

FEO
Revised- 10/26/73
Revised- 10/29/73

AGREEMENT BETWEEN THE SANITARY DISTRICT OF ELGIN
AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO
FOR A JOINT PROJECT IN THE POPLAR CREEK DRAINAGE BASIN

WHEREAS, The Metropolitan Sanitary District of Greater Chicago (referred to hereafter as "MSDGC") is charged with the urgent responsibility of providing additional sewage treatment facilities to serve areas within its jurisdiction in the Poplar Creek Drainage Basin, and

WHEREAS, the Sanitary District of Elgin (referred to hereafter as "SDE") owns and operates a sewage treatment facility now serving other parts of the Poplar Creek Drainage Basin, which sewage treatment facility "SDE" has an urgent responsibility to expand and improve, and

WHEREAS, responsible officials of "SDE" and "MSDGC" have determined that the most advantageous and efficient course to follow in the direction of achievement and fulfillment of the respective needs of both agencies, is for them to cooperate in a joint project to expand and improve "SDE's" sewage treatment plant in such a way as to include the provision of facilities adequate to take care of the additional sewage treatment requirements of "MSDGC" in the Poplar Creek Drainage Basin, and

WHEREAS, it is anticipated that federal and/or state grant funds will be made available to cover at least seventy-five percent (75%) of the original construction costs of the proposed joint project, and so far as the federal government is concerned, the grant of these funds will be contingent upon "SDE" and "MSDGC" reaching agreement upon terms for cooperation in a joint project to meet their respective wastewater treatment requirements, rather than proceeding with individual projects, and

WHEREAS, "SDE" and "MSDGC" have the legal powers required to enter into and fulfill their respective obligations under the following Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, IT IS HEREBY AGREED BY AND BETWEEN "SDE" and "MSDGC" as follows:

1. That this Agreement is contingent upon "SDE" receiving at least 75% of the eligible total project costs for additions and improvements to the MAIN PLANT of "SDE" in Federal and/or State funding for the fiscal year ending June 30, 1974. This Agreement is also contingent upon "MSDGC" receiving at least 75% of the eligible total collection facility costs in Federal and/or State funding for the fiscal year ending June 30, 1974. If either "SDE" or "MSDGC" is unable to secure this amount of funding, this Agreement will be null and void.

2. That the areas subject to this Agreement for a Joint Project are certain areas in Cook County, Illinois, which are part of the Poplar Creek Drainage Basin and which fall into three classes, as follows:

(a) Areas presently within the boundaries and under the jurisdiction of "MSDGC".

(b) Areas presently within the boundaries and jurisdiction of "SDE", and

(c) Areas presently outside the boundaries and jurisdiction of both "MSDGC" and "SDE".

3. That, upon the sale of its initial General Obligation bonds on terms deemed acceptable to it, "SDE" will construct the additions and improvements to the MAIN PLANT of "SDE", as referred to in this Agreement and as approved by the Illinois Environmental Protection Agency.

4. That "SDE" will operate and maintain "SDE" MAIN PLANT facilities in accordance with all applicable local, state, interstate, and federal laws, regulations and performance standards.

5. That upon completion and acceptance of the aforementioned additions and improvements, said "SDE" MAIN PLANT facilities shall provide initial total treatment capacity for influents not less than the following:

17 MGD Annual Average

34 MGD Maximum Daily

45 MGD Maximum Hourly

and that, of the above total initial capacity, "SDE" shall provide and reserve initial treatment capacity sufficient to accept at its MAIN PLANT, from "MSDGC's" interceptors, sewage flows at the following rates:

3 MGD Annual Average

6 MGD Maximum Daily

8 MGD Maximum Hourly

unless and until "MSDGC" shall have arranged with "SDE" to secure additional capacity in the MAIN PLANT for flows in excess of the above amounts as set forth in Paragraph 27 below. It is agreed that the "allotted capacity" of each of the parties hereto shall mean that proportion of the total treatment capacity of "SDE's" MAIN PLANT to which the party is entitled, according to the terms as to sewage flows provided in this paragraph, or the sewage flows as modified according to the terms of Paragraph 27.

6. That "SDE" will (a) continue to operate and maintain its treatment facilities in an efficient and economical manner, (b) provide "MSDGC" semiannually with copies of regular reports as prepared by "SDE", containing operating, maintenance, and cost data and related information concerning the treatment facilities, (c) permit any authorized agent or agents of "MSDGC" to examine all of its accounts, books, records, and operations, but without expense to "SDE" and (d) present each year to "MSDGC" at least thirty days in advance of the adoption thereof, a duly authenticated copy of the annual tentative budget and appropriation ordinance of "SDE" proposed for the succeeding fiscal year.

