

THIS AGREEMENT, made this 5 day of April, 1974,

by and between the CITY OF DANBURY, Connecticut, hereinafter referred to as "DANBURY", and acting herein by its Mayor, Charles A. Ducibella, duly authorized by action of the Common Council of said Danbury, on April 2, 1974, and the TOWN OF BROOKFIELD, Connecticut, hereinafter referred to as "BROOKFIELD", and acting herein by its First Selectman, S. Wesley Reynolds, duly authorized by Town Meeting of the Town of Brookfield held July 11, 1972,

W I T N E S S E T H:

1. This agreement is made pursuant to the authority contained in Section 7-273 of Chapter 103 of the General Statutes of Connecticut, Revision of 1958, as amended.

2. Danbury agrees to provide sufficient capacity in its trunk sewers, pumping stations and sewage treatment plant (hereinafter referred to as the "facilities") for conveyance, treatment and disposal of an average daily flow of sewage from Brookfield of 500,000 gallons, said average daily flow to be determined on an annual basis, and Danbury agrees to accept and treat said average daily flow from Brookfield throughout the term of this agreement and any extension of same. Danbury further agrees that the facilities for treatment and disposal of said daily flow will be maintained and operated in accordance with the requirements of all State and Federal agencies having jurisdiction.

3. Danbury further agrees that said facilities shall, at all times, be of a capacity sufficient to receive and treat a peak rate of flow from Brookfield of two and one-half (2-1/2) times the average daily flow, and Danbury agrees to accept and

treat said peak flow quantities from Brookfield from time to time throughout the term of this agreement and any extension of same. If peak rates of flow from Brookfield exceed two and one-half (2-1/2) times the average daily flow, then Brookfield agrees to pay for any and all costs or damages incurred because of this flow in excess of permitted peak flow, and further agrees that if said flow in excess of the permitted peak flow cannot be curtailed within a period of ten (10) days or within an extended period approved by Danbury, then any additional facilities required to handle such excess flow shall be installed or constructed at Brookfield's cost, but if the parties are unable to agree as to the type or size of such additional facilities and cost and method of financing same, then this contract shall be reopened and renegotiated as indicated in Paragraph 16 hereof.

4. All of the facilities contemplated hereunder which are located within the City of Danbury shall be owned by the City of Danbury, subject, however, to said Brookfield's rights to own capacity in and to use said facilities as set forth in this agreement.

5. It is specifically agreed that Danbury may connect to the jointly used facilities at any location desired within the City of Danbury, provided that the capacities required to be available for Brookfield are available for Brookfield as and when required.

6. There is annexed hereto and made a part hereof, a map entitled "DANBURY-BROOKFIELD Agreement for Sewerage Service, Prepared by: Charles A. Manganaro Consulting Engineers, Scale: 1" = 100', Date: February, 1974", upon which map is set forth the approximate location of the trunk sewer lines, pumping station and sewage treatment plant, and upon which map are shown the

design flows for each of the trunk sewers and pumping station, and the percentage share of each of the parties in and to the use of said facilities.

7. Brookfield agrees to pay to Danbury a portion of the net* construction cost of the jointly used trunk sewers located within the City of Danbury, said portion to be that percentage of the total construction cost for each reach of trunk sewer as shown on said map as the Brookfield percentage for each such reach.

8. Brookfield will pay to Danbury 9.3% of the net construction cost for the Beaver Brook Pumping Station shown on said map.

9. Brookfield will pay to Danbury, as a portion of its capital contribution toward the sewage treatment plant, the sum of Thirteen Thousand Five Hundred Dollars (\$13,500), said sum representing the agreed amount of Brookfield's share for the use of the Danbury sewage treatment plant, as same existed prior to the plant expansion program recently undertaken by Danbury. Said contribution has been computed on the basis of said plant's remaining useful life.

10. Brookfield will pay to Danbury 4.00% of the net construction cost of the new sewage treatment plant now being constructed by Danbury.

*As used throughout this agreement, the word "NET" means total cost of the item referred to less the amount of any Federal and/or State grant received in connection therewith.

