

CONSOLIDATED KOSHKONONG SANITARY DISTRICT

OPERATING AGREEMENT

THIS AGREEMENT is made and entered into effective as of the 22nd day of March, 2005, by and between the **Koshkonong Sanitary District No. 1, Town of Milton** ("Milton Sanitary District"), the **Koshkonong Sanitary District No. 2, Town of Fulton** ("Fulton Sanitary District"), the **Town of Fulton Sanitary District No. 2, Town of Fulton**, all three of Rock County, Wisconsin, the **Koshkonong Sanitary District No. 3, Town of Albion** ("Albion Sanitary District"), of Dane County, Wisconsin, and the **Koshkonong Sanitary District No. 4, Town of Sumner** ("Sumner Sanitary District"), Jefferson County, Wisconsin. The Milton Sanitary District, Fulton Sanitary District, Albion Sanitary District, and the Sumner Sanitary District are each sometimes known herein as an "Original Town Sanitary District," or are sometimes collectively known herein as the "Original Town Sanitary Districts." The Milton Sanitary District, Fulton Sanitary District, Town of Fulton Sanitary District No. 2, Albion Sanitary District, and the Sumner Sanitary District are each sometimes known herein as a "Town Sanitary District," or are sometimes collectively known herein as the "Town Sanitary Districts."

WHEREAS, on or about November 25, 1968, the Town Board of the Town of Milton passed an Order and Resolution creating the Milton Sanitary District under Chapters 60.30 through 60.315 (now Chapters 60.70 through 60.79) of the Wisconsin Statutes (known herein as the "town sanitary district law," as such law may be amended from time to time), and appointing the Town Board as the Commissioners thereof, which Order and Resolution are incorporated herein as if fully set forth; and

WHEREAS, on or about March 12, 1969, the Town Board of the Town of Fulton passed an Order and Resolution creating the Fulton Sanitary District under the town sanitary district law, and appointing the Town Board as the Commissioners thereof, which Order and Resolution are incorporated herein as if fully set forth; and

WHEREAS, on or about January 9, 1969, the Town Board of the Town of Albion passed an Order and Resolution creating the Albion Sanitary District under the town sanitary district law, and appointing the Town Board as the Commissioners thereof, which Order and Resolution are incorporated herein as if fully set forth; and

WHEREAS, on or about October 4, 1969, the Town Board of the Town of Sumner passed an Order and Resolution creating the Sumner Sanitary District under the town sanitary district law, and appointing the Town Board as the Commissioners thereof, which Order and Resolution are incorporated herein as if fully set forth; and

WHEREAS, on or about August 13, 1998 (and amended on or about June 14, 2001), the Town Board of the Town of Fulton passed an Order and Resolution creating the Town of Fulton Sanitary District No. 2 under the town sanitary district law, which Order and Resolution are incorporated herein as if fully set forth, and further either has, (or intends to shortly after adoption by all parties of this Agreement) replace its existing commissioners with the Town Board as the Commissioners thereof; and

WHEREAS, each Town Sanitary District has, by resolution, provided for the creation of a consolidated sanitary commission pursuant to Chapter 66.30 (now Chapter 66.0301) of the Wisconsin Statutes (the “intergovernmental cooperation law”) for the purpose of acquiring and developing property interests and rights in three counties in the southwestern Lake Koshkonong area for sanitary sewer facilities, as provided for in the town sanitary district law; and

WHEREAS, the intergovernmental cooperation law provides that any municipality may contract with one or more other municipalities in this state for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. The intergovernmental cooperation law further provides that if various municipalities have varying powers or duties under the law, each may act under a contract between and among them to the extent of their respective lawful powers and duties. Finally, the intergovernmental cooperation law provides that such law shall be interpreted liberally in favor of cooperative action between municipalities in this state; and

WHEREAS, on or about December 1, 1971, the Original Town Sanitary Districts executed a CONTRACT CREATING A COMMISSION AND PROVIDING A PLAN FOR THE ADMINISTRATION OF SAID COMMISSION, thereby creating the Consolidated Koshkonong Sanitary District (herein known as the “CKSD,” the “District,” or the “Commission”); and

WHEREAS, under the Commission Contract each Original Town Sanitary District granted to the CKSD all powers that each Original Town Sanitary District had under the town sanitary district law, and thus, all of said powers available to the Original Town Sanitary Districts under the town sanitary district law were granted to the CKSD; and

WHEREAS, on or about in December of 1992, each Original Town Sanitary District adopted an AMENDMENT TO CONTRACT CREATING A COMMISSION AND PROVIDING A PLAN FOR THE ADMINISTRATION OF SAID COMMISSION DATED DECEMBER 1, 1971 (the 1971 Contract, as amended by the 1992 Amendment, is known herein as the “Commission Contract”), in order to specifically authorize the CKSD to issue bonds and to undertake other types of financing in furtherance of its purpose; and

WHEREAS, no further amendments to the Commission Contract exist; and

WHEREAS, given the growth patterns of the various constituent townships comprising portions of the CKSD, the need for a more definitive agreement between and among the Town Sanitary Districts was perceived, which would allow for better and more planned growth.

NOW, THEREFORE, for valid consideration, the receipt, adequacy, and sufficiency of which is hereby acknowledged by all parties hereto, the Milton Sanitary District, the Fulton Sanitary District, the Albion Sanitary District, the Sumner Sanitary District, and the Town of Fulton Sanitary District No. 2 agree as follows:

1. **Recitals**. The above Recitals are true and correct.
2. **Intent of Contract**. It is the intent of the CKSD to act in the best interests of its constituent Town Sanitary Districts. When these interests conflict, it is the intent of the

Commissioners to amicably resolve such questions in the best interest of the District as a whole, giving due consideration to the growth patterns in the District and the fairness to all parties involved. When called upon to approve of a development project, it is not the intent of the CKSD to judge the merits of such project, but rather to approve or disapprove of the project simply as a matter of capacity. When a development project involves land which is already part of the District, then in that event, the District shall have the priority of servicing its current customers first.