7. That "SDE" will maintain a practical insurance program, with reasonable terms, conditions, provisions and costs, which it determines, will afford adequate protection against loss caused by damage to or destruction of "SDE" treatment facilities or any part thereof and also such comprehensive public liability insurance for bodily injury and property damage resulting from the construction or operation of "SDE" treatment facilities. All such insurance policies shall be carried in a responsible insurance company or companies authorized and qualified to assume the risks thereof. On or before the first day of each fiscal year of "SDE", it will furnish "MSDGC" with a certificate stating the amounts and kinds of such insurance in effect for the ensuing year.

8. That anyone who uses a portion of the capacity of the treatment facility allotted to "MSDGC" shall compensate "MSDGC" for such use; and likewise anyone who uses a portion of the treatment capacity allotted to "SDE" shall compensate "SDE" therefor.

9. That in the event that "SDE" is ordered by any directive of the Illinois Pollution Control Board or other regulatory agency having competent jurisdiction, to increase the degree of treatment then being provided, "MSDGC" will then enter into negotiations with "SDE" for the purposes of establishing the obligations of the parties, if any, as to the payment of any additional costs.

10. That "MSDGC" will permit any authorized agent or agents of "SDE" to inspect "MSDGC" system (including industrial waste discharges) tributary to "SDE" facilities, without expense to "MSDGC", so often as the same may be desired by "SDE".

11. That the term "Total Project Cost" as herein used shall mean the total amount of the necessary and incidental costs incurred by "SDE" on account of the cost of construction of the subject "SDE" facilities expansion and the cost of all lands, properties, rights, easements, franchises, and permits

acquired, the cost of all machinery and equipment, financing charges, interest during construction, cost of engineering, legal, and financial services, plans, specifications, surveys, estimates of cost and of revenues, administrative expenses, and such other expenses as may be necessary or incident to the financing or construction of the Project, including any obligation or expense incurred prior to the issuance of the General Obligation bonds or other obligations of "SDE", for engineering, legal and financial studies for the subject project and for estimates of cost and of revenues and for other technical or professional services utilized in the planning, design, financing and construction thereof, as shall be determined as the findings of an audit of the books and records of "SDE" and certified by "SDE" and "MSDGC's" certified public accountants. Such duly certified expenses incurred and paid by "SDE", prior to the issuance of General Obligation bonds or other obligations of "SDE" for the financing of the Project, shall be reimbursed to "SDE" from the proceeds of such General Obligation bonds or other obligations as soon as practicable after the issuance thereof.

12. That all certified findings of audits and certificates of expense referred to in this Agreement shall be deemed to be accepted by "SDE" and "MSDGC" respectively, unless objection shall be made in writing by either party to the other within forty-five (45) days after the issuance thereof.

13. That the proceeds of the sale of General Obligation bonds as required for total project cost, and the proceeds of grants-in-aid toward the total project cost shall be deposited in a special Construction Fund of "SDE" and shall be applied to the payment of the Total Project Cost. Monies in the said Construction Fund shall, as nearly as may be practicable, be invested and reinvested in such obligations as are permitted by law, and the income therefrom shall be considered as part of the

Construction Fund and shall be utilized solely for the purposes thereof.

14. That prior to the award of the contract for the expansion and improvement of "SDE's" MAIN PLANT, as provided herein, "MSDGC" hereby agrees to pay to "SDE" a lump sum in cash equal to 25% of the difference between the "Total Project Cost", as set forth in Paragraph 11 hereof, and the total Federal and/or State grants awarded for said project; and that said lump sum cash payment from "MSDGC" to "SDE" shall be distributed as follows:

(a) eighty percent (80%) of the lump sum shall be paid to "SDE" Construction Fund described in paragraph 13.

(b) twenty percent (20%) of the lump sum shall be paid to "SDE" in lieu of rental payments for "MSDGC's" use of existing "SDE" facilities.

15. That in the event receipt of Federal or State grant payments are delayed after the initial payment has been received for reasons directly attributable to either "SDE" or "MSDGC" then the responsible party must furnish funds equivalent to their proportional share of the project costs as set forth in this Agreement. Once the Federal or State grant payments have been released then those funds advanced by either "SDE" or "MSDGC" for this purpose will be refunded.

16. That for each year of service rendered to "MSDGC" hereunder, "MSDGC" shall pay a proportional share of the total cost of operation and maintenance for that part of "SDE" treatment facilities used jointly by "MSDGC" and "SDE". The amount of the proportional share to be paid by "MSDGC" shall be computed on the basis of the relative volume and strength of waste flow received from "MSDGC" compared to the volume and strength of the total waste flow received at "SDE" MAIN PLANT facilities. That amount of the proportional share attributed to waste volume shall be based upon the ratio of total flow received from "MSDGC" to the total flow received at "SDE" MAIN PLANT.

