

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
WASTEWATER TREATMENT AGREEMENT WITH
THE CITY OF SKYLINE, MINNESOTA**

WHEREAS, due to failed or failing individual sanitary sewer systems the City of Skyline has determined that it is necessary to develop a community wastewater treatment system; and

WHEREAS, after discussions between the City of Skyline and the City of Mankato it proposed that the City of Skyline construct a community wastewater collection system which will be connected to the City of Mankato waste water collection and treatment system; and

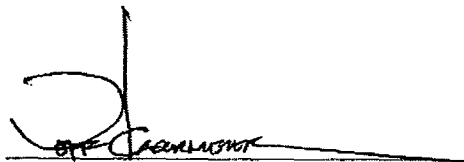
WHEREAS, the City of Mankato Wastewater Treatment Plant has sufficient capacity to incorporate the City of Skyline wastewater without exceeding capacity; and

WHEREAS, the City of Skyline is requesting that a contract be prepared between the City of Skyline and the City of Mankato to formalize this agreement.

NOW THEREFORE BE IT RESOLVED by the City Council for the City of Mankato that the City Manager be and hereby is authorized to execute an agreement with the City of Skyline to provide waste water treatment services at the Mankato Wastewater Treatment Plant for the City of Skyline.

This Resolution shall become effective upon its passage and without further publication.

Dated this 26th day of April 2004



Jeff Kagermeier
Mayor

Attest: Cheryl Schindquist
Cheryl Schindquist, CMC
City Clerk

CITY COUNCIL

CITY OF
MANKATO

AGENDA RECOMMENDATION

TO: Pat Hentges

DATE: April 20, 2004

FROM: George Rosati 

SUBJECT: Wastewater Treatment Agreement between the City of Mankato and the City of Skyline.

Agenda Recommendation: Authorize the City Manager to execute a wastewater treatment with the City of Skyline

Background/Summary: The City of Skyline, Minnesota is an incorporated community made up of 123 residential properties, with no room for continued growth. Each of the properties has individual onsite sanitary sewer systems. The City of Skyline will construct, in 2004, a community wastewater collection system, and connect all of the properties in the City. The new Skyline wastewater collection system will be connected to the City of Mankato wastewater collection system on Woodland Avenue. The City of Skyline will pay all of the costs associated with connecting to the City of Mankato system. The Village of Skyline is requesting a contractual agreement with the City of Mankato for wastewater treatment service at the City of Mankato Wastewater Treatment Plant (WWTP). When the current WWTP Master Plan was developed it was anticipated that the City of Skyline, at some point, would request wastewater treatment service from Mankato. Subsequently, treatment capacity was allocated in the WWTP design. It is for environmental purposes that the City of Mankato is interested in extending wastewater treatment service to Skyline. This action will eliminate 123 failed or failing septic sewer systems.

Fiscal/Budget Impact: There will be a small economy of scale realized by all jurisdictions receiving wastewater treatment service from the WWTP, in that all WWTP costs will be spread to an additional 123 service connections.

cc: Cheryl Lindquist, City Clerk

**RESOLUTION AUTHORIZING THE MAYOR
TO ENTER INTO THE SANITARY SEWER SYSTEM INTERCONNECTION
AGREEMENT
BETWEEN THE CITY OF SKYLINE AND THE CITY OF MANKATO**

WHEREAS the City of Skyline and the City of Mankato have negotiated an agreement for the treatment of sanitary sewer waste generated by the City of Skyline; and


WHEREAS the Agreement has been drafted and is attached hereto and incorporated herein by reference; and

WHEREAS the terms of the Agreement are agreeable to both the City of Skyline and the City of Mankato;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Skyline that the Mayor be and hereby is authorized to execute the Sanitary Sewer System Interconnection Agreement between the City of Skyline and the City of Mankato.

This Resolution shall become effective upon its passage and without further publication.

Dated this 15 day of April, 2004


Kenneth White, Mayor


Carolyn Kapour, Clerk

SANITARY SEWER SYSTEM INTERCONNECTION AGREEMENT
BETWEEN
THE CITY OF MANKATO AND CITY OF SKYLINE

THIS AGREEMENT, made and entered into this 26 day of April, 2004, by and between the City of Mankato, a municipal corporation of Blue Earth County, Minnesota, and the City of Skyline.

In consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

I. PURPOSE OF AGREEMENT

The City of Mankato agrees to permit the interconnection of the City of Skyline Sanitary Sewer Collection System with the City of Mankato Wastewater Treatment Plant (WWTP) and to convey and treat the wastewater delivered to the City of Mankato WWTP by the City of Skyline on the terms and conditions as established in this Agreement. The terms and conditions of this Agreement were developed in accordance with state and federal requirements.

II. DEFINITION OF TERMS

- A. Agreement. Agreement means this contract for the interconnection of sanitary sewer systems between the City of Mankato and the City of Skyline.
- B. Carbonaceous Biochemical Oxygen Demand (CBOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Centigrade, expressed in terms of weight and concentration (milligrams per liter, mg/l).
- C. City of Skyline Sanitary Sewer Collection System (Skyline Collection System). The system of sewers and appurtenances, constructed, owned, operated and maintained by the City of Skyline which are intended to carry only liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions located within the City of Skyline boundary.
- D. City of Mankato Sanitary Sewer Collection System (Mankato Collection System). The system of sewers, force mains, lift stations and appurtenances, constructed, owned, operated and maintained by the City of Mankato which are intended to carry only liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions.