3. **Powers Granted To CKSD.** Each Town Sanitary District grants all powers which such respective Town Sanitary District has to the CKSD, including but not limited to, those powers granted to town sanitary districts under the town sanitary district law, as such law may be amended from time to time. Such powers are granted in full to the CKSD pursuant to the intergovernmental cooperation law, to be exercised pursuant to the terms of this Agreement. Such grant of power is not an abdication of the Town Sanitary Districts' powers under town sanitary district law, but is simply a grant of all such powers to the CKSD in order to act on the Town Sanitary Districts' behalf. Notwithstanding the foregoing or anything to the contrary contained herein, the Town Sanitary Districts shall retain all power and authority to borrow, lend, or service any debt which is in addition to CKSD debt.

4. **Representations and Warranties.** Each Town Sanitary District represents and warrants to the other Town Sanitary Districts and to the CKSD that it has been granted full power and authority under the town sanitary district law to act in accordance therewith.

5. **Representation of Commissioners.** The Commission shall consist of five Commissioners, with one each being appointed from each Town to represent all sanitary districts within said town and with the fifth Commissioner being appointed for a four-year term as follows:

Upon execution of this Agreement, the Town of Milton shall appoint the fifth Commissioner for a term commencing on the date of execution hereof, and ending on December 31, 2007. Thereafter, first the Town of Fulton, then the Town of Albion, and finally the Town of Sumner, shall each respectively appoint the fifth Commissioner for a four-year term. After such sixteen-year rotation, the respective Town Sanitary Districts shall continue to appoint such fifth Commissioner in the same order as set forth herein for respective four-year terms.

Notwithstanding the appointment of the fifth Commissioner set forth above, the other four Commissioners from each Town shall be appointed for an indefinite period by such Town Board in any manner that the Town Board sees fit. Such Commissioners shall be subject to removal by such Town Board at the pleasure of the Town Board. Any vacancy shall be filled by the Town Board from which such vacancy occurs.

All residency and other requirements for the Commissioners shall be as set forth in the town sanitary district law.

6. **Election of Officers.**

a. **Election.** The District shall elect from its Commissioners a president, vice-president, secretary, and treasurer. None of these offices may be combined, and said offices shall be divided as equally as possible between the Commissioners from the Town Sanitary Districts. Said Commissioners shall meet no later than in November of each year to elect officers for the next succeeding calendar year. All officers shall be elected for a term of one year commencing on January 1st and continuing through December 31st of the following year. All officers shall be elected for successive years on an annual basis at the November meeting.

b. **Vacancies.** Any vacancy in any office shall be filled as soon as possible, either at the next regularly scheduled meeting, or at a special meeting called for such purpose.

c. **Quorum.** A quorum of Commissioners shall be sufficient to conduct any business coming before the District. A quorum shall consist of the presence (either physically or electronically (but not taped or otherwise delayed)) of a majority of all Commissioners. Unless otherwise set forth herein, in the town sanitary district law, or in the intergovernmental cooperation law, all acts of the Commission shall be decided by a majority vote of the Commissioners at a legally constituted regular or special meeting, but in all events the consent or approval of at least three Commissioners shall be required to decide any matter. No Commissioner may give a proxy to any other person to act at any meeting, regardless of whether or not such person is also a Commissioner.

d. **Meetings.** All meetings shall be held under Roberts Rules of Order, latest edition. All meetings shall be called as set forth in the District's Code of Ordinances (the "Ordinances").

7. **Revenues, Expenses, & Reports.**

a. **Revenues.** District revenues shall be generated as determined by the Commissioners and as set forth and allowed under the town sanitary district law.

b. **Expenses and Banking.** District expenses shall be paid and allowed as determined by the Commissioners and as set forth and allowed under the town sanitary district law. Funds supplied to the District shall be deposited in a Federal- or state-chartered bank, as determined by the Commissioners.

c. **Reports.** Periodic reports, at least annually, shall be given to each of the Town Sanitary Districts concerning the operation of the CKSD. The CKSD shall keep accurate books, records, and accounts of every and all income, revenue, cost, expense, or disbursement which may be earned, made or entered into, and which may or will affect the District's performance, all in accordance with Generally Accepted Accounting Principles as promulgated by the Government Accounting Standards Board. Upon reasonable notice, any Town Sanitary District, or its agent, shall be entitled to examine and inspect the books, records, and accounts of the CKSD for the purpose of verifying such revenues, expenses, or credits made pursuant to, or in performance of, this Agreement.

d. **Professional Services.** The Commission shall expend funds for, and shall retain, engineering, architectural, legal, and other professional services deemed necessary or advisable by the Commission to exercise its duties and powers hereunder, and to contract and pay for such services.

8. **Financing Matters.**

- a. It is the purpose of this Commission to provide for and acquire the necessary sewer facilities for the CKSD, and to represent the Town Sanitary Districts in planning and negotiating for said sewer facilities and the financing of same. In furtherance thereof, and with the consideration that each Town Sanitary District has granted full power to the CKSD under the town sanitary district law, the District may provide for and acquire the necessary sewer facilities and the financing of same utilizing any means allowed under Wisconsin law, including but not limited to the town sanitary district law.
- b. It is not the purpose of this Commission to provide for the repayment of the existing debt of, or debt to be incurred by, any individual Town Sanitary District, which debt is incurred outside of the auspices of the CKSD, including but not limited to debt incurred by the Town of Fulton Sanitary District No. 2, which debt was incurred to construct and install its sanitary sewer collection system, pumping stations and force mains to the District's collection and treatment facilities ("Independent Debt"). All Independent Debt shall be the responsibility of the Town Sanitary District undertaking such debt.
- c. On or before October 1 of each year, the Town Sanitary District which has Independent Debt shall instruct the District on the quarterly charge to be imposed by the District on the RUEs in their Town Sanitary District for their portion of the Independent Debt. This requirement shall end following final payment of such Independent Debt attributable to the Town Sanitary Districts.

9. **Governance Matters.** The Commissioners shall have full right and authority to adopt and revise from time to time a Code of Ordinances (the "Ordinances"). Such Ordinances shall contain provisions governing the day to day operations of the District, and shall be open to inspection and review by the public. Specifically, such Ordinances shall contain, but not be limited to, administrative provisions, sewer use provisions, schedules of District charges and fees, and standard sewer specifications. Such Ordinances shall be adopted or revised from time to time pursuant to Wisconsin law governing municipal entities. The District may also adopt Policy Statements from time to time based upon this Agreement, the Ordinances, and state law, which cover various topics of general interest to the public.

