

**AGREEMENT FOR TRANSFER OF OWNERSHIP OF
SANITARY SEWER INFRASTRUCTURE**

This AGREEMENT, made this ____th day of _____, 2018 (the “Effective Date”), by and between the City of Willmar, a Minnesota municipal corporation (“City”), and Kandiyohi County, a political subdivision of the State of Minnesota (“County”) (collectively, the City and County are referred to herein as the “Parties”).

WHEREAS, the City owns and operates a sanitary sewer collection and treatment system (“City System”), including a wastewater treatment facility (“WWTF”) that treats the wastewater collected by and conveyed through the City System;

WHEREAS, the County established by the Order dated November 5, 1969, the Eagle Lake Sanitary Sewer District (“ELSSD”) in accordance with 1969 Laws of Minnesota, Chapter 961 (the “ELSSD Special Legislation”);

WHEREAS, the County constructed a sanitary sewer collection system within ELSSD consisting of the infrastructure listed on Exhibit A attached hereto and as depicted on Exhibit B attached hereto (“ELSSD System”), and has owned the ELSSD System at all times thereafter;

WHEREAS, the Parties entered into an agreement providing for the connection of the ELSSD System to the City System dated August 25, 1971, as subsequently amended on December 31, 1974 and January 31, 1990 (the “Connection Agreement”);

WHEREAS, pursuant to the Connection Agreement, the City has been responsible for accepting the wastewater collected by the ELSSD System into the City System and treating the same at the WWTF, and for performing repairs and maintenance on the ELSSD System; and

WHEREAS, the County has been responsible for paying the City’s rates and charges for accepting and treating the wastewater from the ELSSD System and for the cost of repairs and maintenance performed on the ELSSD System by the City (with the exception of routine maintenance on the ELSSD pumping station, which has been performed by the City at the City’s expense);

WHEREAS, pursuant to the Connection Agreement, the County has funded, through charges imposed by the County on properties served by ELSSD, a repair and improvement fund to fund future repairs and improvements to the ELSSD system (the “ELSSD Improvement Fund”), the current balance of which is approximately \$280,000.00;

WHEREAS, the Connection Agreement provided that upon the earlier of the City’s annexation of the properties served by ELSSD or 45 years after the Connection Agreement’s effective date, the County shall by gift, transfer the ELSSD System to the City;

WHEREAS, the Connection Agreement expired on August 25, 2016, and the Parties have continued following the terms thereof pursuant to temporary extensions of such terms while the Parties engaged in negotiations of a replacement agreement; and

WHEREAS, the Parties now wish to enter into a new agreement pursuant to which the City assumes ownership of the ELSSD System and continues providing sanitary sewer service to the properties served by the ELSSD System pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements and provisions herein set forth, the Parties agree as follows:

1. Transfer of ELSSD System.

1.1 In exchange for the mutual covenants contained in this Agreement, County agrees to convey, transfer, and deliver to City, and City agrees to acquire, assume and accept from County, all of the assets of the ELSSD System (the “ELSSD Assets”). For purposes of this Agreement, ELSSD Assets shall mean, as of the Closing Date (as defined below), all assets owned by the County and exclusively associated with or used in the operation of the ELSSD System (as listed on Exhibit A attached hereto and as depicted on Exhibit B), including but not limited to:

1.1.1 all licenses, permits, consents, authorizations, approvals and certificates of any regulatory, administrative or other governmental agency or body relating to the ELSSD System, to the extent the same are transferable;

1.1.2 copies of all books of account, accounting records, files, papers and records used in or relating to the conduct of the ELSSD System;

1.1.3 any existing wastewater collection lines, mains, laterals, transmission pipes or other impoundments, easements, rights-of-way, and any and all other interests in real property, as further addressed in Article 3, which form a part of or contribute to the collection or transportation of wastewater within ELSSD;

1.1.4 The ELSSD Improvement Fund, inclusive of all funds collected from assessments on properties served by the ELSSD System in 2017, without deductions for administrative expenses, or any pre-Closing liabilities of the County and/or ELSSD; and

1.1.5 all agreements, applications, invoices and other contractual arrangements for wastewater collection service within the ELSSD between County and any ELSSD customer (full copies of all such agreements and contractual arrangements shall be delivered by County to City no later than ten days following the Effective Date).

