEREAS, the 1977 Agreement has terminated, and the County and the Village wish to enter into a new agreement in order to extend and modify their respective sewer related obligations in Lake County; to promote and provide for the efficient and economic development and use of costly public infrastructure (including the allocation of such infrastructure) pursuant to sound and logical public sewer plans in order to avoid wasteful duplication of public facilities; and to protect the health, safety, and welfare of residents throughout the Northwest Lake FPA.

WHEREAS, the Northwest Regional Water Reclamation Facility is an integral part of the regional system serving the Northwest Lake FPA. Despite the regional role of the Northwest Regional Water Reclamation Facility's operations, the Village disproportionately bears certain impacts such as odor and potential health risks that result in direct and indirect costs associated with externalities of the Northwest Regional Water Reclamation Facility, which externality costs

cannot be fully ascertained or calculated, and which may include any or all of the following: (1) the cost of supplying police and fire protection to the treatment plant and its environs; (2) the risk of tort liability or losses due to acts of God or other casualties arising out of operation of the treatment plant; (3) the risks of obtaining credit and committing to long term financial liability when major Customers could withdraw, potentially leaving assets stranded while financial obligations persist; (4) loss of real estate tax revenues to the Village because the treatment plant property is not on the tax rolls; (5) inability to fully realize real estate tax revenues in the manner enjoyed by other municipalities that utilize the treatment plant; (6) decreased real estate tax revenues to the Village because of lower equalized assessed valuations of properties in close proximity to the treatment plant; (7) inability to capture a return on the Village's capital investment in real estate used for the Northwest Regional Water Reclamation Facility; and (8) exposure of the Village, and its residents, to obligations set forth in this Agreement which provide regional benefits to County Customers and to municipalities, sanitary districts and public utility companies located within the Northwest Lake FPA, which exposures include but are not limited to: (a) the Village's obligation to accept all Sewage and provide Treatment; (b) the Village's obligation to assure that the Northwest Regional Water Reclamation Facility is capable of Treatment responsibilities under State and Federal standards; (c) the Village's obligation to expand the Northwest Regional Water Reclamation Facility when nearing capacity; (d) the Village's past and current provision of Treatment services to customers of the Tall Oaks Plant located within the Northwest Lake FPA, at no cost to the Northwest Regional Water Reclamation Facility; (e) the Village's obligation to accept amounts actually received by the County from County Customers as User Fees instead of basing the price upon sewage actually treated; (f) the Village's obligation to issue bonds for and finance and pay Sewer User Fees for an excess flow facility in the Village of Round Lake Beach, even though benefits of such facility are primarily for the County and Wholesalers; (g) the Village's obligation to issue bonds for, and finance and pay Sewer User Fees for an excess flow facility adjacent to the site of the Northwest Regional Water Reclamation Facility even though the

benefits of such a facility are primarily for the County and Wholesalers; (h) the potential that Village Customers will pay increased Sewer User Fees because the Wholesale Advisory Committee fails to assess a Local I/I Surcharge upon a Wholesaler which fails to meet its Annual CMOM Investment; and (i) the Village's obligation to operate the Northwest Regional Water Reclamation Facility.

WHEREAS, this Agreement is intended to establish specific and limited obligations of the County and Village with respect to regional sewage disposal service, and the sewage disposal services contemplated hereunder are not expected to supplant the appropriate use of on-site sewage disposal systems within the areas served pursuant to this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and pursuant to the provisions of Article VII, Section 10 of the Illinois Constitution, the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq. (2008), Section 5-15010 of the Counties Code, 55 ILCS 5/5-15010 (2008), Division 11-147 of the Illinois Municipal Code, 65 ILCS 5/11-147-1 et seq. (2008), and all other applicable powers of the County and the Village, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1. 1977 Agreement.

The sewage treatment agreement entered into by and between the County and the Village on or about March 8, 1977, and all amendments thereto, including but not limited to the amendment dated on or about August 9, 1977.

1.2. 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.

1.3. Collection.

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

1.4. Connection Charges.

The charges for Treatment services from time-to-time imposed on County Customers or Village Customers as a condition of making new connections to the County Northwest Sewerage System or the Village Sewerage System, as the case may be.

1.5. County Customer.

Any dwelling, business, office, industrial, institutional, or other building, facility, or entity located in the County Northwest Service Area that discharges (or by agreement is deemed to discharge) Sewage, either directly or indirectly, into the County Northwest Sewerage System for delivery by the County to the Northwest Regional Water Reclamation Facility pursuant to this Agreement.

1.6. County Northwest Service Area.

That portion of the Northwest Lake FPA located in Lake County, Illinois, except those areas depicted on Exhibit C as: (i) "Areas of Service Outside NWRWRF"; (ii) "Areas of Service – Inside Village Corporate Limits"; and (iii) "Current Areas of NWRWRF Service – Outside Village Corporate Limits" that do not receive Sewage Collection services from Lakes Region Sanitary District .

1.7. County Northwest Sewerage System.

Any County interceptors (including any interceptors tributary to the Northwest Regional Water Reclamation Facility that serve Customers within the County Northwest Service Area), 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, Transporting Sewage within the County Northwest

Service Area to the Northwest Regional Water Reclamation Facility or to any other provider of Treatment services.

1.8. 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 or rules promulgated by the County relating in any way to the County Northwest Sewerage System or to the Collection, Transport, Pretreatment, or Treatment of Sewage in the County.

1.9. Customer.

A County Customer or a Village Customer.

1.10. Effective Date.

The date on which this Agreement shall become effective pursuant to Subsection 7.8 of this Agreement.

1.11. Garbage.

Solid wastes from preparation, cooking, and dispensing of food and from handling, storage, and sale of produce.

1.12. Industrial Waste.

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

1.13. Inflow/Infiltration.

A. 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.

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

C. Excessive Inflow/Infiltration: Any flow greater than 2.5 times the design average flow of the Northwest Regional Water Reclamation Facility, or such greater multiple of the design average flow that may be authorized from time-to-time in the NPDES permit for the Northwest Regional Water Reclamation Facility.

1.14. **Meter.**

Any device used to measure flow.

1.15. **Non-Tributary Area.**

That portion of the Northwest Lake FPA depicted on Exhibit C and identified therein as the "Areas of Service Outside NWRWRF."

1.16. **Northwest Lake FPA.**

The Northwest Lake Facilities Planning Area as established in the Illinois Water Quality Management Plan, as such plan may be amended from time-to-time. The boundaries of the Northwest Lake FPA as of the Effective Date of this Agreement are depicted on Exhibit A.

1.17. **Northwest Regional Water Reclamation Facility.**

The wastewater treatment plant constructed, owned, and operated by the Village, and located at 200 Industrial Drive, Fox Lake, Illinois, which discharges into the Fox River in Lake County, Illinois, together with any additions to, or extensions of, such plant.

1.18. **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.

1.19. **Pre-Existing County Sewer Agreement.**

Any unexpired agreement (including amendments thereto) that the County has entered

into prior to the Effective Date of this Agreement with any municipal corporation or sanitary district in the County Northwest Service Area relating to the provision of sewerage services.

1.20. **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 by the State of Illinois, the Village, or the County.

1.21. **Pretreated Sewage.**

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

1.22. **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.

1.23. **Residential Customer Equivalent (R.C.E.).**

A unit of measurement for purposes of imposing Connection Charges or assessing Sewer User Fees on County Customers or Village Customers that shall equal either:

- A. The Sanitary Sewage flow from a single dwelling unit of any type; or
- B. For non-residential Customers, 2.5 P.E.

1.24. **Sanitary Sewage.**

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

1.25. **Sanitary Sewer.**

Any sewer that carries Sewage.

1.26. **Sewage.**

Sanitary Sewage, Industrial Waste, and Pretreated Sewage, together with such

Inflow/Infiltration as may be permitted under applicable law.

1.27. **Sewer User Fees.**

A standard rate charged by the Village for Treatment of Sewage of a specified volume, strength, and composition.

1.28. **Suspended Solids.**

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

1.29. **Transport.**

The conveyance of Sewage from the point or points of discharge into the County Northwest Sewerage System or into Sanitary Sewers of the Village Sewerage System to the Northwest Regional Water Reclamation Facility or to any other provider of Treatment service.

1.30. **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 so as to meet all federal, state, and Village requirements.

1.31. **Village Customer.**

Any dwelling, business, office, industrial, institutional, or other building, facility, or entity located in the Village Service Area that discharges Sewage directly into the Village Sewerage System for Collection, Transport, and Treatment via the Northwest Regional Water Reclamation Facility.

1.32. **Village Service Area.**

The area located within the Village's corporate boundaries from time-to-time and within the Northwest Lake FPA, plus those areas outside the Village's corporate boundaries but depicted on Exhibit C to this Agreement as "Current Areas of NWRWRF Service - Outside Village Corporate Limits"; except that any portions of such areas that are to receive Sewage Collection services from Lakes Region Sanitary District shall be deemed to be part of the County Northwest

Service Area.

1.33. **Village Sewerage System.**

The Northwest Regional Water Reclamation Facility, and all other Sanitary Sewers, treatment plants, or facilities, as well as associated land, easements, and rights-of-way, that the Village, from time-to-time, owns or operates for the purpose of, or related to, Collecting, Transporting, and Treating Sewage within the Village Service Area.

1.34. **Wholesale Advisory Committee.**

An advisory body comprised of both the Wholesale Policy Advisory Committee and the Wholesale Technical Advisory Committee, the responsibilities of which will be further set forth in bylaws to be approved by the Wholesale Policy Advisory Committee. The Wholesale Advisory Committee is established for the purposes of communication and coordination on matters of mutual concern regarding sanitary sewerage service, including input on operational and cost effectiveness matters relating to local systems, transport, and treatment activities, throughout the Northwest Lake FPA.

1.35. **Wholesale Policy Advisory Committee.**

An advisory body comprised of one representative from each of the County, the Village, and each municipality, sanitary district, and public utility company that (i) owns local sewers that are located within the Northwest Lake FPA; (ii) is served by the Northwest Regional Water Reclamation Facility; and (iii) is a party to a current contract for such service with the County ("**Wholesalers**"). Representatives (as well as any alternative representatives) are to be approved by resolution of the respective corporate authorities of the County, the Village, and each Wholesaler. Representatives and alternate representatives shall be either members of the corporate authorities or administrative officials of the County, the Village, or a Wholesaler. The Wholesale Policy Advisory Committee is established for the purposes of communication and coordination on matters of mutual concern regarding sanitary sewerage service throughout the Northwest Lake FPA.

1.36. Wholesale Technical Advisory Committee.

An advisory body comprised of one representative from the County, the Village, and each Wholesaler. Representatives (as well as any alternative representatives) are to be approved by resolution of the respective corporate authorities of the County, the Village, and each Wholesaler. Representatives and alternate representatives shall be either engineers or full-time employees of the County, the Village, or each Wholesaler with responsibilities relating to the representative's sanitary sewer system.

ARTICLE II

SEWER SERVICE

2.1. County and Village Sewage Obligations.

Except as provided in Section 2.4 of this Agreement, the County agrees to deliver to the Northwest Regional Water Reclamation Facility all Sewage that the County collects from the County Northwest Service Area at all times during the term of this Agreement, and the Village agrees to accept, and to hold itself continually and perpetually ready, willing, and able to accept, such Sewage from the County for Treatment at all times for all County Customers legally connected to the County Northwest Sewerage System at any time during the term of this Agreement.

2.2. Village Ability to Serve.

The Village shall at all times after the Effective Date of this Agreement take all steps reasonably necessary to ensure that the Northwest Regional Water Reclamation Facility is continually able to effectively Treat, in accordance with all applicable federal and state standards, and the provisions of this Agreement, all Sewage collected by the County Northwest Sewerage System from the County Northwest Service Area and Transported to the Northwest Regional Water Reclamation Facility for Treatment.