10. **CKSD and Town Allotted Capacity.** Unless otherwise purchased as set forth herein, all excess capacity contained in the District's original wastewater treatment plant shall be CKSD Allotted Capacity. New excess capacity created through wastewater treatment plant

expansions shall be a combination of CKSD Allotted Capacity and Town Allotted Capacity. CKSD and Town Allotted Capacity shall be allocated as follows:

a. **CKSD Allotted Capacity.** Excess capacity from the District's original wastewater treatment plant shall be allocated 100% to CKSD Allotted Capacity, shall be used by the CKSD for infilling and development (including expansions to the District), and shall be utilized on a "first come, first served" basis. Thereafter, CKSD Allotted Capacity from a wastewater treatment plant expansion shall be the difference between the total excess capacity in the expanded facility (as identified in the Wisconsin Department of Natural Resources approved Facilities Plan), and the sum of the Town Allotted Capacity allocated to and purchased by each of the Town Sanitary Districts.

b. **Town Allotted Capacity.** The CKSD shall commence facility planning for a wastewater treatment plant expansion whenever the Commissioners deem it advisable or are forced to do so due to laws, rules, or regulations, but in any event whenever the District's wastewater treatment facility reaches or exceeds 90 percent of its capacity. As a part of the wastewater treatment plant expansion, each Town Sanitary District will be given the opportunity to purchase capacity in the expanded facilities in the form of residential user equivalents (RUE). As a part of the final treatment facility plan, the excess capacity shall be divided into Town Allotted Capacity for each Town Sanitary District in the amount each Town Sanitary District desires to purchase, and CKSD Allotted Capacity. In the event demand exceeds supply at the time such expanded facilities are brought on-line, such capacity shall be allocated to each Town Sanitary District based upon the relative total assessed value of all real property contained in each Town Sanitary District compared with the total assessed value of all real property contained in all Town Sanitary Districts.

c. **Use of Allotted Capacity.** The specific use of allotted capacity shall be as follows:

(1) CKSD Allotted Capacity shall be used as set forth in Section 10(a), above. Up to 80% of the CKSD Allotted Capacity may also be purchased by any of the Town Sanitary Districts at any time. The remaining 20% shall be reserved for CKSD uses. The purchase price of the CKSD Allotted Capacity per RUE shall be the original RUE price as determined in Section 10(d), below, plus interest at a rate that is one percent (1%) above the actual interest rate that CKSD pays on the loan used to construct such treatment expansion. This interest rate shall continue notwithstanding that the CKSD loan may be paid in full.

(2) Town Allotted Capacity shall be used for the development of lands to be annexed into the CKSD. The amount of RUEs to be assigned to each development shall be made by the Town Sanitary District proposing the annexation and by the District. Should the actual developments use more RUEs than identified at the time of annexation, additional RUEs shall be

subtracted from the Town Allotted Capacity of the respective Town Sanitary District or by the use of CKSD Allotted Capacity. Should the actual RUEs at full development be less than the RUEs identified at the time of annexation, the difference between the projected RUEs and actual RUEs shall be returned to the Town Allocated Capacity of the respective Town Sanitary District, or to CKSD Allotted Capacity.

(3) Any Town Sanitary District can purchase RUEs from any other Town Sanitary District at a price negotiated between such Town Sanitary Districts, provided that the seller of the RUEs has available the number of RUEs to be purchased. Terms of the sale shall be between the respective Town Sanitary Districts. Prior to the time of sale, the District shall be notified of the planned sale. Following such notice, the CKSD shall inform both the buyer and the seller that the seller has available the number of RUEs planned to be included in the sale. At the time of the sale of RUEs, CKSD shall be notified of the transfer of RUEs. No Town Sanitary District may sell, assign or transfer RUE's to any private party, nor may RUEs be held in abeyance by a Town Sanitary District in exchange for consideration.

d. **Purchase Price of RUEs.** As a part of the facilities planning process, the cost of an RUE shall be projected and determined by the Commissioners in their sole discretion based upon the flows and loadings included in the design of the new facilities. This cost shall be updated during the design phase to reflect the cost projection based on the detailed design. The final price of an RUE shall be adjusted based upon the actual cost of the project following construction. Each Town Sanitary District has two options for paying the cost of the RUEs as follows:

(1) **Lump Sum Payment.** A Town Sanitary District utilizing this method of payment shall make a deposit with the District in the amount of the total RUEs selected by the Town Sanitary District to be purchased, multiplied by the cost per RUE as determined in the design phase of the project. This payment shall be made following final design but prior to the bidding of construction. Following construction, the final cost per RUE shall be determined and the purchasing Town Sanitary District shall pay its portion of any additional costs if the project costs ultimately exceed the costs projected during the design phase, or a refund will be paid by the CKSD to the purchaser if the final costs are less than the costs determined during design phase.

(2) **Installment Payments.** A Town Sanitary District selecting this method of payment shall make payments to the CKSD one month prior to the date that the CKSD is required to pay its installments on the loan for the treatment plant expansion project. In the event the CKSD must pay more frequently than annually, the District may require the purchaser to make up to quarterly payments hereunder. The payments shall be determined based upon the principal amount calculated by multiplying the number of RUEs

selected by the Town Sanitary District to be purchased by the final cost per RUE. The term of the installment payments shall match, as closely as possible, the term of the CKSD loan. The interest rate on the installments shall be at 1% above the interest rate on the CKSD loan.

