

Resolution No. 24-01

A RESOLUTION OF THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS
APPROVING THE SEVENTH SUPPLEMENTAL AGREEMENT WITH
FOX RIVER WATER RECLAMATION DISTRICT

WHEREAS, the Village of West Dundee, Kane County, Illinois (the "Village"), is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, the VILLAGE and the FOX RIVER WATER RECLAMATION DISTRICT, formerly known as the SANITARY DISTRICT OF ELGIN, a municipal corporation (the "District"), have heretofore entered into an Agreement entitled "Agreement Between the Sanitary District of Elgin and the Village of West Dundee for a Joint Sewage Treatment Project in the West Dundee Facilities Planning Area", dated February 25, 1983 ("Agreement"); a Supplemental Agreement entitled "A Supplemental Agreement" dated July 28, 1986 ("Supplemental Agreement"); a Second Supplemental Agreement dated December 12, 1994 ("Second Supplemental Agreement"); a Third Supplemental Agreement dated August 9, 2004 ("Third Supplemental Agreement"); a Fourth Supplemental Agreement dated October 10, 2005 ("Fourth Supplemental Agreement"); and a Fifth Supplemental Agreement dated December 14, 2020 ("Fifth Supplemental Agreement"); and a Sixth Supplemental Agreement dated August 1, 2022 ("Sixth Supplemental Agreement"); and

WHEREAS, the District provides the Village with sanitary sewer treatment services and, therefore, has agreed to contribute its proportional share of the costs of the operations of the District, including the PRSF Project, all as set forth in the SEVENTH SUPPLEMENTAL AGREEMENT BETWEEN THE FOX RIVER WATER RECLAMATION DISTRICT, FORMERLY KNOWN AS THE SANITARY DISTRICT OF ELGIN, AND THE VILLAGE OF WEST DUNDEE FOR A JOINT SEWAGE TREATMENT PROJECT IN THE WEST DUNDEE FACILITIES PLANNING AREA, attached hereto (the "Seventh Supplemental Agreement").

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of West Dundee, Kane County, Illinois, as follows:


1. That the Seventh Supplemental Agreement by and between the Village and the District in the form attached hereto as Exhibit A and made a part hereof, is hereby approved and the President and Village Clerk are hereby authorized to execute and deliver and undertake any and all actions as may be required to implement its terms on behalf of the Village.

2. This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

Passed by the Village President and Board of Trustees of the Village of West Dundee, Kane County, Illinois, this 22nd day of January 2024.

AYES:	Trustees Price, Johnson, Alopogianis, Anderley and Wilbrandt
NAYS:	None
ABSENT:	Trustee Yuscka
ABSTAIN:	None

VILLAGE OF WEST DUNDEE

By: 
Christopher Nelson, President

ATTEST:


Mary Jo Pape, Village Clerk

SEVENTH SUPPLEMENTAL AGREEMENT BETWEEN THE FOX RIVER WATER RECLAMATION DISTRICT, FORMERLY KNOWN AS THE SANITARY DISTRICT OF ELGIN, AND THE VILLAGE OF WEST DUNDEE FOR A JOINT SEWAGE TREATMENT PROJECT IN THE WEST DUNDEE FACILITIES PLANNING AREA

WHEREAS, the VILLAGE OF WEST DUNDEE a municipal corporation ("Village") and the FOX RIVER WATER RECLAMATION DISTRICT, formerly known as the SANITARY DISTRICT OF ELGIN, a municipal corporation ("District"), have heretofore entered into an Agreement entitled "Agreement Between the Sanitary District of Elgin and the Village of West Dundee for a Joint Sewage Treatment Project in the West Dundee Facilities Planning Area", dated February 25, 1983 ("Agreement") and a Supplemental Agreement entitled "A Supplemental Agreement" dated July 28, 1986 ("Supplemental Agreement") and a Second Supplemental Agreement dated December 12, 1994 ("Second Supplemental Agreement") and a Third Supplemental Agreement dated August 9, 2004 ("Third Supplemental Agreement"); and a Fourth Supplemental Agreement dated October 10, 2005 ("Fourth Supplemental Agreement"); and a Fifth Supplemental Agreement dated December 14, 2020 ("Fifth Supplemental Agreement"); and a Sixth Supplemental Agreement dated August 1, 2022 ("Sixth Supplemental Agreement"); and

WHEREAS, the District's National Pollutant Discharge Elimination System ("NPDES") permit for its North Water Reclamation Facility ("North WRF"), in Special Condition 21 of the permit, provides for new phosphorus removal effluent limits and an associated permit construction compliance schedule, and the District has determined that it is necessary, in order to comply with the permit, to construct improvements to the District's North WRF to biologically remove phosphorus. These improvements include the addition of new anoxic and anaerobic Mixing Basins, new Primary Sludge Pumping, a new Aeration Tank, new Blowers and diffusers with dissolved oxygen control, a new Fermenter with associated Odor Control, replacement of the Return Sludge Pumping Station, modifications to the Sludge Transfer Facility, a new

electrical distribution room, new flow monitoring, hydraulic flow improvements; and associated electrical, instrumentation and controls, heating ventilation and air conditioning, piping, valves, and appurtenances for complete installations. These improvements are being made pursuant to a construction project known as the North WRF Phosphorus Removal Improvements Project ("NPRI"); and

WHEREAS, pursuant to Paragraph 13 of the Second Supplemental Agreement, the Village has agreed to pay its pro rata share of the capital costs for any directive to increase the degree of treatment provided at the North WRF; and hereby agrees to contribute to the cost of the NPRI project on the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements contained herein, it is hereby agreed by and between the Fox River Water Reclamation District and the Village of West Dundee, as follows:

1. The forgoing preamble paragraphs are incorporated herein and made a part of this Seventh Supplemental Agreement as though fully set forth.