2.3. Points of Discharge.

Until such time as additional points of discharge to the Village Sewage System are established by mutual written agreement of the parties hereto, the County shall continue at all times during the term of this Agreement to deliver Sewage collected by the County Northwest Sewerage System from the County Northwest Service Area at the point of discharge to the Northwest Regional Water Reclamation Facility that is in existence on the Effective Date of this Agreement.

2.4. Facility Expansions; Alternative Facilities.

A. General Limitation on Use of Other Facilities. Subject to the terms of this Section 2.4, the County agrees that it shall not deliver any Sewage collected by the County Northwest Sewerage System from the County Northwest Service Area during the term of this Agreement to any Treatment facility other than the Northwest Regional Water Reclamation Facility (an "***Alternative Treatment Facility***"), without the prior written consent of the Village, except as provided in Subsection C of this Section 2.4.

B. Northwest Regional Water Reclamation Facility Expansion Obligations. As the Northwest Regional Water Reclamation Facility approaches 80% of its then-existing capacity, the Village shall take necessary steps to implement additional expansion of the Northwest Regional Water Reclamation Facility, subject to the following:

1. Certification by registered professional engineers acting on behalf of the Village, or other acceptable documentation, establishing the projected number of R.C.E.s from the Village Service Area that will need to connect to and be served by the Northwest Regional Water Reclamation Facility.
2. Certification by registered professional engineers acting on behalf of the County, or other acceptable documentation, establishing that a sufficient number of Customers will need to be served from the County Northwest Service Area and the Village Service Area to not only utilize the existing capacity of the Northwest Regional Water Reclamation Facility but to warrant its expansion to serve a projected number of R.C.E.s. Such projections and population studies must establish that the expansion is economically and financially feasible to support additional revenue bonds,

and the parity bond requirements of the Village.

3. If the County Northwest Sewerage System requires additions and improvements to meet population growth projected pursuant to Section 2.4.B.2, the County shall also supply to the Village a letter of intent representing to the Village that the County intends to issue additional revenue bonds for such additions and improvements as inducement to the Village to issue Village revenue bonds and to proceed with the construction of additions to the Northwest Regional Water Reclamation Facility in order to accommodate the additional Sewage flow. In the event that the County does not proceed to issue such revenue bonds or undertake such additions or improvements, the Village shall have no obligation to enlarge the Northwest Regional Water Reclamation Facility to accommodate the additional Sewage flow to be served by the proposed County Northwest Sewerage System additions or improvements.

C. Alternative Treatment Facilities. In the event the Village fails to maintain or expand capacity sufficient to Treat all Sewage Collected from the County Northwest Service Area in accordance with this Section 2.4 and this Agreement, the County may, upon proper notice as provided in Subsection D of this Section 2.4, and without the consent of the Village, make alternate arrangements for Treatment of such additional flows of Sewage from the County Northwest Service Area (or any portion thereof) that the Northwest Regional Water Reclamation Facility cannot accommodate. The County alone shall determine what alternative arrangements shall be made based upon the best interests of the County and its residents. By pursuing alternative arrangements under this Section 2.4.C, the County shall not be authorized to reduce the volume of Sewage Collected from the County Northwest Service Area that has been and can continue to be served by the Northwest Regional Water Reclamation Facility.

D. Required Notice. Any notice required pursuant to Subsection C of this Section 2.4 shall be in writing and shall be delivered to the Village not fewer than ninety (90) days before the County delivers any Sewage from the County Northwest Service Area to any Alternative Treatment Facility. Such notice shall specify (i) the additional amount of Sewage for which the County requires additional capacity at the Northwest Regional Water Reclamation Facility and

that the County intends to deliver to an Alternative Treatment Facility, (ii) the time within which such additional Treatment capacity is required, and (iii) the basis for the County's conclusion that the Village will not or cannot Treat all Sewage from the County Northwest Service Area in accordance with this Agreement. If, within ninety (90) days after such notice is delivered to the Village, the Village notifies the County in writing that it will provide Treatment service for all Sewage from the County Northwest Service Area, then the County shall be required to deliver such Sewage to the Northwest Regional Water Reclamation Facility. Otherwise, the County shall have no obligation to deliver such additional amounts of Sewage (as set forth in the notice) to the Northwest Regional Water Reclamation Facility at any time thereafter.

E. Treatment Obligation. Nothing in this Section authorizing the County to make alternative arrangements for Treatment of Sewage collected from the County Northwest Service Area shall terminate (i) the Village's obligation pursuant to this Article to Treat all Sewage delivered from the County Northwest Service Area (provided, however, the Village shall be released from its obligation to provide Treatment of Sewage serviced pursuant to alternative arrangements), or (ii) the County's obligation to Transport all Sewage delivered to the County Northwest Sewerage System to the Northwest Regional Water Reclamation Facility (except such Sewage authorized by this Section to be Treated pursuant to alternative arrangements).

F. Septic and Land Treatment Systems. Notwithstanding anything to the contrary in this Agreement, a residential septic system serving only one detached single family dwelling on a lot of at least 40,000 square feet in area shall not be considered to be an Alternative Treatment Facility for purposes of this Section. In addition, any existing septic systems serving nonresidential structures or residential structures for which certificates of occupancy have been issued prior to the date of this Agreement shall not be considered an Alternative Treatment Facility for purposes of this Section; provided, however, that such existing septic systems (other than those serving only one detached single family dwelling on a lot greater than 40,000 square feet in area) shall not be replaced or repaired in a manner requiring a permit from the Lake County

Board of Health unless there is no Sanitary Sewer within 250 feet of the property served by such septic system (or such greater distance as may be established by regulation of the Lake County Health Department). In addition, the County shall not have an obligation to Transport Sewage to the Northwest Regional Water Reclamation Facility if treated by any other type of on-site Treatment system for which required permits have been issued and maintained (including without limitation land treatment systems). Septic or other on-site Treatment facilities not meeting the criteria established in this Subsection F of Section 2.4 may nevertheless be authorized to operate by express written agreement between the County and the Village.

2.5. Service Area Boundaries.

A. Village Service Area Boundary. The Village shall not directly or indirectly accept Sewage from any person, firm, municipality, or other governmental agency located within the County but outside the Village Service Area other than through the County Northwest Sewerage System, unless the County otherwise consents in writing. Notwithstanding the foregoing, for areas within both the Northwest Lake FPA and the "Potential Areas of Service" depicted in Exhibit C of this Agreement, Collection or Transport services may (but need not) be provided by either the County or the Village without the consent of the other party for Treatment at the Northwest Regional Water Reclamation Facility. Any part of the Potential Areas of Service located within the Northwest Lake FPA to which the Village actually provides Collection or Transport service from time-to-time shall be deemed part of the Village Service Area notwithstanding anything in this Agreement to the contrary.

B. County Service Area Boundary. The County shall not directly or indirectly accept Sewage from any person, firm, municipality, or other governmental agency located within the Village Service Area, unless the Village otherwise consents in writing.

C. Pre-Annexation Sewer Connections. To the extent that any person, firm, municipality, or other governmental agency is connected to the County Northwest Sewerage System and is subsequently annexed within the corporate limits of the Village, such person, firm,

municipality, or other governmental agency shall remain a County Customer for purposes of this Agreement unless the County otherwise consents in writing.

D. Non-interference. Neither party shall interfere with the sewer planning activities in the other's service area in any way, including without limitation the filing of, or objection to, applications to amend the Illinois Water Quality Management Plan, unless requested to do so in writing by such other party to this Agreement; provided, however, that nothing in this Section 2.5.D shall be interpreted to limit either Party's right to take actions in furtherance of assuring compliance with the terms of this Agreement.

E. Non-Tributary Area. The parties acknowledge that neither the County Northwest Sewerage System nor the Village Sewerage System has been planned or designed to Transport Sewage from the Non-Tributary Area to the Northwest Regional Water Reclamation Facility for Treatment service, nor shall such Transport or Treatment service involving the Northwest Regional Water Reclamation Facility be provided by either party to the Non-Tributary Area, except (i) upon the express written consent of the other, or (ii) as provided in Section 3.1.I of this Agreement.

ARTICLE III

CHARGES FOR SEWAGE TREATMENT

3.1. Connection Charges.

A. In General. For every new County Customer hereafter connecting, either indirectly or directly, to the County Northwest Sewerage System and receiving Sewage Treatment services from the Northwest Regional Water Reclamation Facility, such County Customer shall deliver to the County for payment to the Village a Connection Charge in the amount and manner set forth in this Section 3.1. Whether this Agreement expressly references Village Customers or not, the Connection Charge for new County Customers shall be the same as the Connection Charge

charged to new Village Customers. To this end, the Village agrees that it shall at all times impose a Connection Charge on Village Customers that is separate from the charges for Collection and Transport services the Village imposes on Village Customers as a condition of making new connections.

B. Basis for Assessing Connection Charges. Connection Charges shall be assessed against each Customer on a per Residential Customer Equivalent (R.C.E.) basis. For purposes of determining the applicable Connection Charge, (i) all dwelling units, irrespective of size or type, shall be assessed as one R.C.E., and (ii) all non-residential uses shall be assessed based on the applicable R.C.E.s indicated on Exhibit D to this Agreement or as otherwise provided in Section 3.1.C.

C. Basis for Determining Connection Charges. As of the Effective Date of this Agreement, the basic Connection Charge shall be established based on the coefficients for the Northwest Regional Water Reclamation Facility set forth in Exhibit D to this Agreement. The Connection Charge for any Customer whose use is not listed in Exhibit D shall be established by the mutual agreement of the Village and County based on the most analogous coefficients set forth in Exhibit D. The Village may adjust the per R.C.E. Connection Charge in accordance with Section 3.1.D below, but, unless the parties otherwise agree in writing, no such adjustment shall occur more than once during any calendar year, and no such adjustment shall be effective until 90 days after the Village notifies the County of such adjustment, except as otherwise provided in Section 3.1.D. Notwithstanding the foregoing, for any Customer whose sewage flow materially exceeds the flow represented in an application for sewer connection, an additional Connection Charge shall be assessed in conformity with such actual flow and in an amount mutually agreed upon by the Village and County.

D. Adjustments to Village Connection Charges. The Village may adjust its Connection Charges from time-to-time as the need arises after proper written notice is given to the County. The County has the right to object in writing within forty-five (45) days of written

notice. Upon notice of such objection, the Village and County shall mutually agree to engage jointly a registered professional engineer and certified public accountant to undertake a rate study to determine an appropriate Connection Charge per R.C.E. for the Northwest Regional Water Reclamation Facility. Unless the parties otherwise agree, such rate study shall be completed within 90 days after the commencement of such engagement, and the study shall consider the replacement, upgrading, and expansion costs for the Northwest Regional Water Reclamation Facility, but shall not include any administrative fee for the Village respecting its operation and management of the Northwest Regional Water Reclamation Facility. Ninety (90) days after completion of any such rate study, the new Connection Charge determined thereby shall be effective with respect to new Customers.

E. Collection of Connection Charge. County Customers shall deliver to the County the Connection Charge per R.C.E. to be paid to the Village for Sewage Treatment services from the Northwest Regional Water Reclamation Facility at the time that such County Customers receive permits to connect to the County Northwest Sewerage System. On the 15th day of each month, the County shall deliver to the Village such Connection Charges that it actually received on behalf of the Village from County Customers as of the 15th day of the preceding month.

F. Use of Revenue from Connection Charges. The Village agrees and covenants that all revenues received from Connection Charges under this Agreement shall only be used for costs directly related to the Northwest Regional Water Reclamation Facility.

G. County Connection Charge. Nothing in this Agreement shall limit the County's ability to impose on County Customers charges for Collection or Transport services as a condition of making new connections to the County Northwest Sewerage System; provided, however, that any County Customers residing within the corporate limits of the Village shall be subject to the same charges as any other County Customer. In setting such County Connection Charge, the County may include an amount to be allocated to the Regional Surcharge Fund for Regional I/I Facilities (as those terms are defined in Section 3.2.H below).