- E. City of Mankato Wastewater Treatment Plant (Mankato WWTP). The City of Mankato constructed, owned, operated, and maintained treatment works.
- F. City of Mankato Treatment Works (Mankato Treatment Works). The entire wastewater system operated and maintained by the City of Mankato, which includes the combination of both the Mankato Collection System and the Mankato WWTP.
- G. Design Capacity. Capacity of the Mankato Treatment Works to collect and treat wastewater consistent with all requirements of the Federal Water Pollution Control Act as amended, the National Pollution Discharge Elimination System (NPDES) permit, and all other requirements established by the City of Mankato without incurring unreasonable operating expense or causing damage to the Mankato Treatment Works.
- H. Industrial Strength Waste. Gaseous, liquid, and solid wastes resulting from industrial or manufacturing processes, trade or business, or from the development, recovery, and processing of natural resources, as distinct from residential or normal domestic strength wastes. Industrial strength waste includes all wastes, which are not of normal domestic strength as defined in Paragraph P of this Article.
- I. Infiltration. Water entering the sewage system (including building drains and pipes) from the ground through sources such as, but not limited to: defective pipes, pipe joints, connections, and manhole walls.
- J. Inflow. Water, other than wastewater, that enters a sewer system (including building drains) from sources such as, but not limited to: roof leaders, cellar drains, yard and area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers, catch basins, surface runoff, street wash waters, or drainage.
- K. Infiltration/Inflow (I/I). The total quantity of water from both infiltration and inflow.
- L. Maximum Allowable Rate of Flow (Rate of Flow). The maximum monthly rate of flow of wastewater that may be discharged from the City of Skyline Collection System at the designated point of interconnection to the Mankato Treatment Works and for which the City of Mankato agrees to accept and treat without applying special or penalty charges.
- M. Maximum Allowable CBOD Load (Max. CBOD Load). The maximum monthly CBOD load that may be discharged from the City of Skyline Collection System at the designated point of interconnection to the Mankato

Treatment Works and for which the City of Mankato agrees to accept and treat without applying special or penalty charges.

- N. Maximum Allowable Suspended Solids Load (Max. TSS Load). The maximum monthly total suspended solids load that may be discharged from the City of Skyline Collection System at the designated point of interconnection to the Mankato Treatment Works and for which the City of Mankato agrees to accept and treat without applying special or penalty charges.
- O. MPCA. Minnesota Pollution Control Agency.
- P. Normal Domestic Strength Waste. Wastewater that is primarily introduced by residential users with a CBOD concentration not greater than two hundred sixty (260) mg/l and a total suspended solids (TSS) concentration not greater than two hundred eighty (280) mg/l.
- Q. Person. The State or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual partnership or other entity, including, but not limited to any association, commission or interstate body and including any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation, or other entity.
- R. Pretreatment. The process of reducing the amount of pollutants, eliminating pollutants or altering the nature of pollutant properties in wastewater to a less harmful state prior to introducing such pollutants into the City of Skyline Collection System or the Mankato Treatment Works.
- S. State. State of Minnesota.
- T. Total Suspended Solids (TSS). The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, which are removable by a standard glass fiber filter.
- U. USEPA. United States Environmental Protection Agency.
- V. User. Any person, who discharges, causes or permits the discharge or placement of wastewater into the City of Skyline Collection System or the Mankato Treatment Works.
- W. User Charge System (UCS). The system of user and sewer service charge established and adopted by the City of Mankato, and codified in the Mankato City Code, Section 3.71, which levies charges on users of the Mankato

Treatment Works for the user's proportionate share of the costs associated with the Mankato Treatment Works. The UCS includes user and sewer service charges, which generate revenue for billing administration, infiltration/inflow, operation, maintenance (including replacement), and a debt service charge, which generates revenue for the repayment of capital-related costs of the Mankato Treatment Works.

- X. Wastewater. All liquid or water-carried waste products from whatever source derived, together with such groundwater infiltration and surface water inflow as may be present.

III. POINT OF INTERCONNECTION

- A. There shall be a single point of interconnection of the City of Skyline Collection System with the Mankato Treatment Works. The designated point of interconnection is an existing manhole structure located at the southern Skyline City limits. There shall be no additional points of interconnection unless otherwise expressly agreed to in writing by the City of Mankato.
- B. The City of Mankato agrees to operate and maintain a sanitary sewer from the designated point of interconnection, as described in Paragraph A of this Article, to the Mankato WWTP. The sanitary sewer shall, in the judgment of the City of Mankato, be of sufficient size and capacity to accommodate the needs of the City of Mankato as well as to accept and convey wastewater from the City of Skyline in accordance with the parameters established in this Agreement.

IV. DESIGNATED SEWER SERVICE AREA

- A. The parties recognize and agree that the capacity of the Mankato Treatment Works is limited or finite. As such, the parties agree that the municipal sanitary sewer service provided by the City of Skyline Collection System shall be limited to include only sewer service within the specific designated sewer service area as established in this Agreement.
- B. The designated sanitary sewer service area for the City of Skyline shall be limited to the City of Skyline boundary as represented in Exhibit A. The City of Skyline agrees that it shall, by adoption of policies and employment of suitable methods or such other actions as are necessary, not extend or allow any extension or interconnection with its collection system from outside the designated sewer service area established in this Article, unless written permission is obtained from the City of Mankato.

- C. The Mankato WWTP expansion completed in the year 2002 has a design capacity to accommodate the projected population growth for each jurisdiction as identified in the Wastewater Treatment Plant Master Plan. Such population estimates are projections only and actual wastewater treatment service is limited specifically to the discharge limitations in Article VI of this Agreement and all other terms and conditions established in this Agreement.

V. CITY OF SKYLINE COLLECTION SYSTEM: CONSTRUCTION, IMPROVEMENT, OPERATION AND MAINTENANCE REQUIREMENTS

- A. The City of Skyline, at its expense, shall design, plan, lay, install, construct, operate, maintain, inspect, and keep in repair its own public sanitary sewer collection system, so that such facilities and all user connections thereto at all times strictly conform with all State and Federal laws and regulations, applicable ordinances of the City of Mankato, the State Plumbing Code, and the terms of this Agreement.
- B. Any future additions, expansions, improvements or connections to the sanitary sewer collection system of the City of Skyline shall be subject to review by the City of Mankato prior to construction or connection and shall at all times strictly conform to and be constructed in accordance with all State and Federal laws and regulations, applicable ordinances of the City of Mankato, the State Plumbing Code, and the terms of this Agreement. All costs incurred by the City of Skyline in designing, constructing, replacing, expanding or improving pipes, and other appurtenances necessary for delivering the wastewater flow from the City of Skyline to the Mankato Treatment Works shall be paid by the City of Skyline.
- C. Prior to the construction, improvement, expansion or replacement of the City of Skyline Collection System or any portion thereof by the City of Skyline, the City of Skyline shall, if required to submit plans and specifications for the proposed construction, improvement, expansion or replacement to the MPCA or other State agency, submit the same plans and specifications to the City of Mankato for its review, with the submittal being as nearly simultaneous as practicable.
- D. Upon receipt of such proposed plans and specifications of the City of Skyline Collection System by the City of Mankato, the City of Mankato shall have sixty (60) days to review and make any written objections, which the City of Mankato may have to the proposed plans and specifications. In the event of an objection, the City of Mankato shall specify in writing the reasons for its objection and provide a written report of those findings to the City of Skyline.