11. **District Boundaries and Annexation.** The District boundaries shall be as set forth in the Ordinances of the District, as amended from time to time. The District Service Area of each respective Town Sanitary District (which shall be each Town Sanitary District's planned growth area) is shown on Exhibit A, attached hereto and made a part hereof. Future District Service Area and boundary changes shall be accomplished as set forth in this Section 11. In addition, the District may adopt a Policy Statement covering such boundary and annexation matters.

a. **Modification of District Service Area - Five Year Updates.** Commencing in 2010 and every five years thereafter, all Town Sanitary Districts shall meet with the CKSD Commissioners to reevaluate their District Service Area. The determination of the District Service Area within each Town shall be solely determined by the respective Town Sanitary District (acting through its Town Board). The following procedure shall be followed:

(1) In January of 2010 and in January every five years thereafter, the CKSD Board shall request from each Town Board an update of the District Service Area within the Town in which the Town Sanitary District lies.

(2) Within 6 months of the request by the CKSD Board, each Town Board shall submit to the CKSD the following:

a). Modifications to the District Service Area in the respective Town where the Town Sanitary District lies; and

b). Zoning or proposed zoning within any area addition.

(3) In September of 2010, and in September every five years thereafter, the CKSD Board shall invite the respective Town Boards to a meeting to present the updated District Service Area. At this meeting the CKSD Board shall present the new District Service Area as determined by the respective Town Boards and an update of wastewater treatment plant capacity, remaining Residential User Equivalents in each respective Town Sanitary District, and remaining CKSD reserve Residential User Equivalents (CKSD Allotted Capacity).

(4) Following the September CKSD Joint Meeting with all Town Sanitary Districts, each Town Board shall have the final opportunity to change its proposed District Service Area, which changes shall be forwarded by the CKSD to all Town Sanitary Districts.

(5) In December of 2010 and in December every five years thereafter, the CKSD Board shall adopt the updated District Service Area in each town as determined by the respective Town Boards.

b. **District Service Area Modifications Between Five Year Updates.** Any Town Sanitary District (acting through its Town Board) may change the District Service Area in its township between Five Year Updates by the following procedure:

(1) Following the Town Board's decision to seek a change to its District Service Area, the Town Board proposing the change shall submit the proposed changes to the CKSD Board. The Town Board proposing the change shall meet with the CKSD Board and respond to any comments or questions posed by the CKSD Board.

(2) Following the submission of the proposed changes and consideration of any comments and questions by CKSD, the Town Board proposing the change shall submit such change to, and seek the approval of, all other Town Sanitary Districts.

(3) Finally, the Town Board proposing the change shall re-submit such change to the CKSD Board, along with the final zoning approved by the respective Town and/or County, if necessary and as the case may be (or the proposed zoning in the event final zoning approval is dependent upon the CKSD's approval), and the approval resolutions from the balance of the Town Sanitary Districts.

(4) Following receipt and verification of the necessary documentation, the CKSD Board shall approve the change in the District Service Area at a meeting in which special notice has been provided to all Town Sanitary Districts.

(5) In lieu of the procedure described in 11(b)(1) through (4), a Town Sanitary District may add areas to its District Service Area by reducing the District Service Area within its Town (and which land is also located outside of the CKSD) in like area as the lands proposed to be added to the District Service Area. This transfer of area becomes effective following a CKSD public meeting to which all Town Sanitary Districts have been invited, and which transfer has been approved by a majority of the CKSD Commissioners.

(6) **Indemnity.** The party proposing such changes shall indemnify, defend and hold the District, its Commissioners, employees, and agents (the "Indemnified Parties"), harmless from and against all claims, demands, damages, costs, losses, claims, liabilities, demands and expenses (including legal and professional expenses), which the Indemnified Parties may at any time incur as a result of any and all acts or omissions in connection with such boundary changes.

c. **Modification of District Boundaries.** The party proposing to change the boundaries of one or more of the Town Sanitary Districts, and thereby change the boundary of the CKSD, shall make application to the Town Board of each affected Town Sanitary District and follow the procedures set forth in Wisconsin's town sanitary district law.

d. **CKSD Approval.** After each affected Town Board approves the changing of its Town Sanitary District boundaries, such change shall come before the Commission. In the event that (a) such change lies outside the current District Service Area, (b) such change involves a residential development consisting of more than 100 total units (in all phases), (c) such change involves a commercial or agricultural development which is likely to utilize more than 100 RUEs, or (d) such change is likely to materially accelerate the need for expanded treatment facilities, then in that event such change must be approved by a majority of the four constituent townships, voting through their Commissioners. In all other events, such change shall be accepted by the CKSD based upon available capacity.

e. **Costs and Expenses.** To the extent allowed by law, all costs and expenses incurred by the District, including but not limited to meeting, engineering, design, legal, financial, and other expenses shall be paid by the party proposing such changes, as may be more fully set forth in the Ordinances.

f. **Compliance with Laws and Ordinances.** All Town Sanitary Districts, hereby agree to adhere strictly with all District Ordinances, and with all federal and state laws, rules, regulations, statutes, and directives pertaining to the District and its business. In the event any Town Sanitary District violates the terms or provisions of this Agreement, the Ordinances, or any laws, rules or regulations, the CKSD or any other Town Sanitary District may enforce the same, and the violating District shall pay to the CKSD and any other Town Sanitary District all costs and expenses resulting from such acts, failure, or omissions.

12. **Term.** To the extent allowed by law, the term of this Agreement shall be perpetual. Notwithstanding any other term or condition to the contrary contained herein, no Town Sanitary District may withdraw from participation in the CKSD, or withdraw from this Contract, so long as any public debt of the District is outstanding, or so long as such withdrawal would act to the serious detriment of the District or the other Town Sanitary Districts.

13. **Amendments to This Agreement.** This Contract supersedes the 1971 Commission Contract and the 1992 Amendment thereto, both which shall be of no further force and effect. Further, this Contract supersedes the operation and maintenance agreement and the billing and accounting agreement between and among the CKSD and FSD2, both of which shall be of no further force and effect. Notwithstanding the foregoing, to the extent that voiding the 1992 Amendment violates any financing provision agreed to by the District, such Amendment shall remain unchanged. Amendments to this Agreement may hereafter be made at any time upon the authorization by each respective Town Sanitary District, evidenced by written amendments executed by the President and Secretary of each respective Town Sanitary District. All resolutions adopted by each of the

respective Town Sanitary Districts authorizing this Agreement are hereby incorporated herein by reference and made part of this Agreement as though fully set forth (except and to the extent that such resolutions conflict with, or otherwise modify, this Agreement). Such resolutions shall be attached hereto as Exhibit B.

