



Providing Wastewater Treatment to the Kankakee River Valley

INTERGOVERNMENTAL AGREEMENT



**AMENDED AND RESTATED MUNICIPAL JOINT SEWAGE TREATMENT
AGENCY INTERGOVERNMENTAL AGREEMENT**

This Agreement by and among the City of Kankakee and the Villages of Aroma Park, Bourbonnais and Bradley, located in Kankakee County, all municipal corporations, providing for the joint and cooperative ownership, operation, use and maintenance of a wastewater treatment system under and pursuant to the Illinois Intergovernmental Cooperation Act and the Municipal Joint Sewage Treatment Act;

WITNESSETH:

WHEREAS, the parties hereto have been jointly involved in the establishment, operation and utilization of the Regional Wastewater Treatment Facility (the "Facility"), a sewage/wastewater treatment plant located in the City of Kankakee, Kankakee County, Illinois, under the terms and conditions of an existing intergovernmental agreement dated July 20, 1988, and amended on April 30, 1995; and

WHEREAS, the municipalities that are parties to this Agreement (the "Members") previously recognized the mutual benefits to be derived from the Facility which would meet the environmental and health needs of area residents, businesses and industry, facilitate economic development and industrial expansion, and respond to concerns of federal and state environmental agencies; and

WHEREAS, although Facility construction was successfully completed with the assistance of a federal grant and bond proceeds and the Facility is operating smoothly and serving the needs of the Members, those municipalities have determined that to most effectively serve the future

needs of the planning area that has been designated for the Facility, to improve the Facility, and to operate it in a manner that is completely fair to all participants, it is essential to establish an independent agency with authority to operate the Facility, raise revenue, and exercise other powers; and

WHEREAS, the parties hereto have determined that joint action is the most effective way to accomplish the above-described purposes; and

WHEREAS, units of local government have had conferred upon them the following powers by Article VII, Section 10(a) of the Constitution of the State of Illinois:

Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., provides as follows:

Section 3. Intergovernmental Agreements

Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment.

Section 5. Intergovernmental Contracts

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties.

; and

WHEREAS, pursuant to the Municipal Joint Sewage Treatment Act, 5 ILCS 220/3.4, two or more municipalities and/or counties are further authorized to jointly form a municipal joint sewage treatment agency to provide for the treatment, carrying off and disposal of swamp, stagnant or overflow water, sewage, industrial wastes and other drainage of member municipalities and counties; and

WHEREAS, the parties hereto have authorized the execution of this Agreement as an exercise of their respective governmental authority, as an exercise of their intergovernmental cooperation authority under the Constitution and laws of the State of Illinois, and specifically pursuant to statutory authority to establish a municipal joint sewage treatment agency; and their purposes, powers, rights, objectives, and responsibilities hereunder are fully set forth herein;

NOW, THEREFORE, in consideration of the mutual agreements contained herein and upon the further consideration of the recitals hereinabove set forth, it is hereby agreed by, between and among the parties hereto, as follows:

I. DEFINITIONS

“Agency” shall mean the Kankakee River Metropolitan Agency, a municipal corporation and a public body politic and corporate of the State of Illinois, created and existing under the authority of Article VII, Section 10 of the Constitution of the State of Illinois, Sections 3 and 5 of the Intergovernmental Cooperation Act and the Municipal Joint Sewage Treatment Act.

“Board” shall mean the Board of Directors of the Agency.

“Capacity” shall mean, as of any time, the maximum [daily] capacity of the Facility to treat wastewater, expressed in units equal to one million gallons per day (“MGD”), as determined by competent professional engineers.

“Capacity Allocation” shall mean the allocation of Capacity to and among the Members and shall not include any Reserve Capacity held by the Agency or allocated to Customers pursuant to Customer Contracts or Agreements. The Capacity Allocation is set forth in Articles VI and VII and in *Exhibit 1*.

“Capacity Allocation Agreement” shall mean an agreement among any two or more Members reallocating Capacity among them.