11. Brookfield will pay to Danbury its share of the development cost of this project, based upon the following criteria:

a. Development Cost shall be defined as the difference between the Total Capital Cost of the sewerage project financed by the City of Danbury (through the bond resolution adopted in 1969 or as subsequently amended), and the Total Construction Cost of the same sewerage project, as certified by the City's Consulting Engineers.

b. Brookfield's share of the Total Construction Cost, hereafter referred to as "Brookfield's Construction Cost", shall consist of the total of net construction costs determined from the foregoing Paragraphs 7, 8 and 10.

c. Brookfield's share of the Development Cost shall be determined by the following formula:

$$\frac{\text{Brookfield's Construction Cost}}{\text{Total Construction Cost}} \times \text{Development Cost} = \text{Brookfield's Share of the Development Cost}$$

12. So that Danbury will not be required to finance the capital contributions contemplated to be made by Brookfield hereunder, Brookfield agrees to make payments to Danbury in advance of actual construction as follows:

a. Promptly upon execution of this agreement by both parties, and adoption by Brookfield of an appropriate bond ordinance, which adoption shall not be later than 120 days after the execution of this agreement, twenty-five percent (25%) of the estimated cost pursuant to Paragraphs 7, 8, 9 and 10 hereof, for said project to be made by Brookfield, said estimated total to be determined by Charles A. Manganaro Consulting Engineers, 51 Madison Avenue, New York, New York, Consulting Engineers to both parties.

b. At the time that said Engineers certify that the project is twenty-five percent (25%) completed, twenty-five percent (25%) of said estimated total capital contribution;

c. At the time that said Engineers certify that said project is fifty percent (50%) completed, twenty-five percent (25%) of said estimated total capital contribution; and

d. At the time said Engineers certify said project is seventy-five percent (75%) completed, twenty-five percent (25%) of said estimated total capital contribution.

Upon certification of final completion by said Engineers, a determination of the actual final cost shall be made by said Engineers and certified to both parties and any balance thus determined to be owing by Brookfield shall be promptly paid by it to Danbury. In the event Brookfield shall have paid more than its proper share as thus determined, Danbury shall promptly reimburse Brookfield the amount of any such overpayment.

13. As part of the initial construction of said joint sewerage system, Brookfield shall install, at Brookfield's cost, in Brookfield on the trunk sewer at or near the Brookfield-Danbury boundary line (or at such point as the Engineers for both parties shall agree), a recording and totalizing flow meter so that the annual flow from Brookfield to Danbury can be metered. A meter of similar accuracy shall be installed at the treatment plant, as part of the construction thereof, to measure total sewage flow received at such facility. Brookfield and Danbury shall both have access to the readings of said meters at all times. Brookfield shall pay to Danbury, each year, its proportionate share of the costs of the operation of the pumping stations and the sewage treatment plant. Said proportionate

share shall be computed by multiplying the total annual operating cost to Danbury for said facilities, which costs shall be separately tabulated, by the percentage of the total annual flow of sewage into said facilities which is attributable to Brookfield. At the beginning of each fiscal year in Danbury, the Danbury City Engineer shall estimate Brookfield's proportionate share for said ensuing fiscal year, and shall certify said estimate to both Danbury and Brookfield, and Brookfield shall pay said estimated share to Danbury, on a quarterly payment schedule commencing on the first day of the Danbury fiscal year. At the end of the Danbury fiscal year, the sum due Danbury from Brookfield for the preceding year's use shall be determined on the basis of the actual metered flow of sewage from Brookfield into Danbury, and any balance thus determined to be owing by Brookfield shall be promptly paid by it to Danbury. In the event Brookfield shall have paid more than its proper share for the preceding year as thus determined, the amount of such overpayment shall be credited against payments next becoming due from Brookfield to Danbury.

14. Danbury shall assume the responsibility for normal and routine inspection of the jointly used trunk sewer and force main, and no costs will be charged to Brookfield. The costs of maintenance, major repairs or replacements of the jointly used trunk sewer and force main shall be shared as follows:

From the Brookfield-Danbury town line South to the point where said trunk sewer turns East from U. S. Route #7 (approximately at the easterly terminus of Old Brookfield Road): Brookfield 50% - Danbury 50%.

The remainder of said jointly used sewer line and force main: Brookfield 10% - Danbury 90%.

Brookfield shall pay its proportional share to Danbury within thirty (30) days after receiving a bill for the same.

15. From the time when the City Engineer of Danbury certifies that service is available to Brookfield, Brookfield shall pay to Danbury a minimum operational cost, whether or not Brookfield uses the facilities, of One Thousand Dollars (\$1,000) per year.

16. This contract may be reopened and renegotiated at the request of either municipality if either the operating costs or the construction costs are increased as the result of (a) a request by Brookfield for a greater capacity, or (b) as the result of a change in process required by the State of Connecticut or the Federal government. In the event the parties are unable to agree as to some or all of the matters requiring agreement in connection with such renegotiation, the matters in dispute shall be subject to binding arbitration in the manner set forth in paragraph 21 below.