1.2 After Closing, all ELSSD Assets shall become the sole and exclusive property of the City. City accepts all responsibilities for the operation and maintenance of the ELSSD System in coordination with the City System pursuant to Articles 8—10 below, and shall be entitled to the benefits of all applicable construction warranties for any ELSSD System components. Any liability assumed by the City shall be effective upon acceptance of the Closing Date and shall not be retroactive.

2. Liabilities of County.

2.1 City shall not assume or otherwise be liable for any liabilities, obligations or commitments of County (the “Retained Liabilities”) unless expressly assumed herein. City shall assume, be liable and responsible for, and accept assignment from County and thereafter pay, perform or discharge when due all of the following liabilities, obligations and commitments (the “Assumed Liabilities”):

- 2.1.1 any and all obligations under any licenses, permits, consents, authorizations, approvals and certificates transferred by County to City hereunder;
- 2.1.2 any and all obligations under any agreements, applications, invoices and other contractual arrangements transferred by County to City hereunder;
- 2.1.3 any and all obligations to provide services to properties served by the ELSSD System from and after the Closing Date as provided herein; and
- 2.1.4 any and all obligations and liabilities related to the ELSSD System arising from or relating to any event, circumstance or condition occurring after the Closing Date.

3. ELSSD System Property Interests.

3.1 County agrees that it will obtain all land, access, easements and rights-of-way, necessary for access to and maintenance of the ELSSD System components, as listed on Exhibit A and depicted on Exhibit B, to the extent it does not already own the same. The County may utilize existing available City sanitary sewer easements, if any. City agrees to cooperate with County in its obtaining all necessary easements but the City is under no obligation to finance or to obtain land, easements, rights-of-way or other elements necessary prior to the acceptance of the Sewer Improvements.

4. Closing.

4.1 Subject to the terms and conditions of this Agreement, the transfer and conveyance of the ELSSD Assets and the assumption of the Assumed Liabilities, all as contemplated hereby, shall take place at a closing (the “Closing”) to be held at the offices of City at 333 6th Street Southwest, Willmar, Minnesota, or such other place as City and County may mutually agree, on or before July 1, 2018, provided that all the terms and conditions of this Agreement have been satisfied as provided for herein (hereafter, the “Closing Date”).

5. Conditions Precedent to Closing.

5.1 Conditions to Obligations of City. Unless waived by City in its sole discretion, all obligations of City under this Agreement are subject to the following conditions:

- 5.1.1 all representations and warranties of County contained in this Agreement and in all documents delivered pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate as of the date when made and shall be deemed to be made again at and as of the Closing Date and shall then be true and accurate in all material respects;
- 5.1.2 County shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date;
- 5.1.3 County shall have acquired all land, access, easements and rights-of-way, necessary for access to and maintenance of the ELSSD System components pursuant to Article 3 herein.

5.2 Conditions to Obligations of County. Unless waived in writing by County in its sole discretion, all obligations of County under this Agreement are subject to the following conditions:

- 5.2.1 all representations and warranties of City contained in this Agreement and in all documents delivered pursuant hereto or in connection with the transactions contemplated hereby shall be true and accurate as of the date when made and shall be deemed to be made again at and as of the Closing Date and shall then be true and accurate in all material respects; and
- 5.2.2 City shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

6. Closing Documents.

6.1 County's Closing Documents. At the Closing, the County shall deliver to the City the following:

- 6.1.1 sole and exclusive possession of the ELSSD Assets;
- 6.1.2 an executed bill of sale in the form attached hereto as Exhibit C (the "Bill of Sale") conveying to City title to the Assets free and clear of all liens, security interests and encumbrances; and
- 6.1.3 any other documents required pursuant to this Agreement or reasonably requested by City.