“Capital Costs” shall mean, collectively, the costs of (i) debt service on bonds or notes of the Agency, including all amounts that the Agency covenants to collect from Members under any bond resolution and deposits to any debt service reserve fund established in connection therewith; (ii) acquiring, constructing, reconstructing, repairing, equipping, improving or extending the Facility; and (iii) deposits to any depreciation or replacement fund established in connection with any bonds or notes of the Agency.

“Costs” shall mean the aggregate of Capital Costs and Operation and Maintenance Costs.

“Customer” shall mean any unit of local government other than a Member, any agency or department of the State of Illinois, any agency, instrumentality or department of the United States of America, and any “industrial establishment” (as that term is used in Section 11-141-2 of the Illinois Municipal Code) that has entered into a Customer Contract with the Agency pursuant to which (i) the Customer will contribute wastewater for treatment at the Facility, and (ii) the Customer will pay applicable rates and charges for its use of the services provided to it by the Facility.

“Customer Contract” shall mean a contract or agreement between the Agency and a Customer providing the terms and conditions upon which the Agency shall treat wastewater contributed by the Customer. A Customer Contract shall allocate to the Customer all or any part of the Reserve Capacity not previously allocated to other Customers.

“Facility” shall mean the regional wastewater treatment plant located in the City of Kankakee, Illinois, and certain designated lines, connectors and equipment, and includes all property, real, personal or mixed, owned or to be owned by the Agency or under the control of the Agency and used for wastewater treatment purposes. It does not include the sewer collection systems of the Members.

“Member System” shall mean, with respect to a Member, the municipal sewerage enterprise system of such Member.

“Members” shall mean the City of Kankakee, Illinois, and the Villages of Aroma Park, Bourbonnais and Bradley, Illinois.

"1999 Debt Service Allocation" shall mean the allocation among the Members of responsibility for percentage shares of the total debt service on the 1999 Bonds, as agreed to by the Members. The current allocation totaling 100% of debt service is shown on *Exhibit 3*. Whenever Capacity is reallocated among the Members, Exhibit 3 shall be changed without further action of the Board, provided that any such change shall also reflect a 100% total for debt service.

"1999 Bonds" shall mean the revenue bonds of the Agency issued in 1999 to acquire the Facility from the City of Kankakee, Illinois.

"Operation and Maintenance Costs" shall mean all costs of operating, maintaining and making routine repairs to the Facility including wages, salaries, costs of materials and supplies, power, fuel, insurance, purchase of wastewater treatment services (including all payments by the Agency pursuant to long term contracts for such services); but excluding debt service, depreciation, or any reserve requirements; and otherwise determined in accordance with generally accepted accounting principles for municipal enterprise funds.

"Reserve Capacity" shall mean Capacity that has not been allocated to any of the Members.

"Revenue" shall mean all income, rates, fees or charges from whatever source derived by the Agency from the Facility including, specifically, all payments by the Members pursuant to the Agreement and all payments by Customers pursuant to their respective Customer Contracts, and further including (i) investment income; (ii) connection, permit and inspection fees and the like; (iii) penalties and delinquency charges; (iv) Facility development, reimbursement, or recovery charges and the like; (v) annexation or pre-annexation charges insofar as designated by the Board as paid for Facility connection or service but excluding expressly (a) non-recurring income from the sale of

property of the Agency; (b) governmental or other grants; (c) advances or grants made to the Agency, and as otherwise determined in accordance with generally accepted accounting principles for municipal enterprise funds.

“Service Area” shall mean the geographic area served by the Facility as of the date of execution of this Agreement and any additional area added to the Service Area as authorized by the Board. From time to time, the term “Facility Planning Area,” a term used by the IEPA for the same geographic area covered by the Service Area, may also be used by the Agency.