H. Effect of Paying Connection Charge. The payment of the required Connection Charge under this Agreement shall entitle the County Customer making such payment the right to receive Treatment services from the Northwest Regional Water Reclamation Facility; provided, however, that no Customer shall be permitted to pay a Connection Charge or make a connection to the County Northwest Sewerage System unless such connection has received all required authorizations from the Illinois Environmental Protection Agency ("**IEPA**"); provided further that, unless the County and the Village otherwise agree, if such Customer does not physically connect to the County Northwest Sewerage System and the Northwest Regional Water Reclamation Facility within three years after making such payment, then such County Customer shall have forfeited its right to make such connection unless and until such County Customer has paid the difference between the Connection Charge paid and the then-applicable Connection Charge. Notwithstanding the foregoing, either the County or the Village may issue a notice to the other limiting the ability of Customers to prepay Connection Charges for a specified duration for purposes of undertaking a cost study to determine the appropriateness for any adjustments to the Connection Charges in furtherance of Section 3.1.D of this Agreement.

I. Transfer of Tall Oaks Customers.

The parties acknowledge that the Village for over twenty (20) years has operated and currently operates a second Sewage Treatment plant known as the Tall Oaks Treatment Plant (the "**Tall Oaks Plant**") that is not tributary to the Northwest Regional Water Reclamation Facility. While the Tall Oaks Plant serves an area located within the Northwest FPA, the Village paid for the Tall Oaks Plant with its own separate funds and has operated the Tall Oaks Plant with its own funds, separate and apart from the Northwest Regional Water Reclamation Facility, thus for many years relieving the Northwest Regional Water Reclamation Facility from its obligation to provide Treatment services to residents served by the Tall Oaks Plant. The Sewage treated at the Tall Oaks Plant, now or in the future, may be transferred to the Northwest Regional Water Reclamation Facility (a "**Tall Oaks Transfer**"), but only in accordance with all of the following

terms and provisions:

(i) Commencing on the Effective Date of this Agreement, one hundred (100) R.C.E. of new connections for Treatment from the Tall Oaks Plant may be made pursuant to the current Tall Oaks Plant connection terms established by the Village.

(ii) After the one hundred (100) R.C.E. of new connections have been made pursuant to Subsection 3.1.1(i) above, any users seeking new connections for Treatment from the Tall Oaks Plant will be required to pay a charge as a condition of making such new connections to the Tall Oaks Plant in an amount not less than the Connection Charge for the Northwest Regional Water Reclamation Facility (the "**Tall Oaks Connection Charge**"). The Tall Oaks Connection Charges will be held in a special fund (the "**Tall Oaks Transfer Fund**"). Nothing in Subsection 3.1.1 of this Agreement shall limit the Village from imposing charges in addition to the Tall Oaks Connection Charge as a condition precedent to Treatment or other services via the Tall Oaks Plant, but such additional charges need not be held in the Tall Oaks Transfer Fund.

(iii) The Village will be required to prepare and deliver to the County an annual report setting forth the total number of customers being served by the Tall Oaks Plant, the number of customers newly connected during the reporting year, the amount of Tall Oaks Connection Charges collected in the reporting year, the total amount of Tall Oaks Connection Charges collected since the Effective Date, and the amount of accumulated Tall Oaks Connection Charges held in the Tall Oaks Transfer Fund.

(iv) No Tall Oaks Transfer may occur pursuant to this Section 3.1.1 during the five (5) years after the Effective Date of this Agreement (the "**Status Quo Period**"), provided however that should either: (a) a material change in state or federal regulations, or (b) a catastrophic failure outside of the control of the Village of the Tall Oaks Plant, make the continued operation of the Tall Oaks Plant impracticable, a transfer may occur prior to the expiration of the Status Quo Period upon written consent of the County, which

consent will not be unreasonably withheld, delayed, or conditioned.

(v) As conditions precedent to any Tall Oaks Transfer, the Village shall deliver notice to the County (the "**Transfer Notice**") at least 180 days prior to the date of such Tall Oaks Transfer. As part of such Transfer Notice, the Village shall provide an engineering study (the "**Transfer Study**") demonstrating that the capacity of the Northwest Regional Water Reclamation Facility is sufficient (or will be increased, using only the accumulated Tall Oaks Connection Charges in the Tall Oaks Transfer Fund, to become sufficient) to accommodate the Tall Oaks Transfer without exceeding 80 percent of the design capacity of the Northwest Regional Water Reclamation Facility, thus causing the Northwest Regional Water Reclamation Facility to reach "Critical Review" status (the "**Transfer Criterion**"). If the County delivers written objections (the "**Transfer Objection**") to the Village regarding the findings of the Transfer Study within 60 days after receipt of the Transfer Notice, then the Village will be required to retain a third-party engineer mutually selected by the County and the Village to determine whether the capacity of the Northwest Regional Water Reclamation Facility is sufficient to satisfy the Transfer Criterion (the "**Third-Party Transfer Review**"). If the Third-Party Transfer Review establishes that the Transfer Criterion is met, then the Tall Oaks Transfer may proceed upon delivery of the accumulated Tall Oaks Connection Charges in the Tall Oaks Transfer Fund to a capital improvement fund dedicated exclusively to the Northwest Regional Water Reclamation Facility.

(vi) In the event that the Village desires to enhance the Tall Oaks Plant in lieu of any Tall Oaks Transfer, the Village must notify the County of this election, whereupon all moneys in the Tall Oaks Transfer Fund may be released to the Village for use in connection with the Tall Oaks Plant system, and the Village shall have no further right to effect the Tall Oaks Transfer.

3.2. Sewer User Fee.

A. In General. After the Effective Date of this Agreement, every County Customer receiving Treatment services from the Northwest Regional Water Reclamation Facility shall pay to the County for the benefit of the Village a Sewer User Fee in the amount and manner set forth in this Section 3.2. Whether this Agreement expressly references Village Customers or not, the Sewer User Fees for County Customers shall be the same as the Sewer User Fees charged to Village Customers. To this end, the Village agrees that it shall at all times impose a Sewer User Fee on Village Customers for Treatment services that is separate from the standard rate charged by the Village to Village Customers for the Collection and Transport of Sewage of a specified volume, strength, and composition.

B. Basis for Assessing Sewer User Fees. Sewer User Fees shall be assessed against each County Customer in accordance with either (i) the metered flow of Sewage delivered (where applicable), (ii) the metered flow of water usage (where applicable), or (iii) on a flat rate basis.

1. Metered Sewage Flow. If the amount of Sewage delivered to the County Northwest Sewerage System is currently metered, or if such separate metering of Sewage is undertaken by agreement of the Village, the County, and the local collection system owner, then the metered Sewage flow shall be the basis for assessing User Fees.
2. Metered Water Flow. Unless Section 3.2.B.1 applies, for any County Customer whose water usage is metered, Sewer User Fees shall be based upon the actual volume of water usage, plus the strength and composition of Sewage delivered to the County Northwest Sewerage System from such Customer. Unless the County, through its County Sewer Ordinances, establishes otherwise, the metered flow shall be adjusted for such quantity of water usage that is reasonably estimated as not entering into the sanitary sewers by limiting the total metered flow for residential County Customers for the period of May through October in any year to the lesser of the actual metered amount or 110% of the metered water flow from the preceding November through April period; except that, for any Customer that has a separate irrigation source or a separately metered irrigation system for its property, the actual meter reading for the Customer shall be used, exclusive of any meter reading for the irrigation system. Notwithstanding the foregoing, a minimum periodic water usage may be established for County Customers irrespective of actual metered water usage.

3. Flat-Rate Fees. Where no water meter flows are available to the County, the Sewer User Fee shall be calculated on a per R.C.E. basis. County Customers occupying dwelling units (or for which a certificate of occupancy has been issued for any such County Customer's premises) shall be deemed to utilize one (1) R.C.E. of Sanitary Sewer Service each month per dwelling unit, irrespective of actual size, type, occupancy, or use. Customers other than those occupying dwelling units shall be deemed to utilize Sanitary Sewer service each month in accordance with the following calculation:

$$(\text{Estimated P.E. of Customer}) \times \frac{1 \text{ R.C.E.}}{2.5 \text{ P.E.}}$$

where the "Estimated P.E. of Customer" shall be based upon the "**Sewer Use Coefficients**" as established in Exhibit D, but if the Sewer Use Coefficients are not applicable to the Customer's proposed use, then the "Estimated P.E. of Customer" shall be based upon the larger of either: (a) the estimate of P.E. reported in connection with any IEPA permit for such County Customer; or (b) the standard P.E. coefficient as applied by the IEPA for persons having similar uses as the County Customer.

To the extent that Sewer User Fees for non-metered Customers are expressed in units of cost per 1,000 gallons, an R.C.E. shall be deemed to equal 7,500 gallons per month.

C. Basis for Determining Sewer User Fees. Except as expressly provided otherwise in this Agreement, the Village shall establish for Village Customers and County Customers a single set of Sewer User Fees relating solely to the Treatment services by the Northwest Regional Water Reclamation Facility. The Village shall also establish separate standard rates charged to Village Customers for the Collection and Transport of Sewage of a specified volume, strength, and composition. The Sewer User Fees for domestic sewage for Village Customers and County Customers as of the Effective Date of this Agreement are set forth in Exhibit E to this Agreement. Adjustments to the Sewer User Fees applicable to County Customers shall be permitted in accordance with Section 3.2.D of this Agreement, but, unless the parties otherwise agree, no such adjustment shall occur more than once during any calendar year, and no such adjustment shall be effective until 90 days after the Village notifies the County of such adjustment, except as otherwise provided in Section 3.2.D. Such Sewer User Fees shall at all times be set at levels designed to assure that the Northwest Regional Water Reclamation Facility's revenues from such

Sewer User Fees will always be sufficient, when considered in light of any other moneys legally available for and applied to such purposes, (i) to provide adequate and proper levels of service; (ii) to pay the Northwest Regional Water Reclamation Facility's direct and indirect costs of maintenance, replacement, and operation; (iii) to pay the principal of, and premiums and interest on, bonds secured, in whole or in part, by the revenues of the Northwest Regional Water Reclamation Facility; (iv) to provide a reasonable depreciation fund; (v) to provide such other reserves and sinking funds as may be deemed necessary or desirable by the Village for the payment of such bonds and for the replacement, extension, and improvement of the Northwest Regional Water Reclamation Facility; (vi) to compensate for demonstrated losses in collections; (vii) to include amounts for payment of the Externality Fee provided for in Section 3.2.I of this Agreement; and (viii) to otherwise meet any obligations of this Agreement.

D. Adjustments to Village Sewer User Fees. The Village may adjust its Sewer User Fees from time-to-time as the need arises after proper written notice is given to the County. The County has the right to object in writing within forty-five (45) days of written notice. Upon notice of such objection, the Village and County shall mutually agree to engage jointly a registered professional engineer and certified public accountant to undertake a rate study to determine appropriate Sewer User Fees per R.C.E. for the Northwest Regional Water Reclamation Facility. Unless the parties otherwise agree, such rate study shall be completed within 90 days after the commencement of such engagement, and the study shall consider the operation, maintenance, repair, replacement, and administration of the Northwest Regional Water Reclamation Facility, which may include losses in collections and revenue requirements as set forth in Section 3.2.C of this Agreement. The new Sewer User Fee determined thereby shall be effective with respect to all Customers for the next applicable billing period commencing not less than fifteen (15) days nor more than one hundred twenty (120) days after the completion of any such rate study.

E. Time for Payment. Unless otherwise provided in a Pre-Existing County Sewer Agreement, the County shall provide that each County Customer is issued an invoice, not less

than quarterly, of all Sewer User Fees that are due in accordance with this Section 3.2. On the 15th day of each month, the County shall deliver to the Village such Sewer User Fees that it actually received on behalf of the Village from County Customers as of the 15th day of the preceding month. Subject to limitations that may exist in any Pre-Existing County Sewer Agreement, the County shall require any municipality or sanitary district providing Collection services for Sewage delivered to the County Northwest Sewerage System to verify to the County the number of Customers receiving such Collection services and the amount of Sewer User Fees due and collected from such Customers. The County shall require use of a standard form (the current version of which is attached to this Agreement as Exhibit F) for providing such verification reports. Such verification reports shall be made available to the Village upon request.