An additional annual payment for operation and maintenance (attributable to waste strength) shall be made by "MSDGC" to "SDE" for each waste component contained in "MSDGC" flows to the MAIN PLANT, at an average annual concentration in excess of 110% of the corresponding average annual concentration of such waste component contained in the total flows to "SDE's" MAIN PLANT. The amount of such additional payment shall be the annual cost of treatment of that portion of such waste component or components in excess of 110% of its corresponding concentration in the total waste flows received at "SDE's" MAIN PLANT. Likewise, "MSDGC" shall be entitled to a credit for operation and maintenance (attributable to waste strength) for each waste component contained in "MSDGC" flows to the MAIN PLANT at the average annual concentration less than 90% of its corresponding concentration in the total waste flows received at "SDE's" MAIN PLANT. Waste considered for purposes of determining the foregoing charges or credits to "MSDGC", attributable to waste strength, shall include, but not be limited to, the Standard 5-day Biochemical Oxygen Demand (BOD), suspended solids (SS), ammonia nitrogen (N), and phosphorus (P), all expressed in milligrams per liter (mg/l).

17. That "MSDGC" agrees to remit quarterly payments starting at a time three (3) calendar months after "SDE" has accepted for treatment "MSDGC" waste transmitted by "MSDGC" to "SDE" for treatment as called for in this Agreement, and quarterly thereafter for the period that this Agreement is in effect. These payments shall be for "MSDGC's" proportional share of the cost of operation and maintenance, attributable to waste volume, as set forth in Paragraph 16 above, and shall be based upon the records of volumes of flow and operation and maintenance costs of the preceding fiscal year. At the end of each fiscal year, an adjustment shall be made on the next quarterly payment due from "MSDGC", in the form of an additional charge or a credit

based upon the flow volumes and operation and maintenance costs actually experienced during the fiscal year just ended. A further adjustment, if applicable, shall also be made in the form of an additional charge, or credit, whenever any waste component concentration in "MSDGC" flows is greater than 110% or less than 90%, of the concentration of the corresponding waste component in the total flows to "SDE" MAIN PLANT during such fiscal year, all pursuant to the provisions of Paragraph 16. "MSDGC" payments under this paragraph for operation and maintenance during the first fiscal year shall be based upon estimates of costs, and a ratio of "MSDGC" flows to total flows to "SDE's" MAIN PLANT of three seventeenths (3/17).

"MSDGC's" contribution for operation and maintenance shall ultimately be its proportional share of the following funds of actual money spent in the budget of "SDE":

- (a) General Fund - less capital expenditures.
- (b) Chlorination Fund - less capital outlay.
- (c) Illinois Municipal Retirement Fund.
- (d) Insurance Fund.
- (e) Audit Fund.
- (f) Any other fund or funds established for operating purposes.

Costs for replacement of equipment will be amortized over an appropriate period of time. Any amount of money over \$3,000 to be spent on a piece of equipment (other than repair and replacement) allocated under the above categories will require prior consultation with a representative from "MSDGC", and agreement that the equipment fulfills a maintenance function.

18. That an invoice shall be rendered to "MSDGC" by "SDE" at the beginning of each quarter and such quarterly payments as are prescribed in Paragraph 17 shall be due within sixty (60) days after invoice receipt to cover charges incurred.

19. Whatsoever monies are due to be reimbursed to the Federal Government on behalf of industrial users within "MSDGC's" jurisdiction will be collected by "MSDGC" and remitted to "SDE", and "SDE" in turn will remit same to the Federal Government.

20. That "MSDGC" will be notified of the engineering consultant or consultants that "SDE" proposed to employ for future expansions that will provide for the treatment of additional "MSDGC" wastewater flows. The selection of the consulting engineers to perform engineering work for any MAIN PLANT expansion requested by "MSDGC" shall be accomplished by "SDE".

Employment of consultants shall be subject to "MSDGC" concurrence as to reasonableness of fee and competency. Before advertisement for bids on any construction contract under this Agreement or for any future MAIN PLANT expansion as mentioned in this paragraph, "SDE" shall provide "MSDGC" with such construction cost estimated and related calculations before the advertisement of any such bids may take place. Also, after bids have been received, the contractual Agreement will be awarded by "SDE" after concurrence by "MSDGC" as to reasonableness of bid and responsibility of the contractor.

21. That "SDE" at no expense to itself, in cooperation with "MSDGC", will assist in acquiring the requisite easements and rights-of-way (including necessary condemnation) to enable "MSDGC" to build such portions of interceptors, connections, metering devices, pumping stations and other facilities in Kane County, Illinois, as are necessary for "MSDGC" to carry out the purposes of this Agreement.