II. ESTABLISHMENT AND POWERS OF THE AGENCY; BOARD OF DIRECTORS

- A. The Agency is hereby created and established for the purpose of jointly treating and processing wastewater contributed by the Members and any Customers. The Agency shall function through and be governed by a Board of Directors.
- B. The Agency, by action of its Board, shall have, and is hereby delegated, in addition to any and all powers enumerated or implied in the Municipal Joint Sewage Treatment Act, the full power and authority to:
 - 1. operate and maintain the Facility and any expansions thereof in accord with applicable federal, state, and local laws, ordinances and regulations;
 - 2. secure and provide necessary personnel, equipment, and improvements, either directly or through Members;
 - 3. establish a system of revenue through direct payments by Members and Customers and from other sources;
 - 4. apply for and accept gifts, loans or grant monies or other forms of financial assistance from any public agency, government body or private entity;
 - 5. enter into Customer Contracts with any Customers as permitted by law;
 - 6. borrow money from time to time and, in evidence of its obligation to repay the borrowing, issue its negotiable revenue bonds or notes for any of the following purposes: for paying costs of planning, constructing, reconstructing, acquiring, leasing, equipping, improving or extending a drainage and sewage

treatment project; for paying other expenses incident to or incurred in connection with such project; for repaying advances made to or by the Agency for such purposes; for paying interest on the bonds or notes until the estimated date of completion of any such project and for such period after the estimated completion date as the Board shall determine; for paying financial, legal, administrative and other expenses of the authorization, issuance, sale or delivery of bonds or notes; for providing or increasing a debt service reserve fund with respect to any or all of the Agency's bonds or notes; and for paying, refunding or redeeming any of the Agency's bonds or notes before, after or at their maturity, including paying redemption premiums or interest accruing or to accrue on such bonds or notes being paid or redeemed or for paying any other costs in connection with any such payment or redemption, and for such other purposes as may be provided for in the Municipal Joint Sewage Treatment Act;

7. apply for and operate the Facility in compliance with any and all government agency permits necessary in the performance of the Facility, including but not limited to NPDES permits and State of Illinois air pollution control permits;
8. perform such other acts as may be necessary or desirable for the establishment, maintenance, operation, improvement and expansion of the Facility;
9. Enter into Customer Contracts with respect to all or any part of the Reserve Capacity;
10. review and approve an annual budget;
11. appoint committees and hire personnel as deemed necessary;
12. establish rules of procedure for the operation of the Board by means of bylaws; and
13. Acquire by purchase, donation, lease or eminent domain, own, convey, lease, mortgage or dispose of land and other property, real or personal, or rights therein, and grant or acquire licenses, permits, easements and options with respect thereto, all in the manner and at such price as the Agency determines is reasonably necessary to achieve its authorized objectives.

C. The Agency shall be governed by a seven-person Board of Directors consisting of four persons appointed by the Mayor of the City of Kankakee, and one person from each of the Villages of Aroma Park, Bourbonnais and Bradley appointed by the respective Mayors of said Villages. Directors shall serve for one-year terms. Each

Director shall be entitled to one vote. The location of the meetings of the Board shall be the Facility unless the Board members agree otherwise.

The Board shall determine the general policy of the Agency, shall approve the annual budget, shall make all appropriations, shall approve all contracts, shall adopt all resolutions providing for the issuance of bonds or notes by the Agency, shall adopt its bylaws, rules and regulations, and shall have such other powers and duties as may be prescribed elsewhere in this Agreement.

The Board shall meet at least monthly or at the call of the Chairman or any four of the Board members of the Agency. All meetings of the Board shall comply with the requirements of the Illinois Open Meetings Act.

A simple majority of the Board members shall constitute a quorum to do business. The concurrence of a majority of all Directors is required for the passage of any ordinance or resolution, the incurring of any debt or financial obligation, the approval of any payment or the making of any appropriation. All other actions shall require the vote of a majority of those Directors present, provided there is a quorum present at the time, except as otherwise provided in this Agreement and except that the affirmative vote of five Directors shall be required to modify this Agreement, modify the rate methodology or the amount of user charges, approve bond issues, make any appropriation in excess of \$50,000, change the membership of the Agency, or exercise the power of eminent domain.