F. Use of Revenue from Sewer User Fees. Except as hereinafter set forth, the Village agrees and covenants that all revenues received from Sewer User Fees under this Agreement shall only be used for Treatment costs (as further described in Section 3.2.C of this Agreement) directly related to the Northwest Regional Water Reclamation Facility. Such costs shall include, but are not limited to, the payment of fines or fees associated with any NPDES permit violations either associated with the Northwest Regional Water Reclamation Facility or throughout the County Northwest Sewerage System, defense costs (including attorneys' fees) arising from third-party action relating to this Agreement, and any other obligations relating to this Agreement. Notwithstanding the foregoing, the parties recognize that the Village is entitled to reimbursement for certain indirect costs incurred in the operation of the Northwest Regional Water Reclamation Facility. Consistent with past practices, in order to quantify such indirect costs, the Village shall annually cause an indirect cost study to be prepared by an independent auditor (or similarly qualified independent person or firm) based on the principles set forth in OMB Circular A-87 (or any other standard methodology that supersedes OMB Circular A-87 or to which the parties otherwise agree) to establish the cost of administrative services indirectly provided by the Village to the Northwest Regional Water Reclamation Facility. Upon completion of any such

study, the Village shall deliver a copy to the County, and the findings of such study shall be conclusive of the Village's indirect costs to be reimbursed to the Village from the Sewer User Fee revenue, unless the County objects in writing within 45 days after receipt of such study. In the event of such written objection, the parties shall reasonably cooperate to reach a mutual agreement on an amount that the Village shall receive from the Sewer User Fee revenues for its indirect costs.

G. County Sewer User Fees. Nothing in this Agreement shall limit the County's ability to impose its own fees for Collection and Transport services of Sewage of a specified volume, strength, and composition upon County Customers ("**County Sewer User Fees**"); provided, however, that any County Customers residing within the corporate limits of the Village shall be subject to the same fees as any other County Customer.

H. Inflow/Infiltration Reduction. The Village and the County acknowledge and agree that Excessive Inflow/Infiltration from local sewage collection systems tributary to the County Northwest Sewerage System increases the cost of operating, and reduces the overall capacity and capability of, both the Northwest Regional Water Reclamation Facility and the County Northwest Sewerage System. The Village and the County acknowledge, however, that it may be more cost-effective to reduce the effects of Excessive Inflow/Infiltration through regional excessive flow detention facilities or similar mechanisms ("**Regional I/I Facilities**") as well as attainable local corrective measures. In order to create appropriate incentives for local corrective measures and appropriate means for undertaking Regional I/I Facilities to address problems that may be resulting from Excessive Inflow/Infiltration, the County and the Village will take the following steps:

1. Facilities Plan and Regional I/I Facilities. The County has commissioned the "Lake County Public Works Department Northwest Interceptor Facilities Plan" dated August 18, 2009 for the County Northwest Lake FPA, which the County may, from time-to-time, update, supplement, or modify

(the "**Facilities Plan**"). The Facilities Plan is intended to assess what cost-effective measures can be undertaken to accommodate Excessive Inflow/Infiltration, including improvements to the County Northwest Sewerage System, the Northwest Regional Water Reclamation Facility, or both. Based on the determinations of the Facilities Plan, the County and Village shall cooperate to mutually determine, after consultation with the Wholesale Advisory Committee, whether any Regional I/I Facilities should be established, as well as other appropriate details regarding such Regional I/I Facilities, including their locations, sizes, and responsibility for designing, constructing, maintaining, and operating such Regional I/I Facilities.

2. Financing Plan; Establish Regional I/I Surcharge. Following a determination of the need for one or more Regional I/I Facilities, the County and the Village shall cooperate to mutually determine, after consultation with the Wholesale Advisory Committee, a plan for financing the cost of any such Regional I/I Facilities. Based on such financing plan, whichever of the County or the Village (or both) that will be responsible for implementing Regional I/I Facilities will establish and impose a "**Regional I/I Surcharge**" to be maintained in a "**Regional Surcharge Fund**" to cover the estimated costs of designing, constructing, and placing into service the recommended Regional I/I Facilities, and which shall be chargeable either:
 - (a) if bonds or other debt instruments are issued therefor, over the amortization period and at the actual rate of interest of such bonds or other debt instruments; or
 - (b) if no bonds or other debt instruments are issued, over a 15-year amortization period at an interest rate equal to the prime rate (as set by the Federal Open Market Committee of the Federal Reserve

Board) plus 0.5%. Such Regional I/I Surcharge (w) shall be in addition to Sewer User Fees and County Sewer User Fees, (x) shall be assessed upon all County Customers and Village Customers in accordance with Section 3.2.B, (y) shall be accounted for separately from any other funds collected by the County or the Village, and (z) shall be used solely to pay for (or reimburse the Village or County for) all costs and expenses associated with the design, construction, financing, construction management, and placing into service of the Regional I/I Facilities.

3. CMOM Programs; Establish Local I/I Surcharge. The Village and the County shall employ or engage qualified engineers in connection with the development, maintenance, and operations of their respective facilities within the Northwest Lake FPA, and they shall also comply with any applicable Capacity, Management, Operation, and Maintenance regulations as reflected in the "NWLCSAC Capacity, Management, Operation, and Maintenance Program" dated November 14, 2007 (Draft) and the Facilities Plan (collectively, "**CMOM**") or similar requirements that may be established from time-to-time. In the absence of such requirements, the Village and the County, in conjunction with the Wholesale Advisory Committee, shall undertake analyses and related measures in general conformity with the proposed EPA CMOM regulations to encourage improvements to local sewer systems within the County Northwest Service Area and Village Service Area. As part of these efforts, the Village and the County shall annually establish, after consultation with the Wholesale Advisory Committee, a system-specific minimum investment level needed for maintenance and repair of any local sewage collection system tributary to the County Northwest Sewerage System or

the Northwest Regional Water Reclamation Facility to control Excessive Inflow/Infiltration (the "**Annual CMOM Investment**"), and the local sewage collection system operators will be required to report annually about the activities undertaken to improve their local sewerage systems, periodic monitoring activities and results, and the amounts expended therefor. To the extent that the owner or operator of such a local sewage collection system fails either (i) to make the requisite Annual CMOM Investment in its local sewage collection system, or (ii) to the extent that the Excessive Inflow/Infiltration from any such local sewage collection system substantially exceeds any Inflow/Infiltration objectives that may be established as part of the CMOM Program as mutually determined by the Village and the County after consultation with the Wholesale Advisory Committee, the Village and the County shall quantify the additional cost that such Excessive Inflow/Infiltration imposes annually on the County Northwest Sewerage System and the Northwest Regional Water Reclamation Facility (the "**CMOM Non-Compliance Cost**"), and an additional special user fee shall be imposed upon all County Customers or Village Customers being served by such local sewage collection system (the "**Surcharged System**") at a rate that will yield the CMOM Non-Compliance Cost over the course of a year (the "**Local I/I Surcharge**"), notwithstanding that such Local I/I Surcharge results in non-uniform Sewer User Fees among County Customers or between County Customers and Village Customers.

4. Administration. The Regional I/I Surcharge and any Local I/I Surcharge imposed under this Subsection 3.2.H shall be collected in the same manner as other Sewer User Fees. Any Local I/I Surcharge shall be: (a) in

addition to Sewer User Fees; (b) assessed in accordance with Section 3.2.H.3; (c) accounted for separately from any other funds collected by the County or the Village and held during the Initial Surcharge Year, as hereinafter defined, in a fund designated for improvements to the Surcharged System (a "**Local Improvement Fund**"); and (d) shall be used as follows:

(i) During the first year of incurring a Local I/I Surcharge (the "**Initial Surcharge Year**"), all Local I/I Surcharge revenues shall be deposited in a Local Improvement Fund to be administered by the Wholesale Advisory Committee. If the Wholesale Advisory Committee determines that a Surcharged System meets its Annual CMOM Investment as prescribed for the Initial Surcharge Year, then: (a) the Local I/I Surcharge imposed upon the Surcharged System shall no longer be imposed after such determination; and (b) the Wholesale Advisory Committee shall make the Local Improvement Fund moneys available to the owner of the Surcharged System for use in making up deficiencies in its prior Annual CMOM Investment;

(ii) If a Surcharged System fails to meet its Annual CMOM Investment as prescribed for the Initial Surcharge Year during the Initial Surcharge Year, then: (a) the Local I/I Surcharge shall continue to be imposed until the Wholesale Advisory Committee determines that a Surcharged System has met its Annual CMOM Investment as prescribed for any year after the Initial Surcharge Year; and (ii) all moneys in the Local Improvement Fund shall be transferred, and all future Local I/I Surcharge revenue shall be

deposited, into the Regional Surcharge Fund for a Regional I/I Facility as designated by the County and the Village after consultation with the Wholesale Advisory Committee.

I. Externality Fee.

(i) The parties acknowledge and agree that the Northwest Regional Water Reclamation Facility is an integral part of the regional system serving the Northwest Lake FPA. Despite the regional role of the Northwest Regional Water Reclamation Facility's operations, the Village disproportionately bears certain impacts such as odor and potential health risks that result in direct and indirect costs associated with externalities of the Northwest Regional Water Reclamation Facility, which externality costs cannot be fully ascertained or calculated.

(ii) In light of and to offset such externality costs, the parties agree that a transfer may be made monthly by the Village from revenues of the Northwest Regional Water Reclamation Facility to the Village's general fund (the "**Externality Fee**"). The amount of the Externality Fee shall be 4.5% of the total Sewer User Fees paid by both the County Customers and the Village Customers and other operating revenues that are attributable to the Northwest Regional Water Reclamation Facility; provided, however, that, for one year after the Effective Date of this Agreement the Village may not increase its Sewer User Fees for the Northwest Regional Water Reclamation Facility as existing on the Effective Date, which Sewer User Fees are set forth in Exhibit E to this Agreement.

(iii) All Externality Fees shall be paid to a special fund to be maintained by the Village (the "**Externality Fee Fund**"), and, notwithstanding any other provision in this Section 3.2.I, the total amount of the Externality Fees payable to the Village shall not exceed \$350,000 in any calendar year. Expenditures from the Externality Fee Fund shall be made in the sole discretion of the Village, provided that such expenditures are limited to capital improvements and maintenance or improvements to capital facilities (but not

including any Village administrative buildings) within the boundaries of the "Areas of Service - Inside Village Corporate Limits" as depicted in Exhibit C (the "**Externality Impact Area**"); and provided further that Externality Fee Fund proceeds shall not be used to finance any capital improvements that otherwise would be the responsibility of a developer or land owner to construct, install, or improve. The Village must report annually to the County the nature and amount of expenditures made from the Externality Fee Fund.

(iv) The parties acknowledge and agree that, in the event Regional I/I Facilities in the nature of regional storage lagoons serving the Northwest Lake FPA are established as contemplated within the corporate limits of the Village of Round Lake Beach ("**RLB**"), RLB will also disproportionately bear certain impacts such as odor and potential health risks that result in direct and indirect costs associated with externalities of such storage lagoons, which externality costs cannot be fully ascertained or calculated. Therefore, in such event, the Village agrees to credit RLB the amount of 2.25% of RLB's Sewer User Fees otherwise due to the Village as an offset to such externality costs for so long as the Village receives the Externality Fee and the regional storage lagoons in RLB serve as Regional I/I Facilities; provided, however, that such credit shall not apply to County Sewer User Fees.