6.2 City's Closing Documents. At the Closing, City shall deliver to County the following:

- 6.2.1 an executed counterpart to the Bill of Sale; and
- 6.2.2 any other documents required pursuant to this Agreement or reasonably requested by County.

7. Representations and Warranties.

7.1 County's Representations and Warranties. Except as provided herein, County makes no representations or warranties of any kind or nature, and particularly makes no warranty or covenant of fitness for particular purpose or covenant or warranty of merchantability of the ELSSD System. The ELSSD System and the ELSSD Assets are being sold on an **AS IS, WHERE IS** basis. County hereby represents and warrants to City as follows:

- 7.1.1 Authority. The County has the full right, power and authority to convey the ELSSD System and the ELSSD Assets to the City in accordance with the terms and conditions hereof. This Agreement, when executed and delivered by the County, will be a valid and binding obligation of the County in accordance with its terms.
- 7.1.2 Title. The County has, and on the Closing Date will have, good and marketable title to all of the ELSSD Assets, free and clear of all liens, pledges, security interests or other encumbrances of any nature whatsoever, whether fixed or contingent, and whether due or to become due. Title and all risk of loss with respect to the ELSSD Assets shall remain exclusively with the County until the Closing.
- 7.1.3 Environmental.
 - 7.1.3.1 the County has not received from any governmental authority any written notices within the past five years asserting any material violation of any applicable environmental laws and regulations in connection with its ownership, use, maintenance, and operation of the ELSSD System;
 - 7.1.3.2 there is no written claim pending or, to the knowledge of County, threatened against the ELSSD System relating to environmental laws or regulations; and
 - 7.1.3.3 County has no knowledge of any conditions or circumstances associated with the ELSSD System which may prevent or interfere

with material compliance with any applicable environmental laws and regulations.

7.1.4 The County's representations and warranties are for the exclusive benefit of the City and shall not be for the benefit of any other person or entity. The County shall not have any liability for the falsity of any representation or the breach of any warranty to the extent the City, its officers, directors, employees, agents or contractors, (1) had knowledge of such falsity or breach when made by the County or (2) fails to give written notice to the County of such falsity or breach as soon as the City acquires knowledge thereof.

7.2 City's Representations and Warranties. The City represents and warrants to the County as follows:

7.2.1 Authority. The City has the full right, power and authority to acquire the ELSSD System and the ELSSD Assets from the County in accordance with the terms and conditions hereof. This Agreement, when executed and delivered by the City, will be a valid and binding obligation of the City in accordance with its terms.

7.2.2 The City's representations and warranties are for the exclusive benefit of the County and shall not be for the benefit of any other person or entity. The City shall not have any liability for the falsity of any representation or the breach of any warranty to the extent the County, its officers, directors, employees, agents or contractors, (1) had knowledge of such falsity or breach when made by the City or (2) fails to give written notice to the City of such falsity or breach as soon as the County acquires knowledge thereof.

8. ELSSD System Operation, Maintenance, Repairs and Improvements.

8.1 City shall operate and maintain the ELSSD System as a part of its broader City System and shall make such connections thereto as deemed necessary or convenient to the operation of the City System in the City's sole discretion, provided, however, that City shall be responsible for all costs associated with the design, construction and right-of-way acquisition in connection therewith.

8.2 City shall continue to perform, or cause to be performed (or supervise the performance of) all repairs and maintenance on the ELSSD System, as it does for the City System (including the WWTF), in City's sole discretion.

9. Provision of Sewer Services; Rates and Charges.

9.1 City shall continue to provide sanitary sewer services to properties served by the ELSSD System.

9.2 No new connections to the ELSSD System by residences or commercial buildings will be made unless a written permit has been granted by the City to each applicant for service on such forms and applications provided by the City.