14. **Town Sanitary District Systems.** It is the further intent of this Contract that each Town Sanitary District which is a party hereto contribute its operating systems, equipment, accounts and intangibles to the CKSD (subject to all terms and conditions of any grants or loan programs utilized to construct such systems and equipment), to be used for the general good of the CKSD. As such, the CKSD shall have the full right to use such systems, equipment, accounts and intangibles for the general maintenance and upkeep of the entire, consolidated CKSD system. As such, in the event any individual Town Sanitary District has available to it or is required to maintain equipment replacement accounts, the CKSD shall have access to these accounts in order to benefit the entire CKSD system.

15. **Waiver of Liability.** The CKSD and each of the Town Sanitary Districts agree that no party hereto shall be responsible or liable to any other party hereto for any claim, damage, loss or expense caused by the breakdown or failure of any sewer facilities affected by this Agreement which is not due to the gross negligence or wilfully tortuous act of the responsible party.

16. **Specific Performance.** All parties hereto declare that it is impossible to measure in money the damages which may accrue to an aggrieved party hereto by reason of a failure to perform any of the obligations under this Agreement. Therefore, if any party hereto shall institute any action or proceeding to enforce the provisions hereof, any party against whom such action or proceeding is brought hereby waives all claims or defenses therein that such party has an adequate remedy at law, and such party shall not urge in any such action or proceeding the claim or defense that such remedy at law exists.

17. **Binding Effect.** This Agreement shall be binding on each party and its successors and assigns, by consolidation, merger, or otherwise.

18. **Counterparts.** This Agreement may be signed in several counterparts, each of which shall be an original, but all of which together shall constitute the same instrument. Delivery of a signed counterpart by facsimile transmission shall be effective as delivery of a manually signed counterpart of this Agreement.

19. **Assignment.** This Agreement shall not be assigned by any party without the prior written consent of the other parties. Notwithstanding the foregoing, this Agreement may be assigned by a party hereto for the limited purpose of obtaining financing, but only if the assignor agrees to indemnify, defend, and hold the balance of the parties to this Agreement harmless from and against any liability or damages as a result of such assignment.

20. **Notices.** All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given at the earlier of the date when actually delivered to a party or to an officer of a party, when deposited in the United States mail, in certified

or registered form, postage prepaid, return receipt requested, or by facsimile transmission, and addressed as follows, unless and until each of such parties notifies the others of a change of address:

Consolidated Koshkonong Sanitary District

328 East Ellendale Road
Edgerton, Wisconsin 53534
608.868.7191 (ph)
608.884.6447 (ph)
608.868.5325 (f)

Koshkonong Sanitary District No. 1, Town of Milton

P.O. Box 447
Milton, Wisconsin 53563
608.868.2312 (ph)
608.868.2312 (f)

Koshkonong Sanitary District No. 2, Town of Fulton

2738 West Fulton Center Drive
Edgerton, Wisconsin 53534
608.868.4103 (ph)
608.868.4104 (f)

Koshkonong Sanitary District No. 3, Town of Albion ,

624 Albion Road
Edgerton, Wisconsin 53534
608.884.8974 (ph)
608.884.2130 (f)

Koshkonong Sanitary District No. 4, Town of Sumner

W8005 High Ridge Road
Fort Atkinson, Wisconsin 53538
920.568.0484 (ph)
920.568.9477 (f)

Town of Fulton Sanitary District No. 2

328 East Ellendale Road
Edgerton, Wisconsin 53534
608.868.7191 (ph)
608.884.6447 (ph)
608.868.5325 (f)

21. **Captions.** The captions of the paragraphs in this Agreement are only for convenience or reference and do not define, limit, extend or describe the scope or intent of this Agreement.

22. **Governing Law, Venue, and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. All parties hereto consent to

the exclusive jurisdiction of the circuit courts located in Rock, Jefferson, or Dane Counties, Wisconsin (as any party may choose), or to the United States Federal Courts for the Eastern or Western Districts of Wisconsin.

23. **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision hereof, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

24. **Entire Agreement.** This instrument contains the entire agreement between the parties relating to the rights granted and the obligations assumed hereunder. Any oral representations or modifications concerning this instrument shall be of no force and effect, excepting a subsequent modification reduced to a writing signed by all parties hereto.

25. **Legal Fees.** In the event any party(ies) hereto, or their successors or assigns, incurs reasonable legal fees in a successful effort to enforce (or defend, as the case may be) this Agreement, such reasonable legal fees shall be paid by the losing party(ies) to the prevailing party(ies).

26. **Further Assurances.** From time to time, and without further consideration, the Commissioners, the various Town Sanitary Districts, and their Commissioners, at their expense, will execute and deliver such further instruments and take such further actions as the CKSD may reasonably require to effectuate the intent of this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, this Agreement shall become effective as of the final date set forth below.

Milton Sanitary District:

By: _____
Name: _____
Its President

By: _____
Name: _____
Its Secretary

Date: _____

Fulton Sanitary District:

By: _____
Name: _____
Its President

By: _____
Name: _____
Its Secretary

Date: _____

Town of Fulton Sanitary District No. 2:

By: _____
Name: _____
Its President

By: _____
Name: _____
Its Secretary

Date: _____

Albion Sanitary District:

By: _____
Name: _____
Its President

By: _____
Name: _____
Its Secretary

Date: _____

Sumner Sanitary District:

By: _____
Name: _____
Its President

By: _____
Name: _____
Its Secretary

Date: _____

APPROVAL OF THE OPERATING AGREEMENT BY EACH SANITARY DISTRICT IS IN THE FORM OF A RESOLUTION, A COPY OF WHICH IS ATTACHED HERETO.

EXHIBIT A

DISTRICT SERVICE AREAS

**KOSHKONONG SANITARY DISTRICT NO. 4,
TOWN OF SUMNER, JEFFERSON COUNTY:**

The Subdivisions of Oakwood Park, Glenn Oaks Beach, First addition to Glen Oaks Beach and second addition to Glenn Oaks Beach in Sections Nineteen (19) and Thirty (30) Township Five (5) North Range Thirteen (13) East, Town of Sumner, Jefferson County, Wisconsin.