(v) As an obligation to this Agreement, the Village agrees to and does hereby hold harmless, defend, and indemnify the County and any Wholesaler with whom the County has, or will have, a valid Agreement for Sewage Disposal (collectively, the "**Indemnitees**"), the Indemnitees' corporate authorities, and all of the Indemnitees' elected and appointed officials, officers, employees, agents, representatives, and attorneys (collectively, the "**Indemnified Parties**"), from any and all claims that may, at any time, be asserted against any of these Indemnified Parties with respect to the collection, distribution, transfer, or use of the Externality Fee. The Village acknowledges and agrees that, by accepting Externality Fee moneys from any Indemnified Party or such party's

customers, the Village makes such Indemnified Party a third-party beneficiary of this Section 3.2.1(v) of this Agreement.

3.3. **Technical Calculations; Parity.** Whenever the number of P.E.s or R.C.E.s must be calculated in connection with any fee or charge under this Agreement, or any other term or provision of this Agreement, such calculation for County Customers shall be determined in accordance with the same technical standards as are employed with respect to any Village Customers receiving Treatment service from the Northwest Regional Water Reclamation Facility.

3.4. **Records.**

A. Each party shall establish and maintain at all times during the term of this Agreement permanent books and records of bills, invoices, rates, receipts, accounts receivable, quantities of flow, permits, and any other records relating to Sewage Treatment services, Connection Charges, Sewer User Fees, Local and Regional I/I Surcharges, Externality Fees, and Pretreatment surcharges dating back not less than seven years (the "***Recordkeeping Data***"). In addition, the Village and the County shall cause to be prepared annual audits or financial statements of the Northwest Regional Water Reclamation Facility and the County Northwest Sewerage System, respectively, which audits or financial statements shall include at least the categories of information described in Exhibit G. Each party shall have the right to inspect and copy Recordkeeping Data of the other during normal business hours, and the parties hereby waive all copying and related costs. In addition, the annual audits or financial statements will be delivered to each member of the Wholesale Advisory Committee.

B. For purposes of reporting on Connection Charges, Sewer User Fees, and overall Sewage flows (both actual and committed but not-yet-connected), the Village and the County shall cooperate to develop and thereafter approve appropriate forms to be used by the owner or manager of any local sewerage system that collects Sewage for delivery to the County for Transport services. Approvals of such forms shall not be unreasonable withheld. The current form to be used is attached as Exhibit F.

C. The parties agree that any municipal corporation or sanitary district in the County Northwest Service Area that has a valid agreement in place with the County for Sewage Transport services shall be granted reasonable opportunities to review Recordkeeping Data from the County and the Village.

3.5 Pre-Existing County Sewer Agreements.

Notwithstanding anything in this Article III to the contrary, to the extent that a Pre-Existing County Sewer Agreement precludes the assessment or adjustment of any fees or charges, or the calculation of any fee or charges, in the manner set forth in this Article, the terms of any such Pre-Existing County Sewer Agreement shall continue in effect until the earlier of: (i) the expiration of such Pre-Existing County Sewer Agreement (including any extension thereof); or (ii) the amendment of such Pre-Existing County Sewer Agreement. The County agrees not to approve any amendment to a Pre-Existing County Sewer Agreement unless such amendment substantially conforms to the requirements of this Agreement (unless otherwise accepted by the Village in writing). Nothing in this Agreement shall require the County to breach the terms of any Pre-Existing County Sewer Agreement. Exhibit B identifies all Pre-Existing County Sewer Agreements and their current respective expiration dates. To the extent that the County may, through amendments to the County Sewer Ordinances, implement the provisions of this Agreement under the various Pre-Existing County Sewer Agreements, the County agrees to so amend the County Sewer Ordinances. Nothing contained in this Section 3.5 shall be construed to postpone transfers of the Externality Fee as provided in Subsection 3.2.1.

ARTICLE IV

ADMISSIBLE WASTES, ODORS, AND PRETREATMENT STANDARDS

4.1. Waste Parameters.

A. Compliance with Applicable Laws and Standards. In order to permit proper Treatment of Sewage delivered to the Northwest Regional Water Reclamation Facility from the

County Northwest Sewerage System, the County agrees to prohibit County Customers from discharging to the Northwest Regional Water Reclamation Facility any Sewage or other material not in compliance with the standards and requirements of the County Sewer Ordinances and the standards and requirements of all other applicable federal, state, and Village laws, regulations, and rules, except with respect to County Customers subject to the Village Pretreatment program under Section 4.2 of this Agreement.

B. Excessive Inflow/Infiltration. The parties acknowledge that: (1) special steps (including those set forth in Section 3.2.H of this Agreement) are required to reduce the Excessive Inflow/Infiltration existing in the local Sewage Collection systems within the Northwest Lake FPA and throughout the County Northwest Sewerage System and Village Sewerage System; and (2) such steps are part of a long-term response to Excessive Inflow/Infiltration problems in the Northwest Lake FPA. To the extent that the Village faces an enforcement action or a written notice of violation related to Excessive Inflow/Infiltration at the Northwest Regional Water Reclamation Facility, the Village may either:

- (i) join in such enforcement action, or file a separate enforcement action against, the following: the County (to the extent that the County Northwest Sewerage System experiences Excessive Inflow/Infiltration) and the owner or operator of all local Sewage Collection systems (including the Village Sewerage System, if applicable) tributary to the Northwest Regional Water Reclamation Facility that have or are believed to have Excessive Inflow/Infiltration;
- (ii) seek to enjoin action or inaction by the County or the owner or operator of any local Sewage Collection system (including the Village Sewerage System, if applicable) tributary to the Northwest Regional Water Reclamation Facility that has or is believed to have Excessive Inflow/Infiltration;
- (iii) require the County or the owner or operator of any local Sewage Collection system (including the Village Sewerage System, if applicable) tributary to the Northwest

Regional Water Reclamation Facility to install flow meters or other monitoring devices to measure flows within the County Northwest Sewerage System or a local system to ascertain the sources of Excessive Inflow/Infiltration; or

- (iv) pursue such other remedies as it may have at law or in equity.

In the absence of an enforcement action or a written notice of violation against the Village, however, the Village agrees that efforts to reduce Excessive Inflow/Infiltration shall be limited to those set forth in the other Sections of this Agreement or as the Village and the County may otherwise agree in writing.

4.2. Village Pretreatment.

A. Village Pretreatment Program. The Village shall provide, manage, and operate a Pretreatment program and related facilities approved by the designated state or federal approval authority for the control of Sanitary Sewage and Industrial Waste from the County Northwest Service Area to assure that all Sewage delivered to the Northwest Regional Water Reclamation Facility from the County Northwest Sewerage System satisfies the Pretreatment standards promulgated under the Federal Clean Water Act, and any amendment thereto, as well as all other applicable federal and state, laws and regulations, as well as complementary Village enactments, and the provisions of this Agreement.

B. County Cooperation. The County shall reasonably cooperate with the Village in the establishment and enforcement of a Pretreatment program in the County Northwest Service Area. Such cooperation shall include without limitation the adoption of most recent ordinances establishing the Pretreatment standards set forth in Section 4.2.A of this Agreement and authorizing the Village and its agents, representatives, and inspectors to have access to such properties as may be necessary from time-to-time for the purpose of enforcing the ordinances aforesaid, including without limitation ordinances authorizing the Village to bring suit to collect all charges, or to terminate sewer and/or water services as may be necessary for the purpose of enforcement and for the purpose of protecting and preserving the environment; provided,

however, that the Village shall indemnify, defend, and hold the County and its officers, officials, and employees harmless from any losses, claims, liabilities, damages, judgments, suits, or actions of any kind whatsoever arising from, in connection with, by reason of, or relating to Village's activities pursuant to the Pretreatment program.

C. Village Pretreatment Costs. Except as included as part of the operation and maintenance fee under Section 3.2 of this Agreement and except as otherwise provided in Subsection 4.2.D hereof, the Village shall bear all the costs (payable from Sewer User Fees) incurred for the Village's proper management and operation of the Pretreatment program for the County Northwest Service Area without reimbursement from the County.

D. Pretreatment Charges. For all County Customers that are identified as subject to the Pretreatment program, the Village may impose Pretreatment surcharges in the amount of the costs actually incurred by the Village for Pretreatment services rendered to each such County Customer directly, as well as fines and penalties for violations of Pretreatment standards, and each such Customer shall be solely responsible for the payment of invoices for such surcharges, fines, and penalties. The Pretreatment surcharges for County Customers shall be comparable to similar surcharges imposed upon Village Customers.

4.3. Fats, Oils, and Grease Disposal Program.

Unless otherwise provided in Section 5 of the Intergovernmental Agreement Among the Village of Fox Lake, Lakes Region Sanitary District, and the County of Lake, dated August 1, 2006, the Village shall provide, manage, and operate a fats, oils, and grease program (the "**Program**"). The purpose of this Program is to have the Village establish from time-to-time certain minimum reasonable rules and regulations (the "**Fats, Oils, and Grease Rules**") for any food processing, food sales, or food service establishment or user, that is connected to, or applying to connect to, the Village Sewerage System; the current version of the Fats, Oils, and Grease Rules are set forth in Section 7-3A-19 of the Village Code, a copy of which is attached as Exhibit H to this Agreement. The Fats, Oils, and Grease Rules shall regulate the collection and disposal in

wastewater of fats, oils, and greases, not otherwise subject to an Industrial Wastewater Discharge Permit from the U.S. Environmental Protection Agency and /or Illinois Environmental Protection Agency. The Village's Fats, Oils, and Grease Rules, as may be amended from time-to-time to conform to state or federal regulatory requirements, shall be used for this Program and shall apply to any Customer or sewer system that is directly or indirectly tributary to the Northwest Regional Water Reclamation Facility.

4.4. Odor Control.

The parties acknowledge that it is necessary and expedient for the Village and the County to take reasonable measures to control odors that emanate from the Northwest Regional Water Reclamation Facility. One method which has proven effective at odor control is to utilize certain odor control technologies at pumping stations that are part of the County Northwest Sewerage System. The parties agree to continue to allow the utilization of odor control technologies (all costs of which shall be payable from Sewer User Fees) on the following basis:

A. The County shall allow the Village and an "Approved Supplier" (as hereinafter defined) to perform odor control remediation by installing and maintaining certain equipment and utilizing chemicals or other odor control technologies acceptable to the County in the following pumping stations currently owned and operated by the County:

Rollins Road Pump Station
25265 West Rollins Road
Ingleside, IL 60041

East Main Pump Station
25326 West Main Street
Ingleside, IL 60041

Petite Lake Lift Station
39075 North Highway 59
Lake Villa, IL 60046

B. For purposes of this Section, an "Approved Supplier" shall be a company engaged in the business of supplying and inserting chemicals or other odor control technologies into

structures for purposes of odor elimination. An Approved Supplier and the odor control technologies to be utilized (and any modifications thereof) shall be subject to the reasonable consent of the County, which consent shall not be unreasonably withheld, delayed, or conditioned.

C. In the event that the Village determines that it is expedient to cause odor control technologies to be utilized at structures other than those identified in Section 4.3.A, the County agrees to permit access to such other structures under the same terms as under this Section 4.3 in order to test the effectiveness of proposed utilization of odor control technologies. If such tests are effective, and if the utilization of odor control technologies at such other structures does not interfere with the County's operations of facilities of the County Northwest Sewerage System (as determined by the County in its reasonable discretion), the County agrees to permit the utilization of odor control technologies at such structures on a permanent basis pursuant to the terms of this Section 4.3.

D. The Village shall be allowed to utilize approved odor control technologies at each of the pumping stations identified in Section 4.3.A (and such other pumping stations as may be added pursuant to Section 4.3.C) in such quantities and during such times as deemed appropriate for said service by the Village and an Approved Supplier.

E. The equipment necessary to utilize the approved odor control technologies will be installed by the Village or its Approved Supplier at the sole expense of the Village. The equipment and its installation shall be subject to review and approval by the County. When the service is concluded, or this Agreement terminated, it shall be the responsibility of the Village to remove all such equipment at Village expense. A chemical spill plan shall be prepared by the Village or Approved Supplier and submitted to the County for approval.

F. The Village and Village personnel and the employees and agents of its Approved Supplier shall be allowed all reasonable access to each of said pumping stations as deemed

necessary by the Village and its Approved Supplier, during normal business hours of 7:00 a.m. to 3:30 p.m., with 24 hour notice to the County.