22. That "MSDGC" will construct, own, maintain and operate all necessary interceptors sewers and other facilities to convey wastewater originating from within its jurisdictional boundaries in the Poplar Creek Basin to the point at which they enter the metering structure described herein.

"MSDGC" shall furnish and install and "SDE" shall own, operate and maintain a meter structure including sampling and metering devices for the purpose of measuring flows contributory to "SDE" from "MSDGC" area covered under this Agreement. Said structure and devices shall be located and be of the manufacture and type as approved by "SDE".

23. That "MSDGC" and "SDE" will enact compatible Ordinances to control discharges into their respective conveyance systems to "SDE" MAIN PLANT. In the event that there is any incompatibility between the ordinances enacted, then the more restrictive of the ordinances shall govern as to "MSDGC" discharges only. However, "MSDGC" shall be the authorizing agent for the issuance of permits for all sewer construction within its jurisdiction.

"SDE" shall have the right and authority to monitor and sample the quality of the wastewater discharges contributed from "MSDGC" to "SDE" MAIN PLANT. "SDE" shall not exercise any connection fees upon any properties within the boundaries of "MSDGC" within Cook County, nor shall they assess, levy or impose any assessments or taxes of any nature upon the properties of "MSDGC" within Cook County. All taxes levied or extended against any real or personal property included in this Agreement located within the "MSDGC" for the treatment of sewage shall become the property of "MSDGC" exclusively.

24. That the initial lump sum payment made by "MSDGC" to "SDE" for the capital improvements shall provide for the guarantee by "SDE" to "MSDGC" of treatment capacity for a minimum of 3 MGD of wastewater.

25. That if wastewater treatment is required for the area described in this Agreement located in Cook County but outside the present "MSDGC" boundaries, a formal notice shall be transmitted from "MSDGC" to "SDE" indicating the type of service Agreement proposed to provide for the service of this area.

26. That at any time after the date of this Agreement, the parties hereto may mutually agree hereunder to the conveyance of any portion of the permanent capacity rights of one party in "SDE" MAIN PLANT to the other party, provided that such may be accomplished without violation of any applicable rules, regulations, or performance standards governing the operation of "SDE" MAIN PLANT. On or before the effective date of each such conveyance of capacity rights, the parties hereto shall adopt an amendment to this Agreement setting forth the revised respective capacities of "SDE" and "MSDGC" in "SDE" treatment plant facilities, with such revised ratios applicable towards the assessment of new operation and maintenance charges while maintaining existing rates as established under Paragraph 16.

27. That "SDE" agrees to take all necessary steps, after proper and reasonable notice given by "MSDGC" to provide treatment capacity for flows contributed by "MSDGC" at the following average quantities by the dates indicated below:

1978 5-8 MGD

1984 8-22 MGD

All costs encountered to increase "SDE" facilities to provide the required capacity as mentioned above shall be borne by "MSDGC".

28. That for so long as "SDE", or any successor thereof remains in existence and so long as "MSDGC" shall not be in default in its obligations hereunder, "MSDGC" shall continue to have the right to utilize the facilities of "SDE" in the manner and upon the conditions set forth in this Agreement.

29. That in the event the "SDE" terminates this Agreement, then:

(a) "SDE" will reimburse "MSDGC" for all losses incurred as a result of such termination, and these losses will include, but not be limited to the depreciated funds provided by "MSDGC" to "SDE" as provided in Paragraph 14, the depreciated capital cost which the "MSDGC" has incurred as a result of con-

constructing an interceptor sewer between the MAIN PLANT and the alternate plant site, and the depreciated costs for constructing any and all connections from the presently proposed interceptor to the alternate plant site.

(b) "SDE" shall provide a three (3) year notice of intention to terminate this Agreement to "MSDGC" and shall reimburse "MSDGC" for the amount described in Section (a) upon termination.

30. In the event that "MSDGC" terminates this Agreement, then "MSDGC" will reimburse "SDE" for all losses incurred as a result of such termination.

31. That this Agreement shall inure to the benefit of and be binding upon all successors of each of the parties hereto.

32. That this Agreement shall become effective on the date of its execution by the parties hereto.

IN WITNESS WHEREOF, THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO and the SANITARY DISTRICT OF ELGIN, the respective parties hereto have each caused these presents to be executed in duplicate by their duly authorized officers, to be duly attested and their corporate seals to be hereunto affixed.

The Metropolitan Sanitary District
of Greater Chicago

By Valentine J. Jurek
Chairman of the Committee on Finance

Art T. Lyman
General Superintendent

R. S. Moore
Purchasing Agent

Signed and Attested:

Frank J. [Signature] (SEAL)
Clerk of the District

SANITARY DISTRICT OF ELGIN

By Edward Haas
President of the Board

[Signature]
Clerk

EXECUTED JANUARY 10, 1974