By resolution adopted by the affirmative vote of five Directors, the Agency may delegate to one or more officers named in the resolution the power to establish the terms of an issue of revenue bonds or notes of the Agency within limits specified by the Board in the Resolution.

- D. The Agency shall have perpetual duration unless dissolved and terminated as provided in Section XII of this Agreement.

III. ANNUAL BUDGET; AUDIT; BONDS AND NOTES

- A. Adoption of the annual operating budget shall require the affirmative vote of four Directors. The fiscal year of the Agency shall be May 1 to April 30.
- B. The Agency budget shall be prepared and maintained as a separate document and shall not be intermingled or made a part of the regular budgets of any of the Members.
- C. An annual audit shall be executed by an auditing firm selected by the Board. The auditing firm selected by the Agency shall be a firm independent of the auditing firm auditing the books and records of any of the Members, unless such firm is approved by vote of the majority of the Board members.

- D. Any resolution authorizing the issuance of the bonds or notes of the Agency shall pledge and provide for the application of Revenues to payment of Operation and Maintenance Costs, to provision for adequate depreciation, reserve or replacement funds with respect to the Facility, and to the payment of principal, premium, if any, and interest on the bonds or notes of the Agency. All bonds or notes of the Agency shall be revenue bonds or notes and shall have no claim for payment other than from Revenues of the Agency. Bonds or notes issued by the Agency shall not constitute an indebtedness of any Member or Customer.

IV. PERSONNEL

- A. All appointments of personnel for the Facility shall be made by the Superintendent, and shall be made only on the basis of merit and fitness, using criteria determined by the Board.
- B. The Board may appoint an Executive Director who shall be an employee at will charged with the duty of directing and supervising the daily operation of the Agency subject to the general policy decisions of the Board, and shall be responsible for carrying out the policy decisions of the Board and other duties as determined by the Board, and shall report to the Board from time to time regarding the activities of the Facility.
- C. The Board may hire a Superintendent who shall report to the Board (or to the Executive Director, if such is appointed) and shall be responsible for supervising the operation and maintenance of the Facility; performing wastewater analysis to determine cost and allocation; monitoring compliance with federal, state and local regulations and permit requirements; preparing reports as directed by the Board (or the Executive Director, if such is appointed); and such other duties as may be appropriate. The Superintendent shall attend all meetings of the Board.

V. FACILITY OWNERSHIP AND MANAGEMENT

- A. It is the intention of the Members that the Agency acquire ownership of the Facility. Currently, the City of Kankakee has outstanding revenue bonds to which are pledged the revenues derived from the operation of the Facility. Covenants made in connection with these bonds require that the City maintain ownership of the Facility until such bonds are fully paid or defeased. The Kankakee bonds are subject to redemption as early as 2003, and will finally mature in 2016.

The City of Kankakee agrees to review the bonding issue with the Board not later than 2003, and to review the entire agreement in 2016. Until the Kankakee bonds are fully paid or defeased and subject to the requirements of Article IX, the City of Kankakee agrees to act as the financial implementer for the Agency by providing

additional bonding capacity, if necessary, to a limit acceptable to the City of Kankakee.

- B. The City of Kankakee shall convey title to and all of its ownership rights in the Facility to the Agency no later than the year 2016, the date on which the last of its existing revenue bonds will be retired, provided, however, that if the City exercises its rights of early redemption in 2003 or after, or provides for the defeasance of its revenue bonds at any time, such that all of the bonds are fully paid or defeased, then the City shall effect said transfer immediately thereafter.
- C. The Agency shall pay the City of Kankakee a purchase price for the Facility, which price shall be determined mutually by the Agency and the City based on studies and reports prepared by consultants selected by agreement between the Agency and the City and stated in the Bond Resolution and appropriate related documents for the 1999 Bonds.

VI. FACILITY OPERATION AND ALLOCATION OF COSTS

A. Conversion Date

The Agency shall take over complete operation and maintenance of the Facility from the City of Kankakee at a date to be mutually agreed on by the Members.