H. When it is necessary for the County to perform routine maintenance or repairs to the equipment at either pump station, the County will provide 48 hour notice to the Village or Approved Supplier of the need to perform such work, absent an emergency situation.

I. In the event that any claim is brought against the County on the basis of any action taken or omitted by the Village or its Approved Supplier during the conduct of the odor control service or as a result of the odor control technologies utilized by the Village or the Approved Supplier, the Village shall indemnify and hold harmless the County and its officers, officials, employees, agents, attorneys, and representatives from any and all costs, damages, judgments, including reasonable attorney's fees and the costs of defense of such claims. Upon receipt of any such claims subject to indemnification under this section the County shall, within 10 days of receipt of such notice, forward same to the Village and its Village attorney.

J. Before the Village or its Approved Supplier shall be allowed to access the County's pumping stations or other facilities of the County Northwest Sewerage System at which odor control technologies are to be used or applied, the Village shall provide proof of insurance in a form acceptable to the County, verifying that the following insurance requirements are met:

1. Statutory Worker's Compensation/Employer's liability insurance coverage for Approved Supplier's and the Village's employees who will access the pumping stations or other County facilities; and
2. Commercial general liability insurance coverage for the Approved Supplier and the Village with a limit of not less than \$1,000,000 each occurrence / \$2,000,000 aggregate. Said coverage shall name the County and its officers, officials, employees, agents, attorneys, and representatives as additional insureds and shall be endorsed by applicable policy endorsement executed by a duly authorized representative of the insurer to provide coverage to the additional insureds on a primary (non-contributor) basis.

K. If any disputes arise between the parties under this Section 4.3, the parties agree to promptly meet to resolve the dispute, the parties recognizing that odor elimination is extremely

vital to the interests of the residents of the Village who live in close proximity to the Northwest Regional Water Reclamation Facility.

L. Nothing contained herein shall prevent the Village, the County, or any Wholesaler from utilizing additional odor control measures at any sewerage facilities within the Northwest Lake FPA consistent with applicable federal and state laws, regulations, and permitting requirements.

ARTICLE V

OWNERSHIP, MAINTENANCE, AND FPA AMENDMENTS

5.1. County Ownership and Maintenance.

The County shall retain ownership of the County Northwest Sewerage System (including without limitation the existing interceptor serving the County Northwest Service Area to its point of connection with the Northwest Regional Water Reclamation Facility), and of all its component parts and of all other facilities and Sanitary Sewers that it now owns, or that it may in the future construct, or of which it may in the future accept dedication from the Village or from any other person or entity. The County shall maintain and operate the County Northwest Sewerage System in accordance with all applicable laws, ordinances, and regulations and shall bear all risk of loss or damage to said system, all at its sole cost.

5.2. Village Ownership and Maintenance.

The Village shall retain ownership of the Northwest Regional Water Reclamation Facility to its point or points of connection to the County Northwest Sewerage System, but shall have no rights, title, or interest whatever in the County Northwest Sewerage System or in any other facilities that the County may construct or accept dedication from any person or entity (other than the right to permit Customers within the Village's corporate limits who currently use, or in the future are authorized to connect to and use, the County Northwest Sewerage System to continue to use the County Northwest Sewerage System). The Village shall maintain and operate the

Northwest Regional Water Reclamation Facility in accordance with all applicable laws, ordinances, and regulations and shall bear all risk of loss or damage to said System, all at its sole cost.

5.3. Right of First Refusal.

A. Northwest Regional Water Reclamation Facility.

(i) In the event that the Village ever seeks to sell the Northwest Regional Water Reclamation Facility and receives a *bona fide* offer from a qualified purchaser for such sale, the County shall have the right of first refusal to purchase the Northwest Regional Water Reclamation Facility in accordance with this Section. Upon receipt of a written *bona fide* offer from a qualified purchaser that satisfies the requirements of Section 5.3.A(iii), the Village shall deliver a copy of such offer to the County. If, within 35 days after such delivery, the County delivers to the Village a written offer to purchase the Northwest Regional Water Reclamation Facility consistent with the terms and conditions set forth in Section 5.3.A(ii), then the Village shall sell the Northwest Regional Water Reclamation Facility to the County pursuant to such offer. If the County fails to deliver a written offer within such 35 day period, the Village may proceed to sell the Northwest Regional Water Reclamation Facility to the qualified purchaser, provided that such purchase is made subject to the terms, conditions, and obligations of this Agreement and said purchaser shall be deemed the successor to the Village under this Agreement.

(ii) Any timely offer from the County pursuant to Section 5.3.A(i) shall be accepted by the Village provided that such offer conforms to the following terms: (a) a purchase price in an amount equal to or greater than the amount of the *bona fide* offer; (b) payment of the purchase price on the same terms as the *bona fide* offer, or within 180 days after the delivery of the County's offer, whichever is later; and (c) such conditions and contingencies that are substantially the same conditions and contingencies as contained in the *bona fide* offer that are not inconsistent with this Agreement.

(iii) The Village agrees that it shall not enter into any contract to sell, or sell, the Northwest Regional Water Reclamation Facility to any person (including any public or private entity) other than a qualified public wastewater treatment plant operator that will continue to use the Northwest Regional Water Reclamation Facility as a public wastewater treatment plant.

B. County Northwest Sewerage System.

(i) In the event that the County ever seeks to sell the County Northwest Sewerage System and receives a *bona fide* offer from a qualified purchaser for such sale, the Village shall have the right of first refusal to purchase the County Northwest Sewerage System in accordance with this Section. Upon receipt of a written *bona fide* offer from a qualified purchaser, the County shall deliver a copy of such offer to the Village. If, within 35 days after such delivery, the Village shall deliver to the County a written offer to purchase the County Northwest Sewerage System consistent with the terms and conditions set forth in Section 5.3.B(ii), then the County shall sell the County Northwest Sewerage System to the Village pursuant to such offer. If the Village fails to deliver a written offer within such 35 day period, the County may proceed to sell the County Northwest Sewerage System to the qualified purchaser, provided that such purchase is made subject to the terms, conditions, and obligations of this Agreement and said purchaser shall be deemed the successor to the County under this Agreement.

(ii) Any timely offer from the Village pursuant to Section 5.B(i) shall be accepted by the Village provided that such offer conforms to the following terms: (a) a purchase price in an amount equal to or greater than the amount of the *bona fide* offer; (b) payment of the purchase price on the same terms as the *bona fide* offer, or within 180 days after the delivery of the Village's offer, whichever is later; and (c) such conditions and contingencies that are substantially the same conditions and contingencies as contained in the *bona fide* offer that are not inconsistent with this Agreement.

(iii) The County agrees that it shall not enter into any contract to sell, or sell, the County Northwest Sewerage System to any person (including any public or private entity) other than a qualified public wastewater system operator that will continue to use the County Northwest Sewerage System as a public wastewater transport system.

5.4 Coordinating Efforts.

The parties acknowledge and agree that the coordination of their respective operations is central to the effective administration of this Agreement, as well as the successful operation of each party's respective systems and facilities (the "**Regional System**"). To this end, beginning in 2010 and every 5 years thereafter throughout the duration of this Agreement, the Wholesale Technical Advisory Committee, in consultation with the Village's and County's respective engineering consultant, will commission a study of the infrastructure and operations of the major elements of the Northwest Regional Water Reclamation Facility and the County Northwest Sewerage System to ensure the efficient and effective operation of the Regional System serving the Northwest Lake FPA (the "**Regional System Review**"). The cost of the Regional System Review shall be paid equally by the Village and the County, and such costs shall be recoverable through Sewer User Fees. The results of the Regional System Review shall not bind the County or Village but are intended to provide guidance on the effective operation of the Regional System.

5.5 FPA Amendments

In order to promote sound public sewer planning and the efficient and economical use of Northwest Regional Water Reclamation Facility and the County Northwest Sewerage System pursuant to this Agreement:

- a. The County agrees that it shall not object to any application by the Village to include territory located within the Village's corporate limits and the County of McHenry within the Northwest Lake FPA; and
- b. Except as provided in Section 5.5.a. of this Agreement, the Village agrees that it shall not seek to amend the Northwest Lake FPA through the addition of land located within the County of McHenry except upon the prior written consent of the County; except that, if (i) such additional land will not

receive Treatment services from the Northwest Regional Water Reclamation Facility, and (ii) the Village has elected that it will not pursue a Tall Oaks Transfer under Section 3.1.1 of this Agreement, then the Village may seek such an amendment of the Northwest Lake FPA and the County agrees it will not object to such an amendment; and

- c. The County agrees that it shall not object to any application by the Village to establish a new sub-FPA that would consist exclusively of all or any part of the Non-Tributary Area; provided that the Sewage from such new sub-FPA does not receive Treatment services from the Northwest Regional Water Reclamation Facility; and
- d. The County agrees that it shall not object to any application by the Village to remove properties within the Non-Tributary Area from the Northwest Lake FPA for the purposes of providing sewer service to the Non-Tributary Area other than through the Northwest Regional Water Reclamation Facility.

ARTICLE VI

OTHER CONTRACTS AND SERVICE

6.1. County Rights.

Except as expressly limited by Sections 2.1 and 2.5 of this Agreement, the County reserves the right to contract with other persons, natural or corporate, private or public, located outside the Village Service Area to perform services similar to those to be performed under this Agreement.

6.2. Village Service Limitation.

Except as provided herein, the Village shall not do anything, including, without limitation, entering into contracts or other arrangements with other persons, natural or corporate, private or public, that will impair, endanger, or interfere with the County's exclusive right as between the parties to this Agreement to serve all areas of the County Service Area, unless the County consents otherwise in writing. In addition, if the Village intends to enter a contract to serve an area outside the County of Lake via the Northwest Regional Water Reclamation Facility, the Village shall notify the County and, as part of such notice, deliver to the County a capacity analysis (which analysis shall be consistent with the types of analyses called for in Section 2.4.B

of this Agreement). If the capacity analysis indicates that such proposed contract will impair the County's ability to deliver Sewage to the Northwest Regional Water Reclamation Facility in accordance with this Agreement, then no such service shall be permitted without the County's approval.

6.3. No Third Party Beneficiaries.

Except as provided in Section 3.2.1, nothing in this Agreement shall create, or be construed to create, any third party beneficiary rights.

ARTICLE VII

LEGAL RELATIONSHIP AND REQUIREMENTS

7.1. Entire Agreement.

This Agreement supersedes and repeals all prior negotiations, representations, and agreements between the parties hereto, including, without limitation, the 1977 Agreement, and there are no representations, covenants, promises, or obligations not contained in this Agreement, including Exhibits attached hereto, that form any part of this Agreement or upon which either of the parties is relying in entering into this Agreement.

7.2. Recitals and Exhibits.

All of the recitals in this Agreement and Exhibits A through H attached to this Agreement are, by this reference, incorporated into and made a part of this Agreement.

7.3. Amendments.

Except as expressly provided otherwise in this Agreement, this Agreement shall not be modified, changed, altered, amended, or terminated without the written consent of both of the parties hereto, as expressed by a resolution duly adopted by their respective corporate authorities. An amendment shall not extend the term of this Agreement unless the amendment specifically states that the term of the contract is to be changed.

7.4. Waivers.

No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived is set forth specifically in a written document executed by a duly authorized representative of such party. No waiver by either 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 of this Agreement be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

7.5. Interpretation and Severability.

It is the intent of the parties 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 Exhibits A through H, inclusive, the provision that best promotes and reflects the intent of the parties shall control. The parties recognize that obligations arising under this Agreement regarding Treatment in Sections 2.1 and 2.2 and Sewer User Fees in Section 3.2 (the "**Service Provisions**") are fundamental to the ongoing Treatment of Sewage within the Northwest FPA. If a Service Provision is construed or held to be void, invalid, or unenforceable in any respect, then the parties agree to renegotiate such Service Provision in order to provide substantially identical terms to the parties in a manner that is valid and enforceable, and if no agreement is reached by the parties within sixty (60) days after the holding of unenforceability or invalidity of the Service Provision, then at the election of either party and upon 30 days notice to the other party, this Agreement shall be null and void. If any provision of this Agreement, not relating to the Service Provisions, 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.

