

AMENDMENT TO DANBURY - BROOKFIELD INTERLOCAL
SEWER SERVICE AGREEMENT

THIS AGREEMENT is made this 9th day of April, 1992, by and between the City of Danbury ("Danbury"), acting herein by Gene F. Eriquez its Mayor, hereunto duly authorized, and the Town of Brookfield ("Brookfield"), acting herein by Bonnie P. Smith its First Selectman hereunto duly authorized; both Danbury and Brookfield ("Municipalities") being municipal corporations situated in the County of Fairfield and State of Connecticut.

W I T N E S S E T H:

WHEREAS, the Municipalities entered into an Interlocal Agreement dated April 3, 1974, hereinafter designated as the "Interlocal", a copy of which is attached hereto and made a part hereof, which defines the rights and responsibilities of the parties with respect to the treatment by Danbury of an average daily flow of sewage generated in Brookfield of 500,000 gallons; and

WHEREAS, Paragraph 16 of the Interlocal provides that the Agreement may be reopened and renegotiated at the request of either Municipality if either the operating costs or the construction costs are increased as a result of a change in the treatment process required by the State of Connecticut or the Federal Government; and

WHEREAS, Danbury has received an order from the State of Connecticut, acting by its Department of Environmental Protection ("DEP"), requiring Danbury to change the process by which it treats effluent at the Danbury sewage treatment plant; and

WHEREAS, the Municipalities wish to take steps to treat sewage generated within their respective corporate boundaries by processes that meet effluent standards imposed by the DEP and the United States Environmental Protection Agency ("EPA"); and

WHEREAS, Danbury authorized a study to determine the most cost effective solution to the problem; and

WHEREAS, such study, performed by Greiner Inc., of Wallingford, Connecticut, concluded that the most cost effective solution was to upgrade the existing Danbury sewage treatment plant and to make other related improvements; and

WHEREAS, this solution was approved by the DEP and the EPA in a stipulated judgment in the case of Stanley J. Pac, Commissioner of Environmental Protection v. City of Danbury (Superior Court, Judicial District of Hartford, Docket No. CV-86-0322335S), as amended ("Judgment"); and

WHEREAS, the timetable for the completion of the necessary renovations has been established and approved in the Judgment; and

WHEREAS, the Municipalities recognize that an amendment to the Interlocal is appropriate due to the foregoing as well as to other changes in conditions occurring since its execution;

NOW THEREFORE, in consideration of the covenants herein contained, the Municipalities do agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Agreement, except where the context clearly requires otherwise, the following words and terms shall have the respective meanings set forth below:

"Danbury 1MGD" shall mean those components of the Facilities necessary to increase the design capacity of the Upgraded Plant to 15.5 million gallons per day.

"Facilities" shall mean the Upgraded Plant, the Danbury 1MGD, a force main, a gravity main expansion, a Bethel pump station and improvements to the Beaver Brook pump station all as described generally in the Wastewater Management Facilities Plan.

"Net cost" shall mean the total cost of the regionally used item referred to, including interest, less the amount of any federal or state grant received in connection therewith.

"NPDES permit" shall mean the National Pollution Discharge Elimination System permit issued to Danbury.

"Upgraded Plant" shall mean the existing sewage treatment plant located in Danbury as it shall be modified in order to meet effluent standards set forth in the National Pollution Discharge Elimination Standards Permit issued by the State, as such permit may be modified from time to time, for an average treatment capacity of 14.5 million gallons per day, and related improvements thereto.

"Wastewater Management Facilities Plan" shall mean the "Wastewater Management Facilities Plan" dated March 1983 prepared by Cahn, Inc. of Wallingford, Connecticut, as amended by "Amendment To The Wastewater Management Facilities Plan For Danbury And Bethel Connecticut" prepared by Greiner, Inc. of Wallingford, Connecticut and approved by the DEP on February 24, 1988 and by "Update To The Wastewater Management Facilities Plan Danbury And Bethel Area, Connecticut" dated March 1989 prepared by Metcalf & Eddy, Inc. of Wakefield, Massachusetts and approved by the DEP.

SECTION 2. CONSTRUCTION OF THE FACILITIES

Section 2.1. Danbury shall construct the Facilities in accordance with the Wastewater Management Facilities Plan and with final plans and specifications approved or to be approved by DEP. Danbury shall comply with the schedule for construction and operation of the Facilities as established in the Judgment, as the same may be modified from time to time.

Section 2.2. Danbury shall make all reports, plans and specifications for construction of the Facilities and grant and loan applications to the State of Connecticut available to Brookfield for review.

SECTION 3. FINANCING THE FACILITIES

Section 3.1. Danbury has filed applications with the DEP on behalf of the Town Bethel and itself in order to obtain Clean Water Fund Program financing for the cost of design and construction of the Facilities. On behalf of Brookfield, Danbury shall file any additional applications and supporting data with the DEP necessary for Brookfield to participate in the Clean Water Fund Program. Brookfield shall supply Danbury with any additional material or information so required to be submitted.