B. Interim Operations Until Conversion Date

Within 90 days of the execution of this intergovernmental agreement, the Agency shall enter into an Operating Agreement with the City of Kankakee which identifies responsibilities and terms of the operation of the Facility for a period of not less than one year. The Operating Agreement shall also provide for the City of Kankakee to continue to receive its existing payment in lieu of taxes, and for electricity for the Facility to continue to be purchased from the City of Kankakee hydropower plant.

The Agency may, subject to the requirements of Article IX, solicit proposals from the City of Kankakee and other interested entities for the contract operation of the Facility upon the termination of any Operating Agreement with the City. Until such time as the Board determines to accept an alternative proposal from another entity, the City of Kankakee shall continue to operate the Facility. There shall be not less than one year's written notice to the City of Kankakee regarding a change to contract operations of the Facility.

C. Transfer of Existing Permits

In developing the Operating Agreement, the Agency shall arrange with the City of Kankakee for the transfer to the Agency of the National Pollution Discharge

Elimination System (NPDES) Permit and the modification of the Sludge Disposal Permit.

D. Billing Procedure

Not later than the twenty-first calendar day of each month, the Agency, by its Superintendent, or Executive Director, if such is appointed, shall send a bill to each Member and Customer for the treatment of wastewater based on required federal regulations and the Rate Methodology established in Article VI. F. The Agency will also make available to each Member, upon request, a monthly budget statement, said statement detailing, by line item, expenditures for the previous month, end of the month encumbrances, and unencumbered budget balances.

E. Revenue Fund

The Agency shall maintain a separate fund entitled "Sewage Treatment Agency Operating Fund" (the "Revenue Fund"). All Operation and Maintenance Costs shall be charged to said fund and all Revenues shall be credited to said fund.

F. Rate Methodology

The Agency shall apportion Operation and Maintenance Costs among the Members in proportion to the hydraulic flow, measured in MGD, that each Member contributes for treatment at the Facility. The Agency shall apportion Capital Costs among the Members as follows: debt service on the 1999 Agency Bonds, including any required deposits to any debt service reserve funds established in connection with the 1999 Agency Bonds, and debt service on any bonds or notes of the Agency issued to refund the 1999 Agency Bonds, including any required deposits to any debt service reserve funds established in connection with such refunding bonds, shall be allocated among the Members in accordance with the 1999 Debt Service Allocation, and all other Capital Costs shall be allocated among the Members in proportion to the Capacity Allocation among the Members, in both instances excluding any Reserve Capacity held by the Agency or allocated to Customers. The Superintendent shall review the Agency's allocation of Operation and Maintenance Costs annually and shall make recommendations to the Board for any necessary changes in such allocations.

Amounts payable by Members for Costs shall be reduced proportionately to the extent that the Agency receives payments by Customers under Customer Contracts or Agreements or any other Revenues, but neither the existence of Customer Contracts or Agreements nor the receipt of payments by Customers under them, or the receipt of any other Revenues, shall modify the allocation of Operation and Maintenance Costs and Capital Costs as provided above.

The Board may modify the rate methodology, but each such modification shall comply with Article IX and any applicable restrictions in resolutions authorizing outstanding revenue bonds and notes of the Agency.

G. Measurement of Flow and Method of Metering

The Superintendent shall establish a method of flow measurement and metering, which shall be approved by the Board.

H. Records and Recordkeeping

The Board may appoint either the auditor or the Superintendent to develop procedures for records and recordkeeping that will be subject to Board approval.

VII. CAPACITY ALLOCATION

A. The current Capacity of the plant is 25 MGD. *Exhibit 1* shows the Reserve Capacity of the Facility and the current allocation of Capacity among the Members. The Agency may modify or expand the Facility to increase the Capacity in accordance with Sections IIB and V. The Agency shall maintain any Reserve Capacity thereby created for allocation to Members or Customers as provided in this Agreement.