7.6. Regulatory Bodies.

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto and 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 7.6 shall not be construed:

- (a) as authorizing the Village to enact or adopt and enforce ordinances, rules, or regulations inconsistent with the terms of this Agreement or as waiving the right of either party to challenge the validity of such rules, regulations, or laws on any basis, including the impairment of this Agreement; provided that any ordinances, rules, or regulation consistent with state or federal law and not subject to a challenge by either party shall be enforceable by the Village; or
- (b) as authorizing the County to enact or adopt and enforce ordinances, rules, or regulations inconsistent with the terms of this Agreement or as waiving the right of either party to challenge the validity of such rules, regulations, or laws on any basis, including the impairment of this Agreement; provided that any ordinances, rules, or regulation consistent with state or federal law and not subject to a challenge by either party shall be enforceable by the County.

7.7. Successors; Assignment.

This Agreement, and all of its covenants, rights, and obligations, shall extend to, bind, and inure to the benefit of the County and to the Village, and to their respective successors, officers, and officials. Except as otherwise expressly provided in this Agreement, neither the County nor the Village shall: (a) assign this Agreement in whole or in part; (b) assign any of their respective rights or obligations under this Agreement; or (c) assign any payment due or to become due under the terms and conditions of this Agreement, without the prior express written consent of the other party, which consent may not be unreasonably or arbitrarily be withheld. Notwithstanding the foregoing, no approval of the other party shall be required for any assignment of rights or obligations under this Agreement if any right of first refusal has been declined.

7.8. Effective Date and Term.

This Agreement shall be in full force and effect and binding on the parties hereto for twenty (20) years from and after the Effective Date of July 15, 2010.

7.9. 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 Board Chairman

and

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

For notices and communications to the Village:

Village of Fox Lake
66 Thillen Drive
Fox Lake, Illinois 60020
Attn: Mayor

and

Howard R. Teegen
Soffiatti, Johnson, Teegen, Phillips & Argueta, Ltd.
74 East Grand Avenue, P.O. Box 86
Fox Lake, Illinois 60020

By notice complying with the foregoing requirements of this Section 7.9, 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 such a change shall be effective until actually received. Notwithstanding the foregoing, bills and invoices may be sent by regular mail instead of certified or registered mail.

7.10. Execution in Counterparts.

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


7.11. **Enforcement.**

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 federal, state, and local laws, ordinances, rules, regulations, and codes.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals on the date first above written.

COUNTY OF LAKE


VILLAGE OF FOX LAKE


By: 
Suzi Schmidt
Chairman, Lake County Board

By: 
Mayor

ATTEST:

ATTEST:


Willard Helander
County Clerk


Village Clerk

(SEAL)

(SEAL)

EXHIBIT B

Pre-Existing County Sewer Agreements

<u>Municipality</u>	<u>Expiration Date</u>
Village of Hainesville	July 14, 2022
Village of Lake Villa	May 8, 2020
Lakes Region Sanitary District	December 9, 2034

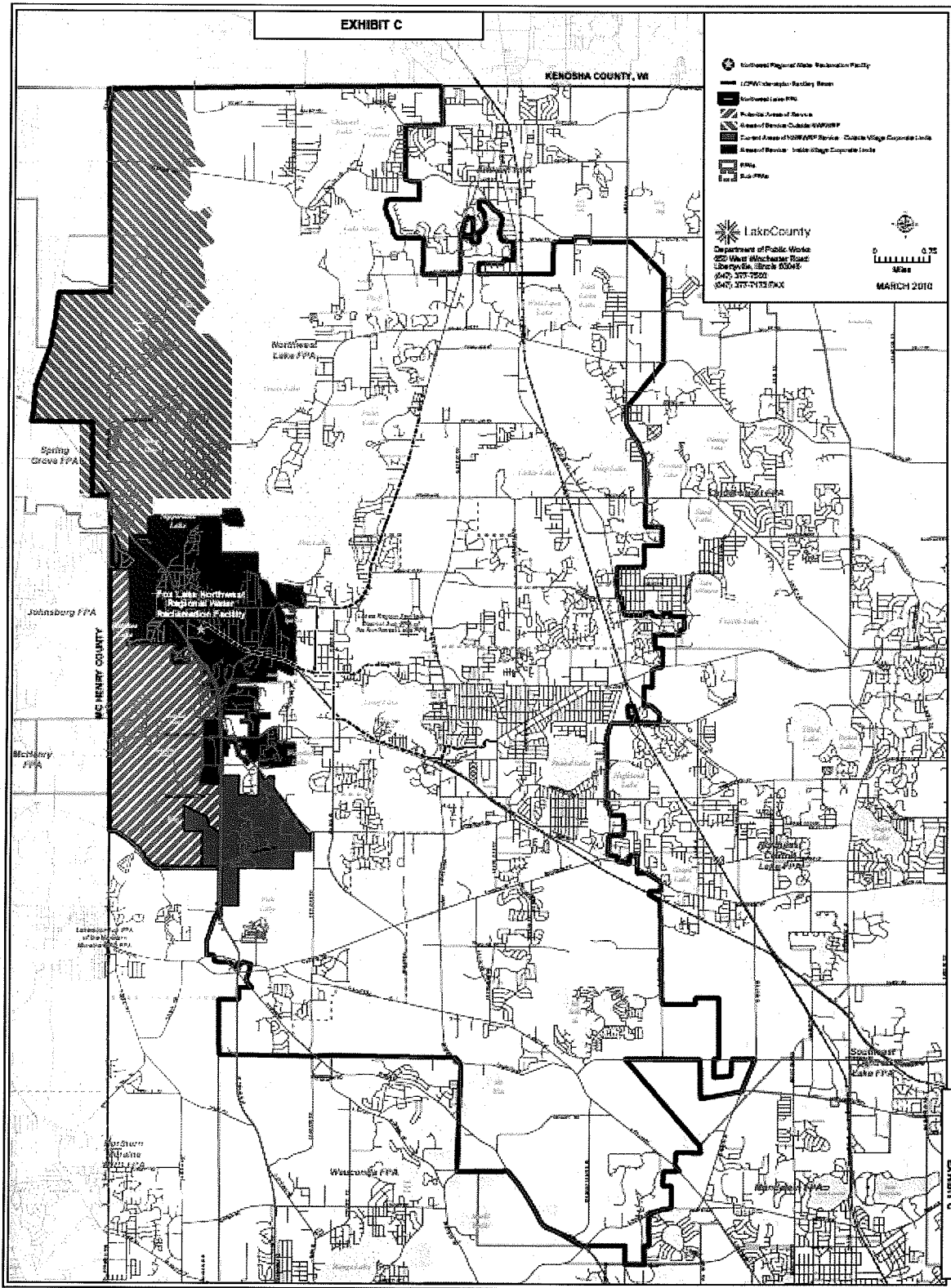


EXHIBIT D

Schedule of Sewer Use Coefficients

Use	Coef.	GPD per
Auto Dealer	0.14	square ft
Bank	0.1	each
Barber Shop	54.6	barber chair
Beauty Shop	269	station
Bowling Alley	133	Alley
Bus - Rail Depot	3.33	square ft
Car Wash	4.78	square ft
Church	5	seat
College Residence	106	student
Dentist / Doctor	0.3	square ft
Fraternal Organization	0.3	square ft
Extended Stay - Motel Style	0.256	square ft
Extended Stay - 2 BR	250	unit
Extended Stay - 3 BR	250	unit
Firehouse	25	person per shift
Gas/Food w/o Car Wash	400	facility
Golf-Swim Clubs	0.5	square ft
Grocery	0.1	square ft
Hospitals	346	bed
Hotels	0.256	square ft
Institution 1 Bedroom	200	unit
Institution 2 Bedroom	250	unit
Jail & Prison	133	person
Laundromat	175	machine
Laundry	0.253	square ft
Medical Offices	0.3	square ft
Motel	0.256	square ft
Night Club / Tavern	1.33	person / capacity
Nursing Home	125	bed
Office, Large > 10,000 sf	0.1	square ft
- additional use	0.03	square ft mechanical space
- additional use	25	cafe seat
Office, Small ≤ 10,000 sf	0.1	square ft
Office, Old ¹	0.142	square ft
Pool outdoor	2.5	resident / member/patron
Professional Bldg	0.1	square ft
Restaurant, Drive-In	109	car stall
Restaurant, Non Chain	25	seat
Restaurant, Large Chain	2000	unit
Restaurant, Small Chain	625	unit
Retail > 100,000 sf	0.05	square ft
Retail ≤ 100,000 sf	0.10	square ft
School, High ²	5-7	student
School, Elementary ²	2.5 - 3.5	student
Service Station	0.251	inside square ft
Theaters	3.33	seat
Warehouses	0.025	square ft plus office
Health Club	0.5	square ft.

General Note: Connection fees will be based on numbers indicated here or some other agreed upon amount.

Footnote 1: Old Offices have not been modernized with modern water saving fixtures and may include toilet facilities that use greater than 1.6 gallons per flush.

Footnote 2: IEPA permits may require higher coefficients.

EXHIBIT E

Sewer User Fees for Northwest Regional Water Reclamation Facility
as of the Effective Date

	<u>Monthly Rate /</u> <u>R.C.E.</u>
Village Customers	\$23.26
County Customers	\$16.75

EXHIBIT G

Financial Statement Categories

Operating Revenues

- User Charges
- Connection Fees
- Inspection Fees
- Revenue from Other Sources

TOTAL REVENUES

Operating Expenses

- Salaries, Payroll, and Related Personnel Expenses
- Expenses: Office Supplies, Equipment, Furnishings
- Building Operation and Maintenance Expenses
- Chemical Supplies
- Laboratory Supplies
- Rolling Stock and Equipment Operating and Maintenance Expenses
- Capital Expenses for Rolling Stock and Equipment
- Miscellaneous Commodity Expenses
- Consultant Services
- Software and Data Processing Maintenance
- Laboratory Fees
- Training/Continuing Education Expenses
- Pest Control
- Garbage Disposal
- Security Services
- Biosolids Management
- Telecommunication and Data Services
- Building and Storage
- Sewage Collection and Transport Facilities Construction, Repair, and Replacement Expenses
- Sewage Collection, Retention, and Transport Facilities Operation and Maintenance Expenses
- Transmission and Disposal Fees and Charges
- Wells, Water Storage Tank Operation and Maintenance Expenses
- All Other Maintenance
- Equipment Rental
- All Other Fees
- Wholesale Sewerage T
- Meter Reading Service
- Testing and Inspecting
- H/L/D Employee Benefit
- Retirement Benefits/

- Auditing And Accounting
- Financial Services
- Bio Hazard Waste Disposal
- Publications & Legal Notices
- Insurance
- Temporary Employment Services
- Indirect Cost Allocations
- Revenue Bond Issue Costs
- Loss on Revenue Bonds Refunding
- Principal Payments
- Interest Payments
- Depreciation Expense

TOTAL EXPENSES

(Surplus) or Deficit

EXHIBIT H

Page 1 of 5

7-3A-19: FATS, OIL AND GREASE DISCHARGE POLICY:

- A. **Grease Interceptor Installation Requirement Criteria:** Grease interceptors are required for all facilities used and operated regularly for the commercial preparation of foods. Businesses requiring grease interceptors include, but are not limited to, restaurants, cafes, fast food outlets, pizza outlets, delicatessens, sandwich shops, and any other kinds and types of food vending establishments in which any food preparation (including heating or defrosting in or by means of any kind of oven or heating device) takes place on the premises, whether or not such facilities are located in a separate building or structure or occupied by other businesses, as well as schools, churches, boarding houses with communal kitchen facilities, nursing homes, and daycare centers which have kitchens and engage in the preparation of food.