Section 3.2. In order to obtain funding in a timely fashion through the Clean Water Fund Program for the Danbury and Brookfield shares of the cost of construction of the Facilities, Danbury, on behalf of Brookfield and itself, shall execute and deliver a project loan and project grant Agreement for the construction phase of the Facilities, shall issue its interim funding obligation or obligations thereunder and shall requisition all advances of project loan and project grant monies from the State. Brookfield shall enter into an amendment to such project loan and project grant agreement within 30 days of its adoption of the necessary proceedings for appropriating sufficient monies and authorizing bonds. Pursuant to such amendment, Brookfield shall become a party to such amended project loan and project grant agreement and shall borrow its respective share of the project loan and obtain its respective share of the project grant in accordance therewith. Brookfield's respective share of the project loan under the construction phase project loan and project grant agreement will include its share of the design phase loan heretofore financed by Danbury, as set forth in Section 3.3. Brookfield acknowledges that Danbury's share of the construction phase project loan will be reduced accordingly to adjust for Brookfield's design phase loan being so included in the construction phase. In further accordance with such amended project loan and project grant agreement, Brookfield shall issue its project loan obligation to the State to finance its share of the project loan for the Facilities.

Section 3.3. Brookfield hereby acknowledges that Danbury has heretofore entered into a project loan and project grant agreement, as amended, to finance the cost of design of the Facilities and that Danbury has heretofore issued its project loan obligation (the "Design Phase PLO") to the State to permanently finance the Danbury and Brookfield shares of said design costs. Within thirty days of execution of this Agreement, Brookfield shall reimburse Danbury for the Ineligible Expenses for the design phase. Brookfield shall also reimburse Danbury for the expense Danbury will incur in carrying the Brookfield share of the project loan for the design phase from the date of issuance of the Design Phase PLO to the date the respective municipalities' construction phase loans are permanently financed through the State, such amount to be payable to Danbury at the time of such permanent financing.

Section 3.4. Brookfield shall be responsible for 3.45% of the net cost of design and construction of the Upgraded Plant and 8.29% of the net cost of design and construction associated with the upgrading of Beaver Brook Pump Station. While the Municipalities expect that Brookfield shall finance its share of said costs through the Clean Water Fund Program, Brookfield's obligation to pay its respective share is absolute and unconditional and its failure or inability to obtain funding through the Clean Water Fund Program shall in no way relieve it of such obligation. Brookfield shall not be responsible for any contribution towards the items that are identified in the Wastewater Management Facilities Plan as being the responsibility of the Town of Bethel or the Town of Ridgefield. In addition, Brookfield shall not be responsible for any contribution to the construction of the portion of the maintenance facility at the Danbury plant which was determined to be ineligible for funding by the State of Connecticut DEP.

Section 3.5. Upon completion of the Facilities, Danbury shall bill Brookfield for its share of the Ineligible Expenses, including interest, which shall be due and payable within 60 days. If Danbury appropriates monies from its sewer fund to pay Ineligible Expenses, Danbury shall charge Brookfield interest on monies so appropriated at the rate of eight per cent per annum.

SECTION 4. MONITORING, TESTING AND METERING

Section 4.1 Brookfield shall install proper monitoring and metering equipment to allow sampling, testing and measurement of effluent discharged by Brookfield and treated by Danbury. Danbury shall collect samples of the Brookfield effluent and shall perform toxicity testing thereof as well as such other testing as may be required to determine conformity with the terms and conditions of the Danbury NPDES permit, as the same may be amended, in a manner and at such times or intervals as may be required by the DEP with respect to the testing of Danbury influent.

Section 4.2. Brookfield shall purchase, maintain and if necessary, repair the aforementioned monitoring and metering equipment as well as a source of emergency power for said equipment, all at its expense. All costs associated with sampling and testing to be performed by Danbury shall be billed to Brookfield. In addition, Brookfield shall bear the costs associated with compliance with the NPDES permit as it relates to the treatment of wastes generated by Brookfield. Brookfield shall pay all such costs within 60 days of billing.

Section 4.3. In the event that Brookfield fails to perform necessary maintenance or repairs to the aforementioned monitoring and metering equipment in a timely manner in accordance with its obligations pursuant to section 4.2 above, Danbury shall have the right, upon written notice to Brookfield, which notice shall have been given not less than two business days in advance, to enter upon property of Brookfield to perform said maintenance or repairs. Any costs incurred by Danbury hereunder shall be reimbursed by Brookfield within 60 days of billing.