9.3 City shall establish rates and charges for providing sanitary sewer services to the properties served by the ELSSD System in accordance with Willmar City Code, Chapter 16, Article IV, as the same may be amended by the City from time to time. Such rates shall be calculated to cover the expenses incurred by the City in performing repairs and maintenance of the ELSSD System, and a proportionate share of the City's capital investments in the City System (including the WWTF).

9.4 County shall collect the rates and charges established by City from ELSSD users by sending statements to the owners of the properties served by the ELSSD System annually no later than November 30 for the annual rates and charges for the following service year. County shall thereafter impose special assessments in the amount of such rates and charges on each property served by the ELSSD System. County shall remit collected assessments to City in accordance with its process of property tax collection and disbursement to local jurisdictions, and in no event shall County make such remittances to City later than June 1 and November 1 of each year.

10. Enforcement of Sanitary Sewer Regulations.

10.1 County will adopt an ordinance requiring all residences and commercial buildings within the ELSSD to be connected to the ELSSD System, and requiring all new residences and commercial buildings within ELSSD to be connected to the ELSSD System at the time of construction of the residence or commercial building, and shall enforce the same upon request of the City.

10.2 County will adopt an ordinance incorporating the City's sanitary sewer system regulations contained in Willmar City Code, Chapter 16, Article III, as the same may be amended by the City from time to time, and making the same effective within the ELSSD, and shall enforce the same upon request of the City.

11. Indemnification.

11.1 Indemnification by County. County covenants and agrees that from and after the Closing Date, County will indemnify, defend and hold the City and its officers, directors, agents, employees, successors and assigns (the "City Indemnified Parties") harmless from and against any and all damages, losses, costs, claims, liabilities, causes of action and expenses ("City Losses") arising out of or resulting from: (i) any inaccuracy of any representation or the breach of any warranty made by County

hereunder; (ii) any failure of County to duly perform or observe any term, provision, covenant, agreement or condition under this Agreement, and all agreements delivered in connection with this Agreement, on the part of County to be performed or observed; and (iii) any Retained Liability.

11.2 Claims Period. The period during which a claim for indemnification by the City Indemnified Parties may be asserted under this Agreement shall begin on the Effective Date and terminate on the date that is 12 months following the Closing Date. Notwithstanding the previous sentence, a claim for indemnification by the City Indemnified Parties solely with respect to the warranty provided in the bill of sale (in the form attached hereto as Exhibit C), shall begin on the Effective Date and terminate on the date that is 20 years following the Closing Date.

12. General Terms.

12.1 Force Majeure. The Parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the party affected by force majeure shall give written notice with explanation to the other party immediately.

12.2 Dispute Resolution. The Parties agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.

12.3 Notices. The Parties' representatives for notification for all purposes are:

CITY:

City Administrator
City of Willmar
333 6th Street Southwest
Willmar, MN 56201

COUNTY:

County Administrator
Kandiyohi County
400 Benson Avenue Southwest
Willmar, MN 56201

12.4 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to

the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

- 12.5 Entire Contract. These terms and conditions constitute the entire Agreement between the Parties regarding the subject matter hereof, and shall supersede all previous agreements between the Parties such that the Parties' only obligations to each other shall be as expressed herein. All discussions, negotiations and previous contracts, agreements and understandings are deemed merged in this Agreement.
- 12.6 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party or Parties, and any undischarged obligations of City and County arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- 12.7 Execution. This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any Party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing Party.

[Signature Page(s) to follow]

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

CITY OF WILLMAR

Marvin Calvin, Mayor

Date: _____

ATTEST:

Isaac Holland, City Clerk

Date: _____

KANDIYOHI COUNTY

By: _____
(Signature)

Date: _____

Title: _____

Print Name: _____

By: _____
(Signature)

Date: _____

Title: _____

Print Name: _____

EXHIBIT A

Inventory of ELSSD System Components

EXHIBIT B

Depiction of ELSSD System

EXHIBIT C

Bill of Sale