If there is more than one building in the facility in which food preparation takes place, each building shall have its own grease interceptor sized as outlined in the minimum requirements or all buildings may discharge to a single grease interceptor that has been sized to the criteria for each individual kitchen.

The exception shall be those facilities granted a variance, after review and approval from the superintendent of the POTW. Grease interceptors shall not be required for private residences or dwellings.

- B. **Grease Interceptor Design Criteria:** Each business establishment, for which a grease interceptor is required, shall have a dedicated service and grease interceptor. The design of the grease interceptor shall be in accordance with the minimum requirements enacted by the village of Fox Lake as indicated below, and shall have a minimum of two (2) compartments with fittings designed for grease retention.

Minimum Requirements

1. Installation of an outside grease interceptor with a minimum liquid holding capacity of one thousand (1,000) gallons. (Sandwich bars and carryout services, which only prepare noncooked foods such as cold sandwiches, shall install a minimum 400 gallon grease interceptor unless the superintendent of the POTW grants a variance.)
2. Installation of a four foot (4') diameter inspection/sampling manhole downstream of grease interceptor.
3. All miscellaneous sinks, slop sinks, floor drains, water wash hoods, etc., located in the kitchen area shall be plumbed to connect into the new grease interceptor.
4. Prohibited discharge to the grease interceptor includes:
 - a. All washroom facilities.
 - b. Food waste grinders.
 - c. Dishwashing machines.

There shall be an adequate number of manholes to provide access for the cleaning of all areas of an interceptor; a minimum of one per interceptor section, and one sampling manhole directly downstream of the interceptor and prior to the effluent entering the sewer main. Manhole covers shall be gastight in construction and have a minimum opening dimension of twenty four inches (24").

One complete set of plans shall be submitted to the village of Fox Lake building department, these plans at a minimum shall include mechanical and plumbing sections. Additionally, the plans shall include size, type and location of each interceptor proposed.

The village of Fox Lake building commissioner shall approve these plans including size, type and location

7-3A-19: FATS, OIL AND GREASE DISCHARGE POLICY:

Page 2 of 5

of the interceptor prior to any construction at the proposed site.

C. Grease Interceptor's Location: Each grease interceptor shall be installed and connected such that it is easily accessible at all times for inspection, cleaning, and the removal of intercepted grease. The grease interceptor(s) shall be located as close to the source as practical, however it must be outside the facility served whenever possible. The village of Fox Lake building commissioner prior to any construction on the proposed site shall approve the location of any grease interceptor.

D. Inspection Of Grease Interceptors: The village of Fox Lake industrial pretreatment department shall inspect all grease interceptors within the village of Fox Lake and develop a mechanism to inventory all grease interceptors of properties connected to the collection system, and document the inspections of these grease interceptors. Once all the grease interceptors in the service area are identified, the grease interceptors shall be classified into two (2) categories:

1. Problem Or Significant Grease Interceptors: The facilities connected to these grease interceptors contribute significant amounts of animal/vegetable fats, oil, grease and/or admissible wastes to the collection system or facilities which have been defined as a chronic problem facility. These grease interceptors shall be inspected and documented at a frequency of once every six (6) months or as deemed necessary.

2. Nonsignificant Grease Interceptor: The facilities connected to these grease interceptors do not contribute significant amounts of animal/vegetable fats, oil, grease and/or admissible wastes to the collection system. These grease interceptors shall be inspected and documented at a frequency of once every twelve (12) months or as deemed necessary.

E. Grease Interceptor Maintenance And Pumping Schedules:

1. It shall be the responsibility of the owner to assure that proper maintenance and pumping/cleaning of the grease interceptor is properly performed and documented. All grease interceptors shall be maintained in efficient operating condition. When pumping/cleaning of the grease interceptor is performed the entire contents of the grease interceptor shall be removed, which includes the removal of all accumulated grease, solids and liquid. The pumping/cleaning of the grease interceptor shall be performed in accordance with the schedule listed below and shall be performed in a manner that does not discharge grease into the collection system. At no time may any portion of the contents removed from the grease interceptor be discharged back into the grease interceptor or the sanitary sewer system. The owner/lessee shall conduct, on a monthly basis, an inspection of each interceptor. At no time may the accumulated grease and/or solids exceed twenty five percent (25%) of the holding capacity of the grease interceptor. These inspections and cleanings must be documented and the records kept on site for a minimum of two (2) years. Records to be kept on site shall include a maintenance log showing each date of pumping or service and copies of receipts and manifests describing each pumping or service. All records shall be made available to the pretreatment inspector (upon request). All grease and/or solids removed from the grease interceptor must be properly documented and disposed of by a licensed waste hauler.

2. All existing business/industrial users connected to grease interceptors prior to the implementation of this fats, oil and grease discharge policy are required to pump and clean their interceptor(s) at a minimum frequency of once every thirty (30) days. Inspections and samplings of grease interceptor(s) by the village of Fox Lake pretreatment department shall determine if this pumping/cleaning frequency is adequate to control the amounts of fats, oils, grease and/or admissible wastes entering the collection system or if the pumping/cleaning frequency needs to be adjusted. The village of Fox Lake pretreatment department has the right to increase the pumping and cleaning frequency as deemed necessary. All requests to reduce the pumping/cleaning frequency must be submitted to the village of Fox Lake pretreatment department, in letter form. The address is:

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Village of Fox Lake NWRWRF

Pretreatment Department

200 Industrial Avenue

Fox Lake, IL 60020

The village of Fox Lake pretreatment department must approve any changes to this frequency in writing prior to any change being made. In addition, the village of Fox Lake pretreatment department may require the business/industrial user to implement best management practices in order to reduce its discharge to acceptable levels.

3. All new, remodeled and/or chronic problem facilities required to connect to a grease interceptor(s) in accordance with the provision of this policy are required to pump and clean their interceptor(s) once every sixty (60) days (or every other month). Inspections and samplings of grease interceptor(s) by the village of Fox Lake pretreatment department shall determine if this pumping/cleaning frequency is adequate to control the amounts of fats, oils, grease and admissible wastes entering the collection system or if the pumping/cleaning frequency needs to be adjusted. The village of Fox Lake pretreatment department has the right to increase the pumping and cleaning frequency as deemed necessary. All requests to reduce the pumping/cleaning frequency must be submitted to the village of Fox Lake pretreatment department, in letter form. The address is:

Village of Fox Lake NWRWRF

Pretreatment Department

200 Industrial Avenue

Fox Lake, IL 60020

The village of Fox Lake pretreatment department must approve any changes to this frequency in writing prior to any changes being made.

4. If deficiencies are found during an inspection performed by the village of Fox Lake, the owner shall have three (3) weeks to bring the facility into compliance. If the grease interceptor fails a second (consecutive) inspection, the village of Fox Lake shall require the owner to contract with a qualified contractor to install new or additional equipment to bring the facility into compliance. This work shall be completed within six (6) months of the date the village requires such contract to be made. The cost of all work required to bring the facility into compliance shall be the burden of the owner.

F. Biological Treatment: Biological treatment shall not be a substitute for the complete pumping of the grease interceptor at the frequency described in this policy.

G. Existing Sources Not Connected To Grease Interceptors: Existing sources of fats, oil, grease and/or admissible wastes not connected to grease interceptors, which contribute significant amounts of fats, oil, grease and/or admissible wastes will be identified through inspection of the collection system by the village of Fox Lake sewer department. Once these sources are identified, the sewer department shall notify the pretreatment department of their presence. The pretreatment department shall in writing require these facilities to implement best management practices (BMPs) to keep fats, oil, grease and excessive amounts of admissible waste out of the wastewater collection system. All BMPs must be submitted to the pretreatment department for review and approval. Examples of a BMP include:

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1. Scrape food from plates into garbage cans.
2. Prewash plates by spraying them off with cold water over a small mesh catch basin positioned over a drain. This catch basin should be cleaned into a garbage can as needed.
3. Pour all liquid oil and grease from pots and pans into a waste grease bucket stored at the pot washing sink. Heavy solids buildup of oil and grease on pots and pans should be scraped off into waste grease bucket.
4. Other kitchen practices identified by the village of Fox Lake or the facility, connector communities or sanitation district and/or facility which will decrease the point source discharge of fats, oil, grease and/or admissible wastes.

If the sewer department finds through inspections of the collection system that the implemented BMPs are not successful at the facility and the facility continues to contribute significant amounts of fats, oil, grease and/or admissible wastes to the collection system, the owner will be required to install an adequately sized grease interceptor as outlined in this policy within six (6) months after being notified.

H. Request For Variance: If a facility that is required to install a grease interceptor finds and documents by a licensed plumber that the facility cannot meet the minimum requirements for a grease interceptor, that facility may submit in writing a variance request. This request must explain the situation, which makes the minimum requirement unachievable, along with an alternative plan for FOG and/or admissible waste reduction. This request must be submitted to the village of Fox Lake pretreatment department within thirty (30) days of the order to install a grease interceptor.

If a facility believes that the pumping/cleaning schedule should be decreased the facility must submit in writing a variance request. This request must include a statement from the grease removal company that the facility has pump/clean their interceptor. The request must also state the frequency the facility feels would be adequate.

No changes to any portion of the FOG policy can be changed until the facility receives from the POTW a written letter either accepting, accepting with conditions or denying the variance request. The facility must abide by the terms the POTW specifies.

I. Penalties And Fees: The penalties, fines and/or fees associated with noncompliance with this fats, oil and grease discharge policy or portions of the pretreatment ordinance shall be as follows:

<u>Violation</u>	<u>Fine</u>
Noncompliance with local limits on discharge (section <u>7-3A-13</u> of this article)	\$150.00
Noncompliance with local limits on discharge, second violation in a six (6) month period	250.00
Noncompliance with local limits on discharge, more than two (2) violations in a six (6) month period	750.00 per violation (in addition to further legal actions)

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Noncompliance with pumping/ cleaning schedule	250.00
Noncompliance with pumping/ cleaning schedule more than once in one year	75.00 per violation
Noncompliance with record keeping or reporting requirements	250.00 per violation
Any sanitary sewer overflow (SSO)	75.00 per violation
Any sewer backup	500.00 per violation
The fees associated with the FOG policy are as follows:	
<u>Activity</u>	<u>Fee</u>
Any facility that requires the to install a grease interceptor in accordance with this policy shall need an inspection by the village plumbing inspector.	\$150.00 per inspection

All fines, fees and compliance orders must be paid in full or satisfied before any new or renewal of business license application will be approved. The village has the right to revoke any business license for a facility (within Fox Lake), which has an outstanding balance or an unresolved compliance order.

If business license renewal occurs within a compliance schedule a temporary license may be issued until the final compliance date.

Compliance status shall be reviewed annually, at the time of business license renewal. All fines, fees and compliance orders must be paid in full or satisfied before applications will be approved. No license shall be issued to a facility with an outstanding balance.

The above penalties, fines and/or fees may be assessed by the supervisor of the POTW. If a person or company against whom a penalty, fine or fee is assessed under this FOG discharge policy disputes the assessment of the penalty, fine or fee and notifies the POTW *in writing* of the basis for the dispute within *thirty (30) days* after assessment of the penalty, fine or fee, then the supervisor of the POTW may adjust the penalty, fine or fee if sufficient cause exists to do so. If the supervisor of the POTW does not believe the penalty, fine or fee should be adjusted, then he shall deliver copies of the original assessment notice and the notice of dispute to the chairman of the sewer and water committee of the village board within fourteen (14) days after the notice of dispute. The sewer and water committee shall thereafter schedule a public hearing before the sewer and water committee, or its designee, which hearing shall be scheduled for no later than thirty (30) days after the notice of dispute has been received by the chairman of the sewer and water committee. The person or company against whom the penalty, fine or fee has been assessed shall be given at least fourteen (14) days' written notice of the hearing. The purpose of the hearing shall be to review the decision of the supervisor of the POTW assessing the penalty, fine or fee, and the decision of a majority of the sewer and water committee shall be final. (Ord. 2005-10, 3-15-2005)