- E. The City of Mankato shall base any objection to the proposed plans and specifications on their conformity with the standards and specifications of the Mankato Treatment Works, applicable City of Mankato ordinances, the terms of this Agreement, and any applicable State or Federal laws and regulations.
- F. In the event of an objection, the City of Skyline may resubmit its plans and specifications taking into consideration the City of Mankato's objections. Upon resubmittal by the City of Skyline, the City of Mankato shall have an additional thirty (30) days from receipt of the resubmitted plans and specifications to comment.
- G. In the event that plans and specifications are not required to be submitted to the MPCA or other State agency for the construction, improvement, expansion or replacement of the City of Skyline Collection System or any portion thereof, the City of Skyline recognizes that it is vital to the operation of the Mankato WWTP to keep the City of Mankato informed of any changes that may affect the operation of the Mankato WWTP. The City of Skyline, therefore, agrees that it will establish procedures for review and evaluation of any plans that may affect the operation of the Mankato WWTP by the City of Mankato prior to any construction, improvement, expansion, or connection to the City of Skyline Collection System. The City of Skyline shall establish the necessary procedures as part of its building permit issuance process that includes the wastewater discharge permit process for the Mankato WWTP. The process shall include notification provided by the City of Skyline to the City of Mankato of any new commercial or industrial projects or expansions. Upon receiving such notification, the City of Mankato shall determine whether a wastewater commercial or industrial building be connected to the City of Skyline until the City of Mankato has either (1) determined that a wastewater discharge permit is not required for the proposed project, or (2) if required, has issued a wastewater discharge permit for the proposed project.

VI. EXTENT OF SERVICE

- A. The parties hereto recognize that the capacity of the Mankato Treatment Works is limited. Current wastewater discharges from the City of Skyline to the Mankato Treatment Works shall strictly conform to the following parameters:

City of Skyline Discharge Parameters			
	Annual Average	Maximum Monthly	Peak Day
Flow	32,700 gpd	40,900 gpd	117,720
CBOD	55.6 lb/day	72.3 lb/day	NA
TSS	65.4 lb/day	78.5 lb/day	NA

Please note that these values are based on the following assumptions:

Parameter	Value	Source
Number of Connections	123	Skyline Connections
Population/Connection	2.66	(Census Data)
Average Flow/Person	100 gpcd	(10 States Standards)
MM/AA Flow Ratio	1.25	(Mankato WW Master Plan)
MM/AA CBOD Ratio	1.3	(Mankato WW Master Plan)
MM/AA TSS Ratio	1.2	(Mankato WW Master Plan)
Average CBOD/Person	0.17 lb/day/person	(10 States Standard)
Average TSS/Person	0.20 lb/day/person	(10 States Standard)

The City of Skyline shall under no circumstances allow, and shall take such actions as are necessary by ordinance or otherwise to prohibit, its collection system from receiving wastewater discharges in excess of the maximum allowable limits as stated in this Paragraph, unless the City of Mankato expressly agrees otherwise in writing. The City of Skyline agrees to voluntarily, or at the request of the City of Mankato, takes such actions as are necessary, including suspension, restriction or termination of sewer service, to prohibit any user of the City of Skyline from exceeding the above discharge parameters. The City of Mankato reserves the right to restrict the rate of flow at the point of interconnection from the City of Skyline to strictly conform to the parameters provided in this Paragraph.

- B. The City of Skyline shall under no circumstances allow its collection system from receiving wastewater discharges from more than 123 hookups unless the City of Mankato expressly agrees otherwise in writing. In structures containing more than one dwelling unit, each dwelling unit will be counted as one hookup.

- C. The discharge parameters established in Paragraph A of this Article are subject to periodic review and may change based on the procedures set out in this Article as conditions and wastewater treatment service needs among the users of the Mankato WWTP change. Based on projected Phase I design capacity from the Wastewater Treatment Plant Master Plan, design capacity to the year 2010 after completion of the scheduled upgrade to the Mankato WWTP in the year 2000, will have a total allocable design capacity among all users of the Mankato WWTP of 9.25 mgd annual daily average flow, 11.10 mgd maximum monthly flow, and 42 mgd peak wet weather flow. As service needs change among users such maximum discharge parameters as established in Paragraph A for the City of Skyline may need to be periodically reevaluated and adjusted.
- D. The City of Mankato may from time to time review or increase the discharge parameters established in Paragraph A of this Article based upon changing circumstances. In allocating rate of flow and loadings to the City of Skyline, the City of Mankato shall take into account the City of Skyline's actual rate of flow and loadings during the previous three (3) years, projected or anticipated increases or decreases in rate of flow and loadings for the City of Skyline and all other users of the Mankato Treatment Works, the original allocation among all users of the Mankato Treatment Works, design capacity of the Mankato WWTP, remaining design capacity reserved for other users of the Mankato WWTP, and such other factors as in the judgment of the City of Mankato will fairly allocate capacity among all users of the Mankato Treatment Works.
- E. The City of Skyline agrees that it will strictly conform to and not exceed the maximum limits stated in Paragraph A of this Article unless otherwise agreed to in writing by the City of Mankato. In the event that the City of Skyline believes an additional allocation of capacity is needed over and above the maximum parameters established in Paragraph A of this Article, the City of Skyline may request a capacity allocation review by submitting a written request to the City of Mankato. The City of Mankato, upon receipt of such a request, shall reconsider the allocation of Treatment Works capacity to the City of Skyline. The City of Skyline may make a request for a Treatment Works capacity allocation increase once per year during the term of this Agreement. The City of Mankato shall afford the City of Skyline the opportunity to present information about the City of Skyline's anticipated capacity needs. The City of Skyline in its request shall include sufficient factual information to enable the City of Mankato to make an appropriate review of allocation needs in addition to supplying any additional information requested by the City of Mankato and cooperating with any independent

investigation by the City of Mankato which the City of Mankato deems necessary or desirable.