Section 4.4. The Municipalities shall work cooperatively to sample and test effluent within the Brookfield sewer system when such sampling and testing is deemed necessary. However, Danbury reserves the right to take samples and perform tests of effluent within the Brookfield sewer system at any time to determine compliance with federal, state and local sewer standards. Danbury shall notify Brookfield prior to taking any

such samples in order to allow Brookfield to send a representative to observe said sampling procedure and provide such assistance as may be necessary. All costs associated with sampling and testing performed hereunder shall be billed to Brookfield. Brookfield shall pay all such costs within 60 days of billing.

Section 4.5. In the event that the aforementioned tests reveal that effluent discharged into the Brookfield sewer system and conveyed to or to be conveyed to the Danbury sewer system fails to meet the standards established by the ordinances of either Municipality or of the State or Federal Governments, Brookfield shall take all action necessary to correct said condition and compel compliance with said standards by all Brookfield sewer users.

SECTION 5. TERM AND EFFECTIVE DATE

This Agreement shall not be effective until it has been executed by the Mayor of Danbury, and the First Selectman of Brookfield, after approval by the Common Council of Danbury and a Town Meeting of the Town of Brookfield. The term of this Agreement and the term of the underlying Interlocal shall be twenty (20) years from the execution date hereof. At the end of said twenty (20) years, Brookfield shall have the option to renew this Agreement and the Interlocal 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, 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 of the Interlocal.

SECTION 6. REPRESENTATIONS AND WARRANTIES

Section 6.1. Danbury hereby represents and warrants to Brookfield that (i) Danbury is and will continue to be a body politic and corporate, validly existing under the laws of the State of Connecticut and with the power to execute and deliver

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this Agreement; (ii) that the execution and delivery by Danbury of this Agreement have been duly authorized by Danbury in conformity with all applicable laws, including its charter, and no proceedings or authority for the execution and delivery of this Agreement have been repealed, rescinded or revoked; (iii) this Agreement, upon the execution and delivery hereof, will be a legal, valid and binding obligation of Danbury enforceable against it in accordance with its respective terms; (iv) no litigation of any nature is now pending or, to the best of Danbury's knowledge, threatened which would restrain or enjoin the execution or delivery of this Agreement or in any manner question the authority or proceedings for the execution or delivery of this Agreement.

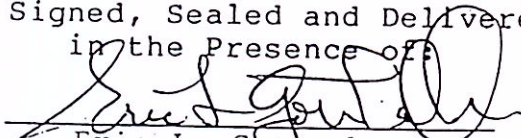
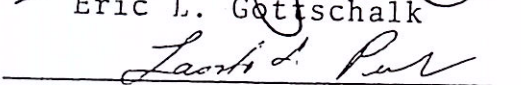
Section 6.2. Brookfield hereby represents and warrants to Danbury that (i) Brookfield is and will continue to be a body politic and corporate, validly existing under the laws of the State of Connecticut with the power to execute and deliver this Agreement; (ii) that the execution and delivery by Brookfield of this Agreement have been duly authorized by Brookfield in conformity with all applicable laws, and no proceedings or authority for the execution and delivery of this Agreement have been repealed, rescinded or revoked; (iii) this Agreement, upon the execution and delivery hereof, will be a legal, valid and binding obligation of Brookfield enforceable against it in accordance with its respective terms; (iv) no litigation of any nature is now pending or, to the best of Brookfield's knowledge, threatened which would restrain or enjoin the execution or delivery of this Agreement or in any manner question the authority or proceedings for the execution or delivery of this Agreement.

SECTION 7. EFFECT ON INTERLOCAL

Except as provided herein, the definitions, terms and conditions contained in the Interlocal shall remain in full force and effect. In the event of a conflict between the provisions hereof and the provisions of the Interlocal, the provisions hereof shall govern.

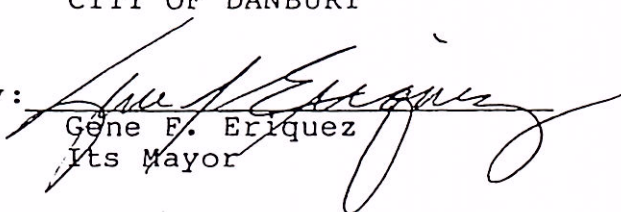
IN WITNESS WHEREOF, the Municipalities have caused this Agreement to be executed by their authorized officers and their respective seals to be hereunto affixed as of the date first above written.

Signed, Sealed and Delivered
in the Presence of:


Eric L. Gottschalk

Laszlo L. Pinter

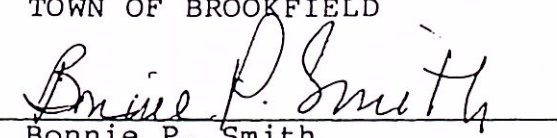
CITY OF DANBURY

By:


Gene F. Enriquez
Its Mayor

TOWN OF BROOKFIELD

By:


Bonnie P. Smith
Its First Selectman