ALSO:

All land in the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 31; T5N; R13E; Sumner Township, Jefferson County, Wisconsin.

**KOSHKONONG SANITARY DISTRICT NO. 3,
TOWN OF ALBION, DANE COUNTY:**

Commencing at a point on the northeast corner of St. Josephs' College property and the south end of Bingham Road; thence, west to the center of Liguori Road; thence continuing west 400 feet to the point; thence south and parallel with Liguori Road to Koshkonong Drive (including Edgerton Beach Park); thence continuing south on a line 400 feet west of the northwest corner of Hickory Hills Estates and parallel with the west boundary of Hickory Hills Estates and also parallel with Highwood Estates First, Second, and Third Additions to a point 400 feet west of the southwest corner of Highwood Estates; thence easterly along the south boundary of Highwood Estates to the northwest corner of the Renkosiak property (known as a recreational area); thence south along the westerly boundary of the Renkosiak property to the north boundary of Indian Heights Subdivision and Resubdivision; thence west to the northwest corner of said Indian Heights Subdivision; thence south and along the westerly boundary of Indian Heights Subdivision to the southwest corner of said Subdivision; thence easterly to the northwest corner of the West Madden property; thence south to the town line; thence east to the westerly shore of Lake Koshkonong; thence northerly and along the shore of Lake Koshkonong to the point of beginning (it being the intention to include St. Joseph's College, Edgerton Beach Park, Highwood Estates First, Second and Third Additions, all real estate 400 feet to the west of these properties the Renkosiak property, Indian Heights Subdivision and Resubdivision and West Madden property and that adjacent to the town line and Hickory Hills Estates).

ALSO:

All land in the south one-half (S ½) of the southeast Quarter (SE 1/4) Section 36; T5N; R12E; Albion Township, Dane County, Wisconsin which lies easterly of the centerline of Hillside Road and southerly of the centerline of Indian Mound Drive.

**KOSHKONONG SANITARY DISTRICT NO. 2,
TOWN OF FULTON, ROCK COUNTY:**

All the land south to the Rock River from the following proposed line to-wit: Commencing at a point 300 feet north of the southeast corner of Section I, Township 4 north, range 12 east; Thence running west and parallel to the south section to a point intersecting the north-south quarter section line; thence proceeding north and including all commercial properties on both sides of State Highway #59 up to and including the Sinclair property purchased from the Goede heirs.

Also, commencing at a point on the north shore of Rock River where the north-south quarter section of Section 12, Township 4 north, Range 12 east intersects; thence north to the northeast corner of the northwest quarter of Section 12; thence west along the said section line to the northwest corner of Section 12 (including among other lands, Richardson's Spring Plat and Richardson's Spring Plat #II); thence continuing west along the north section line of Section II, Township 4 north, Range 12 east to a point which would intersect the north-south line of the R.J. Stumpf property; thence south to Rock River; thence easterly along the north shore of Rock River to the point of beginning.

All that land south of Rock River in the northeast quarter of Section 12, Town 4 north, Range 12 east, commencing at the southeast corner of Newville Heights Subdivision and running thence west and parallel to the north section line to a point on the north and south quarter section line; thence north along the north-south quarter section line to the south shore of Rock River; thence east along the south shore of Rock River to the northeast corner of Lot 1, Newville Heights, thence south along the east line of Lot 1 of Newville Heights to the place of beginning.

ALSO:

All of the land lying north and 400 feet south of the following proposed line in the northwest quarter of Section 12 and the northeast quarter of Section 11, Town 4 north, Range 13 east; commencing at the center of Kidder Road at a point on the north-south quarter section line in Section 12; thence running westerly along the middle of Kidder Road to the intersection of Kidder Road and Ellendale Road; thence southerly along the middle of Kidder Road in Section 11 to the intersection of Fish Camp Road; thence westerly to Rock River. Also to be included in this description are the seven acres adjacent to the westerly end of Fish Camp and in Section 14, Town 4 north, Range 12 east.

ALSO:

All land in the north one-half ($N \frac{1}{2}$) of the northeast quarter ($NE \frac{1}{4}$) Section 1; T4N, R12E; Fulton Township, Rock County, Wisconsin, which lies easterly of the centerline of Hillside Drive.

All land in the $NE \frac{1}{4}$ of Section 12, T4N, R12E, Fulton Township, Rock County, Wisconsin, which lies south of the Rock River north of State Trunk Highway 59, and east of Newville Heights Subdivision.