- F. Should the City of Skyline make a request for a Treatment Works capacity allocation review, the City of Mankato may increase the capacity as requested should the City of Mankato determine, in its judgment, that the allocation increase is necessary and appropriate based on the City of Mankato's review of the circumstances, information presented by the City of Skyline, and the factors for determining capacity allocation as provided in Paragraph C of this Article. The City of Mankato shall make a determination approving or denying the request and provide written notice thereof to the City of Skyline within sixty (60) days of receipt of the written request, except that the period for review may be extended an additional sixty (60) days should the City of Mankato determine that the information submitted by the City of Skyline is not adequate to make a determination or should the City of Mankato determine that additional review or investigation is necessary or desirable.
- G. In the event of an approval, the City of Mankato may, based on its review and to the extent that the design capacity of the Mankato Treatment Works allocated to all users of the Mankato Treatment Works permits, assign the City of Skyline an increased capacity allocation at the level requested or at some lesser level which in the judgment of the City of Mankato is appropriate. Under no circumstances shall the City of Skyline increase or allow increased discharges exceeding the limits stated in Paragraph A of this Article unless the City of Skyline receives written notice of approval from the City of Mankato granting the capacity allocation increase. The letter of approval from the City of Mankato specifying the new discharge parameters shall be adopted by resolution of both governing bodies and by such action becomes a part of this Agreement.
- H. In the event that the City of Skyline wishes to expand their capacity allocation and the City of Mankato, in its judgment, cannot accommodate the request without expanding the Mankato Treatment Works, then after receipt of such a request and within the period of time specified in Paragraph E of this Article, the City of Mankato shall notify the City of Skyline of the design capacity limits. Upon notification, the City of Skyline may hire a consultant engineer, at its own expense, to design capital improvements adequate to increase the Mankato WWTP design capacity to accommodate the requested increase.
- I. Upon completion of plans and specifications for the proposed expansion of the Mankato WWTP, the City of Skyline shall submit the same plans and specifications to the City of Mankato for review and approval by the City of

Mankato. The City of Mankato may require, at its expense, additional engineering analysis should such analysis be deemed, in the judgment of the City of Mankato, necessary or desirable. The proposed plans and specifications shall conform to all standards and specifications required by the City of Mankato, applicable City of Mankato ordinances, and any applicable State and Federal laws and regulations. The City of Mankato as a condition of approval of the proposed plans and specifications may require use of the same design, materials or construction as has been applied by the City of Mankato in designing and constructing the existing Mankato WWTP.

- J. Upon reaching an agreement between the City of Skyline and the design engineer, and upon approval of the plans and specifications by the City of Mankato and payment to the City of Mankato for the estimated construction cost for the capital improvement, the City of Mankato shall initiate construction within two years of said date, at which time the City of Skyline will be billed or refunded any difference between estimated and actual cost. In the event of an approval by the City of Mankato of an upgrade of the Mankato WWTP, the City of Skyline shall not allow any additional discharges beyond those provided for in this Agreement until new capacity allocation limits are agreed to by the City of Mankato and the proposed improvements to the Mankato WWTP are completed and online.
- K. In the alternative, if the governing bodies mutually agree to expand the Mankato WWTP, or if the facilities require expansion or improvements to meet existing or future effluent limitations, then all costs associated with such expansion shall be shared on the basis of actual plant utilization by the respective jurisdictions.

VII. MONITORING AND MEASUREMENT OF SEWAGE

- A. All sewage discharged into the Mankato Treatment Works from the City of Skyline shall be accurately monitored for strength and volume by acceptable metering and sampling equipment which shall be installed in a building or structure constructed by the City of Skyline, at the City of Skyline's expense, at or adjacent to the boundaries of the limits of the City of Skyline or at such other site as may be mutually agreed upon. The type and location of the metering and sampling equipment, any future improvement or replacement thereof, and all plans, specifications and details pertinent thereto shall be subject to review and approval by the City of Mankato. The City of Mankato, in its judgment and at its expense, may install, operate, and maintain similar monitoring stations and may install, operate, and maintain rate of flow restriction equipment or devices within or adjacent to the corporate limits of said City of Mankato at or near the point of interconnection stated in Article III.

- B. The City of Skyline shall operate and maintain the monitoring equipment and monitoring station at its own expense. All required flow metering and sampling equipment shall be operational on a continuous basis and wastewater flow shall be measured on a continuous basis, with volumes totaled and recorded continuously. The reading and recording of results and collection and analysis of wastewater samples from the City of Skyline's metering and sampling equipment shall be completed by the City of Mankato. Wastewater samples shall be analyzed for CBOD, TSS, and any other pollutants. Analysis of pollutants may be conducted by the City of Mankato at any time in a laboratory certified for such analyses by the State of Minnesota. A report shall be submitted by the City of Mankato to the City of Skyline monthly at the City of Mankato's expense.
- C. The City of Mankato, at any time, shall have the right of access to the monitoring station, metering device, automatic sampler, and any other recording instruments and may make any accuracy test or other inspections that it may deem necessary or desirable.
- D. The City of Skyline, at its expense, shall calibrate, with certified calibration procedures, its flow meter on a quarterly basis. A calibration report shall be prepared and filed with the City of Mankato within twenty (20) days of completion of the calibration procedures.
- E. On a yearly basis, the City of Mankato shall contract with a qualified flow metering calibration firm to have all metering devices used in billing calculations involving this Agreement calibrated. The cost of calibration services shall be distributed on a number of meters basis.
- F. Changes or adjustments to the metering and sampling equipment shall not be made unless the City Manager of the City of Mankato or his designated representative and a representative of the City of Skyline are present. If the City of Mankato and the City of Skyline are unable to agree on the calibration of the metering device or related equipment, an impartial registered professional engineer, mutually satisfactory to the parties, shall be selected as an arbitrator to supervise any repairs and calibration of the metering device or other related equipment. If the parties hereto cannot agree on the selection of a registered professional engineer to act as an arbitrator, a State District Court judge for Blue Earth County shall select the qualified professional engineer to act as arbitrator. The findings of the selected arbitrator shall be final and binding on the parties. The services of the arbitrator shall be paid one-half by each party hereto. Any decision of the arbitrator shall be in accordance with the terms, covenants, conditions, and provisions of this Agreement.