B. If the 30-day average flow from any Member exceeds its Capacity Allocation more than two times in any twelve-month period, then the Superintendent shall give written notice to the Member, and a six-month cure period shall begin. Within this cure period, the Member shall negotiate the terms of and execute a Capacity Allocation Agreement with one or more of the other Members, such agreement to be effective at or before the end of the cure period and to provide for a transfer to the first Member of sufficient additional Capacity to at least equal the excess flow. If any Reserve Capacity exists, the Member may negotiate with the Agency for an allocation to it from the Reserve Capacity of the necessary additional Capacity by means of a transfer of such Capacity. Such an allocation shall be evidenced by an amendment to *Exhibit 1*.

Each Customer Contract shall contain provisions similar in substance to the foregoing paragraph.

If the Member fails to cure the flow situation within the cure period, then the matter shall be resolved in accordance with Article XIII.

C. If any Member determines that it has allocated to it Capacity beyond its current and future requirements, then it may negotiate the terms of and execute a Capacity Allocation Agreement with one or more other Members. The Member or Members providing Capacity for reallocation to another Member shall be entitled to charge the recipient a fee [based on the annual costs of outstanding debt service obligations. In

1995, debt service costs on the Facility were \$54,300 per MGD on the basis of 30-day maximum flows. The Members providing Capacity shall also be entitled to reasonable administrative costs in developing the fee.] The Agency shall annually request each Member to identify in writing its reallocation charge and the amount of capacity available for reallocation for the information of the other Members.

VIII. FUTURE CAPITAL IMPROVEMENTS

- A. If, at some future date, it becomes necessary or advisable to enlarge, improve, or expand the Facility, including expansion of the Service Area boundaries and any connections to permit use of the Facility by Customers, [and to pledge revenue for such purpose,] the same may be accomplished with the approval and a majority vote of five Directors under such terms as may be agreed to by the Board.
- B. The Members have mutually agreed to individually expand the Service Area within the general boundaries shown on *Exhibit 2*. Within six months of execution of the Agreement, the Agency shall develop a formal boundary agreement with all Members which precisely delineates the boundaries of the Service Area and which establishes a mechanism to modify the boundaries at a later date.

IX. AGENCY BOND COVENANTS

Until such times as the Agency owns the Facility and the outstanding sewer revenue bonds of the City of Kankakee are no longer outstanding, this Agreement shall be subject to all applicable restrictions contained in the present sewer revenue bond ordinances of the City of Kankakee.

X. REGULATIONS

A. Sewer Use Ordinances of Member Systems

Each Member represents to the other Members that it has adopted, and agrees that it will maintain and enforce, appropriate ordinances imposing sewer use regulations which establish standards for the connection and use of public and private sanitary sewers, the discharge of industrial and other wastewater into sewer systems, and industrial surcharges. Said sewer use regulations shall at least be as strict as standards established by Kankakee Metropolitan Wastewater Utility of the City of Kankakee as may be amended from time to time.

B. User Charge Ordinances of Member Systems

Each Member represents to the other Members that it has adopted, and agrees that it will maintain and enforce, a user charge ordinance for its Member System through which it has assessed and will continue to assess its share of the Costs to the users of its Member System. Such ordinances shall be adopted and enforced pursuant to this

Article and shall be in accordance with the regulations contained in Section 35.935 of Chapter 40 of the Code of Federal Regulations (40 CFR 35.935).

C. Industrial Pretreatment Program

Each Member and any Customer, if required by the Agency or the IEPA, shall provide to the Agency a written pretreatment program acceptable to the IEPA or designate the Agency to prepare such a program on its behalf.