Beginning at the southeast corner of Section 11, T4N, R12E, of the 4th P.M., Fulton Township Rock County, Wisconsin, thence south 88 -29'-50" west 386.21 feet to the centerline of Kidder Road. Thence north 10 -22'-40" west along said centerline 1481.88 feet; thence continuing along said centerline north 12 -51'-10" west 468.21 feet; thence south 89 -56'-54" east 767.80 feet; thence north 00 -23'-06" east 524.17 feet; thence north 89 -50'-07" west 891.11 feet to the centerline of Kidder Road; thence north 12 -45'-34" west along centerline of said road 919.66 feet to the point of curve; thence northeasterly along a curve convexed northwesterly 355.32 feet, having a radius of 370.00 feet, the chord being north 14 -45'-06" east 341.82 feet to a point of curve; thence northeasterly along a curve convexed northwesterly 97.74 feet, having a radius of 545.42 feet, the chord being north 47 -23'-47" east 97.61 feet to a point of tangency, thence north 52 -31'-48" feet to a point of curve on the centerline of Ellendale Road; thence northeasterly along a curve convexed northwesterly 237.88 feet, having a radius of 732.00 feet, the chord being north 61 -50'-24" east 236.84 feet to a point of curve; thence northeasterly along a curve convexed northwesterly 145.39 feet, having a radius of 648.17 feet, the chord being north 77 -34'-33" east 145.08 feet to a point of curve thence northeasterly along a curve convexed northwesterly 326.94 feet, having a radius of 1661.73 feet, the chord being north 89 -38'-17" east 326.41 feet to a point of curve; thence southeasterly along a curve convexed northeasterly 196.05 feet to a point of tangency on said centerline; thence south 72 -04'-39" east 3.17 feet along said centerline; thence south 72 -04'-39" east 250.00 feet; thence south 00 -13'-15" west 275.18 feet; thence south 72 -04'-39" east 136.48 feet; thence north 00 -13'-00" east 275.15 feet to the centerline of Ellendale Road; thence along said centerline south 81 -25'-39" east 124.16 feet; thence along said centerline south 81 -25'-39" east 124.16 feet; thence along said centerline north 88 -35'-36" east 221.00 feet; thence along said centerline south 84 -14'-24" east 290.28 feet thence along said centerline south 89 -21'-24" east 343.88 feet; thence along said centerline north 85 -49'-36" east 254.00 feet, thence south 02 -02'-16" west 427.23 feet, thence south 87 -56'-10" east 251.86 feet; thence south 02 -13'-31" east 457.41 feet; thence south 86 -16'-00" east 136.00 feet to the west R.O.W. line of Interstate 90; thence south 9 -38'-00" east along said R.O.W. line 45.67 feet; thence south 13 -27'-00" east along said R.O.W. line 333.42 feet to a point of curve; thence southeasterly along a curve convexed northeasterly 257.26 feet, having a radius of 22,773.33 feet, the chord being south 13 -07'-35" east 257.26 feet, thence south 72 -09'-41" west from a point said curve 918.93 feet, thence south 00 02'-50" east 1910.30 feet to the south line of said Section 12, thence south 89 -10'-20" west 1276.78 feet to the southwest corner of Section 12 aforesaid and the place of beginning; containing 181.825 acres reserving therefrom all land within 33.00 feet measured at right angle from the centerline of Kidder Road and Ellendale Road for highway purposes.

ALSO:

The east one-half (E ½) of the southeast quarter (SE 1/4) of Section Twelve (12), Town Four (4) north, Range Twelve (12) east;

Also that part of fractional lot number Six (6) of said section, lying south of Highway 59, as presently located, all in the Town of Fulton, Rock County, Wisconsin.

ALSO:

Approximately 28.8A of land along Rock River with Watts Springs Addition to the west and Richardson Springs Subdivision on the east.

Located in Government Lo 1 and in the SW 1/4, NW 1/4, and NE 1/4 of Section 11, T/4N, R12E of the 4th P.M. Fulton Township, Rock County, Wisconsin, commonly known as Fox Meadows Shores.

**KOSHKONONG SANITARY DISTRICT NO. 1,
TOWN OF MILTON, ROCK COUNTY:**

The boundaries of the area to be included within the District are as follows:

All that property east of the following proposed line in Section 6, Town 4 north, Range 13 east, Milton Township: Commencing at a point of Lake Koshkonong directly north of the northwest corner of Lot 27, Maple Beach Subdivision, Number II, 448.5 feet; thence southerly to the northwest corner of Lot 1, Block 1, Mallwood Estates Subdivision; thence southerly along the westerly boundary line of Mallwood Estates along the easterly Morris Cooper fence line to the southwest corner of Lot 1, Block 20, Mallwood Estates. Also, all of the property south of the following proposed line and all of the property north 200 feet of the following proposed line: Commencing at a point in the center of Mallwood Dive on the westerly boundary of Mallwood Estates Subdivision; thence westerly along Mallwood Drive to the Township Line dividing Fulton and Milton; also, the Charley Bluff area commencing at the southwest corner of Section 5, Town 4 north, Range 13 east; thence easterly along the southerly line of Section 5 to the southeast corner of Section 5; thence north along the easterly boundary of Section 5 to the shore of Lake Koshkonong; thence southeasterly along the shore of Lake Koshkonong to the point of beginning.

ALSO:

All land in the northwest quarter (NW 1/4) of the northwest quarter (NW 1/4) of Section 6; T4N; R13E; Milton Township, Rock County, Wisconsin. All land in Section 7, T4N, R13E, Town of Milton, Rock County, Wisconsin, which is bounded by STH 59 on the south and the Rock River and Lake Koshkonong on the north; also, all land in the northwest quarter (NW 1/4) of Section 8, T4N, R13E, Town of Milton, Rock County, Wisconsin, which lies northerly of STH 59; except any and all real estate included in the above description owned by Earl Kidder in Section 8, T4N, R13E.

ALSO:

Part of the SW 1/4 of the NW 1/4 part of Government Lot 1 in Section 6 T4N, R13E, Town of Milton, Rock County, Wisconsin, to-wit:

Beginning at a 4" diameter aluminum monument at the west 1/4 corner of said Section 6; thence N.89 25'E., along the south line of said SW 1/4 of the NW 1/4, also being the centerline of Maple Beach Road, 1320.00 feet to the SE corner thereof; thence N 0 20'30"E., along the east line of said SW 1/4 of the NW 1/4, 1093.74 feet to the south line of Lot 26, Maple Beach Subdivision Number 2; thence N.87 44'20"W., along said south line, 14.85 feet to a 3/4" iron rod at the SW corner thereof; thence N.1 49'00"E., along the west line of said Maple Beach Subdivision Number 2, 119.72 feet to a 3/4" iron rod at the SW corner of Lot

27 of said Maple Beach Subdivision Number 2; thence N.87 36'00"W., 50.00 feet to a 3/4" iron rod; thence N.2 18'30"E., 100.00 feet to a 3/4" iron rod; thence S.87 39'35"E., 49.93 feet to a 3/4" iron rod at the NW corner of said Lot 27; thence N.2 09'45"E., 263.99 feet to the east line of said Government Lot 1; thence N.0 20'30"E., along said east line, 175 feet or less to Lake Koshkonong; thence northwesterly, along the shore of said Lake Koshkonong to the north line of said Government Lot 1; thence N.88 47'24"W., along said north line, 365 feet more or less to a 6"x6" stone monument at the NW corner of said Section 6; thence S.0 20'30"W., along the west line of said NW 1/4 of Section 6, 2655.48 feet to the point of beginning, containing 68.8 acres more or less and subject to a road right of way across the southerly 33 feet.