- G. If any required flow metering or sampling equipment is non-functional for five (5) business days, temporary equipment approved by the City of Mankato shall be installed at the City of Skyline's expense. If any required flow metering or sampling equipment remains non-functional for thirty (30) calendar days, the City of Skyline shall notify the City of Mankato thereof and the non-functional equipment shall be replaced within a reasonable period of time at the City of Skyline's expense. For purposes of this paragraph, a reasonable period of time shall not exceed ninety (90) days.
- H. If the required flow metering or sampling equipment fails, the wastewater volume and pollutant loadings shall be estimated using the most comparable recent historical data. Said estimates shall continue until such time as the equipment is repaired or replacement equipment is installed as required by this Agreement.

VIII. INSPECTION

- A. The City Manager of the City of Mankato or his designated representative, upon reasonable notice first given to the City of Skyline, shall be permitted, at the expense of the City of Mankato, to inspect the design, materials, construction, as well as the subsequent operation and maintenance of the City of Skyline in order to confirm that the same is being constructed, operated and maintained according to applicable City of Mankato specifications, standards, and ordinances and all applicable Federal and State laws. The City of Mankato may inspect the City of Skyline under the above terms for the purpose of verifying that this Agreement is being complied with in its entirety.
- B. The City of Skyline, upon reasonable notice first given to the City of Mankato, shall be permitted at the expense of the City of Skyline, to inspect the condition and operation of the Mankato WWTP, in order to confirm that this Agreement is being complied with in its entirety.
- C. Upon written notice given by either party to this Agreement to the other that an investigation is necessary in the requesting party's opinion for the purpose of enforcing or complying with the provisions of this Agreement, the making such an investigation and shall make available to the requesting party, upon reasonable demand, all books, records and information maintained in connection with the operation and maintenance of its sanitary sewer system.

IX. QUALITY OF EFFLUENT, RESTRICTION, OR SUSPENSION OF SERVICE

- A. The quality of effluent to be delivered to the Mankato WWTP shall be aerobic in character and the odor shall not be stronger than that associated with normal domestic strength wastewater effluent. If additional aeration or injection of chemicals is required in the judgment of the City of Mankato or the MPCA in order to prevent damage to the Mankato Treatment Works or to eliminate nuisance odor conditions from the City of Skyline Collection System, all costs associated with this shall be borne by the City of Skyline.
- B. The City of Skyline shall immediately notify the City of Mankato of any potential, proposed or actual substantial change in the volume or strength characteristics of the wastewater effluent discharged at the point of interconnection with the Mankato Treatment Works which the City of Skyline knows or has reason to believe will or is likely to have, either singly or by interaction with other wastes, a negative impact on the Mankato Treatment Works or which will exceed the parameters provided in Article VI or the materials prohibitions provided in Article X. The City of Mankato, in its judgment, may restrict the rate of flow at the point of interconnection to strictly conform with the parameters established in Article VI and Article X of this Agreement.
- C. The City of Mankato may restrict or limit the rate of flow of wastewater discharges at the point of interconnection from the City of Skyline should the City of Mankato, in its judgment, determine that such restriction or limitation is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to human health or welfare, an endangerment to the environment, interference with the operation of the Mankato Treatment Works, or which may cause the City of Mankato to violate any condition of its NPDES permit.
- D. The City of Skyline, when notified of a restriction or limitation on wastewater service as provided for in Paragraphs B or C of this Article, shall act as soon as practicable after notification to cease or reduce such discharges or take such actions as are necessary to cause those responsible users of the City of Skyline to cease or reduce such discharges. In the event of failure of a user of the City of Skyline to comply voluntarily with a restriction or limitation, the City of Skyline shall take such actions as are necessary, including but not limited to, immediate suspension of sewer service or severance of the sewer connection, in order to ensure full compliance with all terms of this Agreement.
- E. Upon proof by a user of the City of Skyline who is under a City of Skyline imposed restriction, limitation, or suspension, for the elimination of the non-

complying discharge, the City of Skyline shall reinstate the pre-restriction sewer service to the user after notifying the City of Mankato thereof and after the City of Mankato verifies compliance and approves in writing the removal of the restriction. Notification of approval by the City of Mankato to remove a restriction shall be provided to the City of Skyline within thirty (30) days of such request by the City of Skyline.

X. DISCHARGE OF CERTAIN MATERIALS PROHIBITED

- A. The City of Skyline, by adoption of ordinances and employment of suitable methods, shall not discharge or allow any user of the City of Skyline to discharge, either directly or indirectly, any of the following:
1. All waste of any type generated from any source outside the designated sewer service area as provided for in this Agreement.
 2. All waste generated from septic tank contents, privy vault contents, sewage holding tanks and the like generated from within the limits of the designated sewer service area.
 3. Any wastes which may directly or indirectly impair the proper functioning of the Mankato Treatment Works.
 4. Any wastes the strength or pollutional effects of which are not effectively altered by ordinary treatment processes, or the presence of which in the receiving stream would violate State and Federal water quality standards.
 5. Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the Mankato Treatment Works or to the operation of the system. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, sulfides, and any wastes with a closed cup flash point of less than 140 degrees Fahrenheit (60 degrees Centigrade).
 6. Solid or viscous substances which will or may cause obstruction to the flow in a sewer or other interference with the operation of the Mankato Treatment Works such as, but not limited to, grease, garbage with particles greater than one-half inch (1/2 in.) in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshing,

entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, gas, tar asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.