XI. COVENANTS OF THE MEMBERS

Each Member covenants that:

- A. It will operate and maintain, or cause to be operated or maintained, its Member System, and all improvements and extensions of its Member System, in good repair and working order, will operate the same efficiently, will establish and maintain appropriate depreciation and/or replacement funds for its Member System, and will punctually perform all duties with respect to its Member System as may be required by the Constitution and laws of the State of Illinois and all other applicable laws and by all resolutions and ordinances of such Member. From time to time, it will take steps reasonably necessary so that its Member System may at all times be operated properly and advantageously.
- B. It will continue to own and possess its Member System and will, within the exercise of reasonable business judgment and in a manner so as not to cause a default hereunder, dispose of property which is part of its Member System only to the extent that such property is no longer useful or profitable in the operations of its Member System.
- C. It will treat all payments required to be made to the Agency under this Agreement as operation and maintenance costs of its Member System incurred to pay for sewerage treatment services. It will include in its annual appropriation or budget ordinance adequate funds for the aforementioned payments. Such payments shall have a lien upon the revenues derived from the operation of the applicable Member System senior to payments of debt service on obligations of the applicable Member payable from such revenues. Each Member covenants that it will not pledge the revenues derived from the operation of its Member System to any obligations with a lien senior to, or on a parity with, its obligations to make the payments required under this Agreement.

XII. WITHDRAWAL, DISSOLUTION AND TERMINATION

- A. Any Member may at any time withdraw as a member of the Agency but only upon the consent of the Board and upon the consent of each other Members. Any Member

may withdraw pursuant to this Section only upon filing with the Agency a certified copy of an ordinance of the Member determining so to withdraw. Any consent by any Member to withdrawal by any other Member shall be made only by filing with the Agency a certified copy of an ordinance so consenting to the withdrawal.

- B. Any withdrawing Member shall be responsible for its pro-rata share of any unpaid contracts, debts and obligations of the Agency, including any revenue bonds or notes, incurred prior to the date of withdrawal or removal in proportion to its respective share or cost-sharing, as the case may be, and no withdrawal shall be effective unless and until said obligations have been satisfied.
- C. Upon the withdrawal of one or more Members so as to reduce the number of Members to less than three, the Agency may be dissolved and terminated, subject to Section XII(D). Upon the filing with the Agency of certified copies of ordinances of the majority of Members determining to dissolve and terminate the Agency, then the Agency shall be so dissolved and terminated, subject to Section XII(D). If the number of Members is reduced to two, a vote of either Member to dissolve shall be sufficient to dissolve the Agency, subject to Section XII(D).
- D. The Agency may not be dissolved or terminated if any revenue bonds or notes of the Agency remain unpaid and undischarged, unless such bonds or notes remain unpaid and undischarged solely because their holder failed to present them for payment when due at maturity or on a prior date on which such bonds or notes were duly called for redemption prior to maturity.
- E. If withdrawal of one or more Members results in dissolution and termination of the Agency as provided herein, then the withdrawing Members shall participate in the dissolution of the Agency as set forth in Section XII(F).
- F. Upon the termination and dissolution of the Agency:
 - (1) The contracts, debts and obligations of the Agency remaining unpaid after such dissolution and termination shall be the several obligations of the respective Members in the respective allocations established for Capital Costs and Operation and Maintenance Costs, as applicable, in accordance with this Section or by separate resolution.
 - (2) The assets of the Agency remaining after dissolution shall be distributed among the Members which had been Members of the Agency within one year prior to such dissolution and termination in proportion to their respective proportionate share of Capital Costs as established by the Board or by previous agreement, after any setoff with respect to the provision for payment of that Member's share of the contracts, debts and obligations of the Agency.

(3) The Agency shall file a notice of dissolution with the Secretary of State.

- G. The Agency shall not be liable for any liability or obligations incurred individually by any Member except as agreed by the Board.

XIII. CONFLICT RESOLUTION

A. Definition

A "dispute" or "grievance" is defined as a difference of opinion raised by a Member against the Agency or the Agency against a Member regarding an alleged violation, misapplication or misinterpretation of an express provision of this Agreement.

B. Procedure

A grievance filed against the Agency or a Member shall be processed in the following manner:

The aggrieved party shall submit the grievance in writing to the representative of the other party specifically indicating that the matter is a grievance under this Agreement. The grievance shall contain a complete statement of the complaint, the provision or provisions of this Agreement which are alleged to have been violated, and the relief requested. All grievances must be presented no later than ten (10) business days from the date of the occurrence of the matter giving rise to the grievance or the aggrieved party's discovery of such matter using reasonable diligence, whichever is later. The party served with the written notice of grievance shall provide a written answer within seven business days from receipt of the notice.