2. The NPRI Project has been constructed according to certain plans and specification prepared by Black & Veatch, dated February 2019. The total project cost was estimated to be \$28,078,000.00 and included design engineering, construction costs, and post-award engineering costs to complete the NPRI Project. The final, loan eligible, total cost for engineering and construction due to change orders and amendments is \$26,135,734.54 ("Total Principal Cost".) The Total Project Cost, including interest accumulated during construction, is \$26,528,823.40.

3. The Village's proportionate share of the Total Principal Cost of the NPRI Project is based upon the percentage of the Village's design flow at the District's North Treatment WRF as compared to the total design flow of the District's North Treatment WRF. The design flow of the Village is 1.65 MGD divided by 7.75 MGD total design flow of the North Treatment WRF, or 21.29% as set forth in paragraph 1 of Exhibit A, attached hereto and incorporated herein.

4. The Village's accumulated depreciation payments for existing facilities replaced in the project are deducted from the Village's share of the Total Principal Cost. The accumulated depreciation payments total \$621,356, as set forth on Exhibit B attached hereto and incorporated herein. The Village's final proportional share of the Total Project Cost shall be 18.9% based on the calculations set forth in Item B.6 of Exhibit A.

5. The Village of West Dundee shall pay to the District the Village's final proportionate share of the Total Project Cost. Except as otherwise provided herein, payment by the Village for loan eligible costs will be made on the same terms, conditions, interest rate, and amortization period as the District's Illinois Environmental Protection Agency ("IEPA") loan. The District's IEPA loan is to be repaid in 40 semi-annual installments at 1.64% interest. The Village's payments shall be made to the District in advance of the District's payment due dates. The Final Loan Closing Agreement Schedule of Payments is set forth on Exhibit C attached hereto and incorporated herein. Payment by the Village for loan eligible costs shall be made according to the Village of West Dundee Agreed Schedule of Payments set forth on Exhibit D attached hereto and incorporated herein.

6. The Village shall have the right to pre-pay or make further payments from time to time, without penalty, in such amounts as the Village may see fit, to be applied first to interest currently due and owing and then to principal, until the principal balance remaining unpaid is paid in full.

7. Without prejudice to any other remedy at law or equity, in the event that Village fails to make any one payment of its share of the loan payments due to the District under this agreement for a period of 18 months then all principal and interest due to the District by Village for its pro rata share of the loan eligible portion of the total project costs shall become immediately due and payable.

8. Other than the requirements, if any, of the parties original grants received pursuant to the Agreement, under no circumstances shall this Seventh Supplemental Agreement or the parties' Sixth Supplemental Agreement, Fifth Supplemental Agreement, Fourth Supplemental Agreement, Third Supplemental Agreement, Second Supplemental Agreement, Supplemental Agreement, and Agreement be construed to have created a joint venture, a joint venture entity, joint venture liability or the requirements of joint venture accounting between the Village and the District. It is the intention of the District and the Village that the District shall retain full ownership, operation and control of the subject sewage treatment facilities and the Village's rights and responsibilities are in the nature of contract rights and not those of a joint venturer. Neither the District nor the Village has any authority to take any action to bind the other or impose liability on the other through action or inaction with respect to the subject matter of this Seventh Supplemental Agreement or the parties Sixth Supplemental Agreement, Fifth

Supplemental Agreement, Fourth Supplemental Agreement, Third Supplemental Agreement, Second Supplemental Agreement, Supplemental Agreement, and Agreement.

9. The Agreement, Supplemental Agreement, Second Supplemental Agreement, Third Supplemental Agreement, Fourth Supplemental Agreement, Fifth Supplemental Agreement, Sixth Supplemental Agreement, and this Seventh Supplemental Agreement shall remain in effect for a term of Forty (40) years from the date of execution of this Seventh Supplemental Agreement.

10. In all respects not inconsistent herewith or supplemented hereby, the parties Sixth Supplemental Agreement, Fifth Supplemental Agreement, Fourth Supplemental Agreement, Third Supplemental Agreement, Second Supplemental Agreement, Supplemental Agreement, and Agreement shall remain in full force and effect.

Dated this the 22nd day of January, 2024

FOX RIVER WATER RECLAMATION DISTRICT

By: _____



President

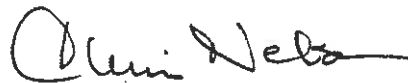
ATTEST:



Clerk

VILLAGE OF WEST DUNDEE

By: _____



President

ATTEST:



Village Clerk