7. Any wastewater having a pH less than 6.0 or more than 10.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the Mankato Treatment Works.
8. Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater treatment system. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307 (a) of the Federal Water Pollution Control Act as amended.
9. Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are capable of creating a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance and repair.
10. Any wastewater with objectionable color not removed in the treatment process, such as but not limited to, dye wastes and vegetable tanning solutions.
11. Any wastewater which creates conditions at or near the Mankato Treatment Works which violate any statute or any rule, regulation, or ordinance of any public agency or State or Federal regulatory body.
12. Any wastewater with CBOD in excess of two hundred sixty (260) mg/l and TSS in excess of two hundred eighty (280) mg/l.
13. Any wastewater having a temperature greater than 150 degrees Fahrenheit (65.6 degrees Centigrade), or causing, individually or in combination with other wastewater, the influent at the Mankato WWTP to have a temperature exceeding 104 degrees Fahrenheit (40 degrees Centigrade) or having heat in amounts which will inhibit biological activity in the Mankato WWTP resulting in interference.
14. Any slug load, which shall mean any pollutant, including oxygen demand pollutants (CBOD, etc.), released in a discharge of such

volume or strength as to cause inhibition or disruption in the Mankato Treatment Works.

15. Non-contact cooling water or unpolluted storm or groundwater.
16. Any wastewater containing fats, wax, grease, or oils whether emulsified or not, in excess of fifty (50) mg/l or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit (0 degrees Centigrade) and 150 degrees Fahrenheit (65.6 degrees Centigrade); and any wastewater containing oil and grease concentrations of mineral or animal origin of greater than fifty (50) mg/l whether or not emulsified.
17. Wastewater containing inert suspended solids (such as, but not limited to, Fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate) in such quantities that they would cause disruption with the Mankato Treatment Works.
18. Radioactive wastes or isotopes of such a half-life or concentration that they are in non-compliance with standards issued by the appropriate authority having control over their use and which will or are likely to cause damage or hazards to the Mankato Treatment Works or the personnel operating it.
19. Wastewater containing the following substances in excess of the limits shown herein:

<u>Toxic Pollutant</u>	<u>Discharge Limitation</u>
Cadmium (Cd)	1.03 mg/l
Chromium total (Cr)	5.23 mg/l
Copper (Cu)	2.86 mg/l
Cyanide (Cn)	1.09 mg/l
Lead (Pb)	1.05 mg/l
Mercury (Hg)	0.01 mg/l
Molybdenum (Mo)	0.01 mg/l
Nickel (Ni)	3.65 mg/l
Silver (Ag)	2.14 mg/l
Zinc (Zn)	8.10 mg/l

- B. If any waters or wastes are discharged or are proposed to be discharged to the Mankato Treatment Works which contain substances or possess the characteristics enumerated in Paragraph A of this Article, and which, in the judgment of the City of Mankato, may have a deleterious effect upon the

Mankato Treatment Works, processes, or equipment; the receiving waters, soil, vegetation or groundwater; or which otherwise create a hazard to life or constitute a public nuisance, the City of Mankato may take one or all of the following actions:

1. Reject the wastes prior to or during their discharge to the Mankato Treatment Works;
 2. Require pretreatment to an acceptable condition for discharge to the public sewers, pursuant to Section 307 (b) of the Federal Water Pollution Control Act as amended;
 3. Require such remedial steps, as are in the judgment of the City of Mankato, necessary to abate any further impairment, either direct or indirect, of the proper functioning of the Mankato Treatment Works;
 4. Require control over the quantities and rates of discharge which may include the restriction, limitation, or suspension thereof;
 5. Require payment to cover the added costs of handling, treating, and disposing of wastes not covered by existing user or sewer service charges. This includes, but is not limited to, reimbursement for any fines or penalties levied against the City of Mankato for a violation of its NPDES permit or which otherwise have resulted from a discharge from the City of Skyline; or
 6. Require a wastewater discharge permit as contemplated in Paragraph C of this Article.
- C. The City of Skyline agrees to require, by ordinance and employment of suitable methods that any user of the City of Skyline contemplating to discharge waters, wastes, or loadings in excess of those described in Paragraph A of this Article, apply for and receive a written wastewater discharge permit between the user and the City of Mankato. No discharges or loadings as described in Paragraph A of this Article shall be permitted until an approved wastewater discharge permit has been issued to the user by the City of Mankato. The wastewater discharge permit shall at a minimum provide that:
1. The user will pay all costs incurred by the City of Mankato arising out of the discharge including any fines and penalties;
 2. The user shall under no circumstances exceed the parameters established in Article VI;

3. Provisions be made for constant monitoring of discharge as may be necessary in the judgment of the City of Mankato;
4. The City of Mankato or the City of Skyline may restrict, limit, suspend, or shut-off the discharge before it enters the Mankato Treatment Works;
5. The wastewater discharge permit may be revoked or modified where necessary as the needs of the Mankato WWTP dictate, in the judgment of the City of Mankato, in connection with the demands placed on the facility, its capabilities, and emergencies affecting its operation in compliance with the applicable requirements for its operation by the City of Mankato;
6. The City of Skyline and the user shall hold the City of Mankato harmless for such discharge; and
7. Such other terms as may be deemed appropriate to ensure the safe and verifiable granting of permission to place such excess discharges or loadings in the sanitary sewer system, including but not limited to, those permit requirements established in the City of Mankato Sanitary Sewer Ordinance, Section 3.31, as such requirements now exist or may from time to time be amended by the City Council of the City of Mankato. No wastewater discharge permit shall be granted hereunder where such discharge would violate applicable Federal or State laws or regulations or adversely impact upon the City of Mankato's ability to comply with applicable terms of its NPDES permit or applicable regulations governing the Mankato WWTP.

XI. INDUSTRIAL USERS, WASTEWATER DISCHARGE PERMITS, AND PRETREATMENT

- A. The City of Skyline agrees to require, by ordinance and employment of suitable methods, that all industrial users of its system, adhere to and comply with the wastewater discharge permit, monitoring, and pretreatment requirements established in the City of Mankato Sanitary Sewer Ordinance, Section 3.31, as such requirements now exist or may from time to time be amended by the City Council of the City of Mankato.
- B. The City of Skyline agrees to require pretreatment to normal domestic strength levels prior to discharge to the City of Skyline of all wastewater discharges in excess of the normal domestic strength levels, as defined in Article II of this Agreement, and of any wastewater discharges which will

contribute wastes enumerated under Article X, Paragraph A should the City of Mankato require such pretreatment.