C. Arbitration

Arbitration shall proceed in the following manner:

- (1) The Agency and the Member shall confer and attempt to reach agreement on the selection of an arbitrator. In the event that parties are unable to agree upon the arbitrator within ten (10) days, they shall obtain a list of recognized arbitrators from the Federal Mediation and Conciliation Service. Upon receipt of such list, each party shall strike a name from the list, until there is one name remaining. The remaining individual shall be the arbitrator. The party requesting the arbitration shall strike first.
- (2) The arbitrator shall promptly review the grievance and shall hold a hearing, and the scope of the hearing shall be defined by the grievance and this Agreement. The hearing shall only be open to the parties in interest. The

parties may request that a written transcript of the hearing be made, to be paid for by each party.

- (3) The arbitrator shall issue his/her decision not later than thirty (30) days from the close of the hearing.
- (4) The decision of the arbitrator shall be in writing and shall set forth the findings of fact, reasoning and conclusion of the issues submitted.
- (5) The decision of the arbitrator shall be binding upon the parties to the grievance.
- (6) The cost of the arbitrator's fees and expense and the cost of a court reporter, if jointly requested by the parties, shall be borne equally by the Agency and the Member. Each party shall be responsible for its own costs.
- (7) The arbitrator shall have full authority to decide all issues of substantive and procedural arbitrability provided, however, that the parties shall not be prejudiced from challenging arbitrability determinations on subsequent review in judicial and quasi judicial proceedings.

D. Modification of Procedure


The Agency may amend the procedures set forth herein or may provide for alternative forms of dispute resolution by amending this Agreement or by means of its By-laws.

IX. PREVIOUS AGREEMENT; SAVINGS CLAUSE

- A. The intergovernmental agreement between the City of Kankakee and the Villages of Aroma Park, Bourbonnais and Bradley, dated the 20th day of July, 1988, and amended April 13, 1995, was rendered void as of May 1, 1996, the date on which this Agreement became effective.
- B. This Agreement is an amendment and restatement of the Municipal Joint Sewage Treatment Agency Intergovernmental Agreement entered into by the parties hereto on May 1, 1996 (the "1996 Intergovernmental Agreement"). All actions taken by the Agency and its Directors under the 1996 Intergovernmental Agreement are hereby ratified, confirmed and approved.

EXECUTED this 8 day of March, 1999, by the following:

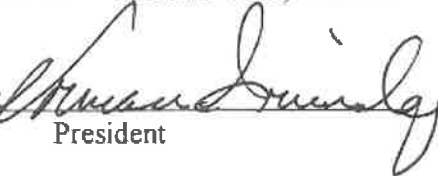
CITY OF KANKAKEE, ILLINOIS

By: 
Mayor

ATTEST:


City Clerk

VILLAGE OF AROMA PARK, ILLINOIS

By: 
President

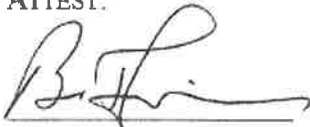
ATTEST:


Village Clerk

VILLAGE OF BOURBONNAIS, ILLINOIS

By: 
President

ATTEST:


Village Clerk

VILLAGE OF BRADLEY, ILLINOIS

By: *Kenneth P. Hayes*
President

ATTEST:

William J. [Signature]
Village Clerk

EXHIBIT 1

Allocation of Capacity

City of Kankakee	16.6 mgd
Village of Bourbonnais	4.4 mgd
Village of Bradley	3.8 mgd
Village of Aroma Park	0.1 mgd
Reserve capacity	<u>0.1 mgd</u>
Total	<u>25.0 mgd</u>

EXHIBIT 2

**Service Area Map Showing Boundaries
for Expansion by Each Member**