17. All materials and wastes discharged by Brookfield into said jointly used sewerage facilities must conform in all respects and adhere to the ordinances of the City of Danbury relating to the use of sewers, including but not limited to Section 16-10 of the Code of Ordinances of the City of Danbury. Sampling and testing procedures shall conform to the latest edition of the Standard Methods for Testing of Water and Wastewater, as published by the American Public Health Association. If tests indicate that Brookfield's wastes do not adhere to said ordinances, then:

a. Brookfield shall pay for all damages and costs incurred because of such discharge;

b. Danbury may require that Brookfield pretreat its wastes to acceptable levels; or Danbury may impose surcharges for the costs of handling wastes which do not adhere to said ordinances, including those wastes which have concentrations that exceed 350 milligrams per liter of suspended solids or 300 milligrams per liter of biochemical oxygen demand; and

18. This contract shall not be effective until it has been executed by the Mayor of the City of Danbury, and the First Selectman of the Town of Brookfield, after approval by the Common Council of the City of Danbury and a Town Meeting of the Town of Brookfield. The term of this contract shall be twenty (20) years from the effective date. At the end of said twenty (20) years, Brookfield shall have the option to renew this contract for a further period of twenty (20) years upon such terms and conditions as are agreed to between the municipalities. In the event that Brookfield exercises its option to renew this contract, but some or all of the terms and conditions cannot be agreed upon, the matters in dispute shall be subject to binding arbitration in the manner set forth in Paragraph 21 below.

19. In the event that Brookfield fails to make the payments required under this contract, Danbury, in addition to the legal and equitable remedies which are available to it, and in addition to the right of arbitration as provided for herein, shall have the right to terminate the flow of sewage from Brookfield into Danbury upon six months' written notice.

20. In the event that Danbury fails to provide Brookfield with the capacity or service which is required under this contract, Brookfield, in addition to legal and equitable remedies which are available to it, and in addition to the right of arbitration as provided for herein, shall have the right to suspend payments until the required service or capacity is restored.

21. All claims, demands, disputes, differences, controversies and misunderstandings that may arise between Brookfield and Danbury under this agreement shall be submitted to and be determined and settled by arbitration, in the manner hereinafter set forth, to wit:

Either municipality may by written notice appoint an arbitrator. Thereupon, within ten (10) days after the giving of such notice, the other municipality shall by written notice to the former appoint another arbitrator, and in default of such second appointment, the arbitrator first appointed shall be the sole arbitrator. When any two arbitrators have been appointed as aforesaid, they shall agree upon a third arbitrator and shall appoint him by notice, in writing, signed by both of them in triplicate, one of which triplicate notices shall be given to each municipality hereto. Upon appointment of the third arbitrator the three arbitrators shall meet and shall give opportunity to each municipality hereto to present its case and witnesses, if any, in the presence of the other, and shall then make their award; and the award of the majority of the arbitrators shall be binding upon the municipalities hereto and judgment may be entered thereon in any court having jurisdiction. Such award shall include the fixing of the expense of the arbitration and assessment of same against either or both municipalities.

22. In the event that there shall be a final adjudication that any provisions or provision of this Agreement is or shall be invalid, illegal or contrary to public policy, such adjudication shall not affect any of the other provisions of this Agreement which other provisions will continue in full force and effect, unless the provision or provisions so adjudicated are so essential to the Agreement as to render performance of the Agreement impossible in their absence.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date and year first above written.

In the presence of:

CITY OF DANBURY

Laverne R. O'Donnell
City Clerk

By Charles A. Ducibella (LS)
Charles A. Ducibella
its Mayor
hereunto duly authorized

TOWN OF BROOKFIELD

Laverna R. O'Donnell
Laverna R. O'Donnell
Town Clerk

By S. Wesley Reynolds (LS)
S. Wesley Reynolds
its First Selectman
hereunto duly authorized

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss. Danbury, April 3, 1974.

Personally appeared CHARLES A. DUCIBELLA, Mayor of the City of Danbury, signer and sealer of the foregoing instrument, he being thereunto duly authorized, who acknowledged that he executed the same in the capacity and for the purpose therein stated, and that the same is his free act and deed, as Mayor, before me.

Robert N. Talarico
Robert N. Talarico
Commissioner of the Superior Court
Notary Public

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss. Brookfield, May 27, 1974.

Personally appeared S. WESLEY REYNOLDS, First Selectman of the Town of Brookfield, signer and sealer of the foregoing instrument, he being thereunto duly authorized, who acknowledged that he executed the same in the capacity and for the purpose therein stated, and that the same is his free act and deed, as First Selectman, before me.

LILLIAN J. GRANT
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1978

Lillian J. Grant
Lillian J. Grant
Commissioner of the Superior Court
Notary Public