- C. The City of Skyline agrees to provide notice and to require any existing or future users of its system to provide notice to the City of Mankato of any new user connections to the City of Skyline; of any improvement, expansion or replacement of an existing user connection; any significant change in the strength of effluent from a user of its system; or of any expansion of the volume of discharges or loadings from a user of the City of Skyline. The City of Skyline agrees to provide and require such notification prior to allowing any connection, construction or any additional discharges or loadings to its system. Upon such notice given by either the City of Skyline or an existing or new user of the City of Skyline, the City of Mankato shall determine within thirty (30) days whether the user must apply for a wastewater discharge permit under Paragraph A of this Article or under Paragraph C of Article X. The City of Mankato shall notify the user in writing of its determination. The City of Skyline shall require the user to provide the City of Mankato sufficient information for it to make this permit determination and the City of Mankato may require any additional information it deems necessary or desirable to make the permit determination. The City of Mankato may extend the permit determination period for an additional thirty (30) days should it deem such extension necessary or desirable.
- D. During the permit determination period, the City of Skyline shall strictly prohibit any connection, construction or any additional discharges or loadings by the user to the City of Skyline. If the City of Mankato determines that a wastewater discharge permit is required for a particular user of the City of Skyline, it shall so notify the user and the City of Skyline thereof. Thereafter the City of Skyline shall require that the user apply for and receive a wastewater discharge permit from the City of Mankato prior to any connection, construction or release of any additional discharges or loadings by the user to the City of Skyline.
- E. The City of Mankato shall have the right to measure and monitor the waste discharged by any industrial user or any user with a wastewater discharge permit at the point of discharge to the City of Skyline. All costs incurred by the City of Mankato in monitoring or measuring such waste shall be paid to the City of Mankato by the affected user.
- F. The permit at the point of discharge to the City of Skyline shall require that all industrial users having waste containing prohibited materials as provided for in this Agreement to construct pretreatment and monitoring facilities meeting the requirements of the City of Mankato as established in the City of Mankato Sanitary Sewer Ordinance, Section 3.31, as such requirements now

exist or may from time to time be amended by the City Council of the City of Mankato. The City of Mankato agrees that in all events it will require the application of rules, regulations, and standards with respect to any industrial user on an equitable basis not withstanding the location thereof.

- G. If pretreatment is required, the design, construction, installation, operation, and maintenance of the pretreatment facilities and equipment shall be made at the owners' (permittees') expense. The plans and specifications for such pretreatment facilities and their subsequent operation and maintenance shall be subject to the review, approval, and inspection of the City of Mankato prior to any construction of such facilities. Any subsequent changes to the permitted pretreatment facilities or process, which will potentially adversely affect the quality of the discharge or the method of operation, shall be reported to and approved by the City of Mankato prior to constructing or initiating any changes.
- H. The City of Mankato reserves the right to adopt, modify, or amend standards and regulations governing the contribution of wastes, pretreatment, and the contents and applicability of wastewater discharge permits as the same from time to time may be necessary or desirable.

XII. INFILTRATION AND INFLOW

- A. The parties hereto agree that remediation of infiltration and inflow (I/I) is a priority for the serviced communities. Therefore, the purposes of controlling and remedying I/I, the City of Skyline agrees, by adoption or ordinances and employment of suitable methods or such other actions as are necessary, to effectively exclude extraneous I/I to its sanitary sewer system, including but not limited to storm water runoff from roofs, eaves, rainspouts, yards, lawns, foundation drains, parking lots, streets, alleys, and the like.
- B. The City of Skyline agrees to adopt, comply with, adhere to, and enforce an I/I inspection, monitoring, remediation and surcharge program which substantially meets the program jointly established by the Cities of Mankato, North Mankato, Eagle Lake, Lake Washington, and the Town of South Bend as such requirements now exist or may from time to time be amended by them collectively. In no event shall the I/I program established by the City of Skyline be less restrictive than the approved program.
- C. The City of Skyline shall exercise due care to preclude gravel, sand, dirt, grit, or heavy substances of any kind from being washed or dumped into its sanitary sewer system. When expenses are incurred in cleaning the City of Mankato sewers due to any such substance being carried into them from the City of Skyline, all such expenses attributable to the City of Skyline shall be

paid for by the City of Skyline within thirty (30) days of receipt of an invoice from the City of Mankato. The City of Mankato shall provide an itemized accounting of the cleaning expenses incurred with the invoice provided to the City of Skyline.

XIII. AMOUNT OF FEES AND TIME OF PAYMENT

- A. The parties hereto agree that in consideration for transport and treatment of the wastewater of the City of Skyline by the City of Mankato, the City of Skyline shall pay to the City of Mankato all fees and charges applicable thereto as provided for in this Agreement. The parties agree to apply the City of Mankato User Charge System (UCS) in establishing the applicable fees and charges. In addition, the City of Skyline will not pay the \$500 connection fee per connection stated in Subd. 7 of the Mankato UCS. The parties agree that the Mankato UCS may be subject to adjustment from time to time during the term of this Agreement by the City Council of the City of Mankato.
- B. The parties agree that the sewer service charge assessed to the City of Skyline by the City of Mankato shall include a user charge, a sewer service charge, and a debt service charge for the costs attributable to treatment, as determined annually by the City of Mankato. Charges shall be proportionate to use in accordance with the Mankato UCS and the UCS may be amended from time to time to provide for additional charges or surcharges which in the judgment of the City of Mankato are necessary or desirable.
- C. The City of Mankato shall, on an annual basis, prepare a budget for the wastewater utility and determine unit costs for the various treatment parameters. Based upon unit costs and an estimated wastewater contribution for the City of Skyline, an annual cost of treatment shall be calculated for the City of Skyline. This estimate of annual treatment costs shall be presented to the City of Skyline at least sixty (60) days before the new rates are to be effective.
- D. The City of Skyline shall pay, each month, one-twelfth (1/12) of the annual estimated treatment cost for the previous month's service. At the end of each fiscal year, a final billing or refund will be prepared by the City of Mankato based on the actual wastewater contribution by the City of Skyline and the actual cost of operation and maintenance of the Mankato WWTP. The billing or refund shall reflect an interest rate of five percent (5%) per annum based on the average monthly under-or over-payment. The interest calculation shall be determined as follows:

$$(\text{Actual Charges} - \text{Actual Pay}^{21}) / 12 \times 5\% = \text{Interest Due}$$

If "Interest Due" is positive, payment is to the City of Mankato.
If "Interest Due" is negative, payment is to the City of Skyline.