**TOWN OF FULTON SANITARY DISTRICT NO. 2,
TOWN OF FULTON, ROCK COUNTY:**

All lands located in Sections 16, 20 and 21, T 4 N, R 12 E, Town of Fulton, Rock County, Wisconsin described as follows: Commencing at the north shore of the Rock River at the southeast corner of CSM 3-93 of Section 20, said point being the point of beginning; Thence north along the east line of CSM 3-93, 830.7 feet to the north line of said Section 20; Thence east along the north line of said Section 20 to the southwest corner of said Section 16; Thence north along the west line of said Section 16, to the northwest corner of Lot 22, State School Kraft Subdivision; Thence east along the north line of Lots 22, 17 and 9 of State School Kraft Subdivision and its extension to the easterly shore of the Rock River; Thence northeasterly along the easterly shore of the Rock River to the northeast corner of Lot 59 of the State School Kraft Subdivision; Thence south along the east property lines of Lots 59 to 52 of the State School Kraft Subdivision to the southeast corner of Lot 52; Thence westerly along the south property line of said Lot 52, to the northwest corner of Lot 35 of the State School Kraft Subdivision; Thence south along the west property line of Lot 35 of the State School Kraft Subdivision to the south section line of Section 16; Thence west along the south section line of Section 16 to the northeast corner of Lot 1 of Block 1 of Fulton Center in the NW 1/4 of the NW 1/4 of Section 21; Thence south along the east property line of Lot 1, 2, 3, and 4 of Block 1 of Fulton Center to the southeast corner of Lot 4 of Block 1 of Fulton Center, the north right-of-way of Town Hall Road; Thence west along said north right-of-way and its extension to the east shore of the Rock River; Thence southwesterly across the Rock River to the said point of beginning, the southeast corner of CSM 3 – 93; AND; Lot 2 of the CSM described in Rock County Vol. 10, pages 21 to 23.

EXHIBIT B

TOWN SANITARY DISTRICT RESOLUTIONS

00136044.WPD

RESOLUTION NO. 9-13-04

**Consolidated Koshkonong Sanitary District
(Operating Agreement)**

WHEREAS, on or about March 18, 2004 the Consolidated Koshkonong Sanitary District ("CKSD") adopted a new Operating Agreement; and

WHEREAS, it has been determined that certain modifications to the Operating Agreement are necessary.

NOW THEREFORE BE IT RESOLVED, that the MILTON Sanitary District No. 1 hereby approves of certain modifications to the Introduction, to Section 9, and to Section 11, as such modifications are attached hereto.

Harold Traynor
Sanitary District President

Certificate

This is to certify that the foregoing was adopted by the TOWN OF MILTON Sanitary District No. 1 at a meeting held on the 9 day of September, 2004.

Jeannine C. Schrank
Town Clerk

RESOLUTION NO. 04-07

**Consolidated Koshkonong Sanitary District
(Operating Agreement)**

WHEREAS, on or about March 18, 2004 the Consolidated Koshkonong Sanitary District ("CKSD") adopted a new Operating Agreement; and


WHEREAS, it has been determined that certain modifications to the Operating Agreement are necessary.

NOW THEREFORE BE IT RESOLVED, that the Koshkonong Sanitary District No. #2 hereby approves of certain modifications to the Introduction, to Section 9, and to Section 11, as such modifications are attached hereto.


Sanitary District President

Certificate

This is to certify that the foregoing was adopted by the Koshkonong Sanitary District No. 2 at a meeting held on the 9th day of December, 2004.



RESOLUTION NO. 04-06

Consolidated Koshkonong Sanitary District
(Operating Agreement)

WHEREAS, on or about March 18, 2004 the Consolidated Koshkonong Sanitary District ("CKSD") adopted a new Operating Agreement; and

WHEREAS, it has been determined that certain modifications to the Operating Agreement are necessary.

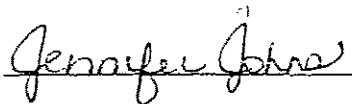
NOW THEREFORE BE IT RESOLVED, that the Fulton Sanitary District No. #2 hereby approves of certain modifications to the Introduction, to Section 9, and to Section 11, as such modifications are attached hereto.



Sanitary District President

Certificate

This is to certify that the foregoing was adopted by the Fulton Sanitary District No. #2 at a meeting held on the 9th day of December, 2004.



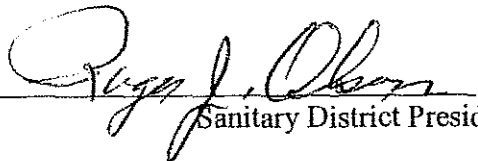
RESOLUTION NO. _____

**Consolidated Koshkonong Sanitary District
(Operating Agreement)**

WHEREAS, on or about March 18, 2004 the Consolidated Koshkonong Sanitary District ("CKSD") adopted a new Operating Agreement; and

WHEREAS, it has been determined that certain modifications to the Operating Agreement are necessary.

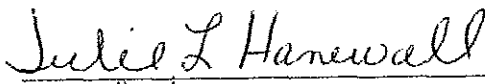
NOW THEREFORE BE IT RESOLVED, that the Koshkonong Sanitary District No. 3 hereby approves of certain modifications to the Introduction, to Section 9, and to Section 11, as such modifications are attached hereto.



Sanitary District President

Certificate

This is to certify that the foregoing was adopted by the Koshkonong Sanitary District No. 3 at a meeting held on the 4 day of January, 2005.



Clerk/Treasurer

RESOLUTION NO. _____

**Consolidated Koshkonong Sanitary District
(Operating Agreement)**

WHEREAS, on or about March 18, 2004 the Consolidated Koshkonong Sanitary District ("CKSD") adopted a new Operating Agreement; and


WHEREAS, it has been determined that certain modifications to the Operating Agreement are necessary.

NOW THEREFORE BE IT RESOLVED, that the Sumner Sanitary District No. 4 hereby approves of certain modifications to the Introduction, to Section 9, and to Section 11, as such modifications are attached hereto.


Sanitary District President

Certificate

This is to certify that the foregoing was adopted by the Sumner Sanitary District No. 4 at a meeting held on the 18 day of March, 2005.


Barbara J. Zwoeck, clerk