- E. The City of Skyline agrees to maintain a user charge system, which assesses a user charge to each customer proportionate to that customer's wastewater contribution to the City of Skyline.

XIV. PENALTY FOR NON-PAYMENT

Failure on the part of the City of Skyline to pay to the City of Mankato the payments specified above in Article XIII shall render such unpaid amount delinquent; and in the event such non-payment continues for a period of more than sixty (60) days after the due date, such delinquent amount shall bear interest at an annual rate of six percent (6%). The City of Mankato shall have and hereby reserves the right to enforce payment against the City of Skyline by appropriate proceedings at law or in equity in any court of competent jurisdiction. All costs incurred by the City of Mankato in connection with collecting such delinquent accounts shall be paid by the City of Skyline.

XV. PENALTIES FOR VIOLATION OF WASTEWATER DISCHARGE PERMIT

- A. The parties hereto agree that the City of Mankato may apply the following penalty assessment formula to users of the City of Skyline who violate the terms and conditions established in an approved City of Mankato wastewater discharge permit as provided for in Articles X and XI of this Agreement:

(lbs. Of CBOD and/or TSS over permit) (\$/lbs. Of CBOD and/or TSS as established in User Charge System) (1.0) =

- B. The parties agree that the penalty multiplier stated in the above formula will increase by .5 under the following circumstances:

1. The problem caused by mechanical malfunction or human error was not corrected within 12 hours;
2. The Mankato WWTP was not notified of the problem and the nature of the discharge, as soon as reasonably possible. (The Mankato Utilities

Superintendent determines reasonableness; appeal procedures are outlined in Section 3.31 of the Mankato City Code); or

3. The user, in the judgment of the Mankato Utilities Superintendent, has a history of mechanical malfunctions or human errors that effect wastewater discharge.
- C. The parties agree that the penalty multiplier stated in Paragraph A of this Article will be 5.0 in the event that increased loadings caused the Mankato WWTP to violate its NPDES permit.
- D. The parties agree that if the above penalties do not prove to be a deterrent for failing to meet permitted discharge limits, the penalties will be increased for the violating user to a level the City of Mankato deems necessary to achieve compliance with permit requirements.

XVI. SURCHARGES

- A. In the event that the City of Skyline exceeds the discharge parameters for maximum allowable rate of flow as established in Article VI, without first receiving prior written approval from the City of Mankato for such discharge, the City of Mankato, at its option, may restrict the rate of flow to meet the agreed upon parameters established in Article VI, take any other actions as provided for in this Agreement, or charge the City of Skyline a surcharge for those discharges of wastewater in excess of the maximum allowable rate of flow. The excess rate of flow surcharge shall be calculated separately and shall be assessed for each hour that flow exceeds the maximum allowable allotted wastewater rate of flow. The excess rate of flow surcharge is established at One Hundred Dollars (\$100) per mgd. Such additional charge for exceeding the allotted limits is not intended to be a penalty, but rather, is an additional charge necessary to cover tangible and intangible operating and capital costs associated with accommodating the unexpected rate of flow.
- B. In addition to any surcharge, the City of Skyline shall be liable for any damages caused to the Mankato Treatment Works by such wastewater flows or loadings in excess of its allotted limits and will hold, save and defend the City of Mankato harmless from claims by third parties made as a result of the excess discharge and shall reimburse the City of Mankato for any and all additional costs over and above the surcharge for treating or otherwise disposing of the excess discharges.

XVII. THE CITY OF SKYLINE TO ADOPT AND ENFORCE REGULATIONS

- A. The City of Skyline enact, adopt, and strictly enforce all such resolutions, ordinances or regulations as may be or shall be necessary to give full effect to the stipulations contained in this Agreement.

- B. The City of Skyline agrees to adopt, enforce, comply with, and adhere to all sewer use regulations and revisions thereto as established in the City of Mankato Sanitary Sewer Ordinance, Section 3.31, as such requirements now exist or may from time to time be amended by the City Council of the City of Mankato.

XVIII. THE CITY OF MANKATO TO ADOPT AND ENFORCE REGULATIONS

The City of Mankato shall enact, adopt, and strictly enforce all such resolutions, ordinances, or regulations, as may be or shall be necessary, in the judgment of the City of Mankato, to give full effect to the stipulations contained in this Agreement.

XIX. COOPERATION AND PARTICIPATION WITH AGENCIES

The City of Skyline shall cooperate and participate with the City of Mankato in providing all data requested by any State or Federal agency relative to regulatory policies or funding requests.

XX. LIABILITY FOR NEGLIGENCE

- A. The City of Skyline shall indemnify, save, and hold harmless the City of Mankato from any and all loss or damage to any property incurred by the City of Mankato by reason of any act or omission of the City of Skyline, its agents or employees, in connection with the construction or operation and maintenance of the sanitary sewer system belonging to the City of Skyline, unless the same shall be due to the negligence of the City of Mankato, its agents or employees.
- B. The City of Mankato shall indemnify, save and hold harmless the City of Skyline from any and all loss or damage to any property incurred by the City of Skyline by reason of any act or omission on the part of the City of Mankato, its agents or employees, in connection with the construction or operation and maintenance of the City of Mankato sanitary sewer system and treatment works, unless the same shall be due to the negligence of the City of Skyline, its agents or employees.

XXI. NON-LIABILITY OF THE CITY OF MANKATO UNDER CERTAIN CHANGED CIRCUMSTANCES

The City of Mankato shall exercise diligence in operating its sanitary sewer system, and if said system is prevented from receiving and discharging sewage from the City of Skyline in accordance with the terms of this

Agreement by any cause not reasonably within the control of the City of Mankato, including but not limited to acts of God (fire, explosion, flood, earthquake, tornado), strike, war unavoidable accident, rupture pipe resulting from temperature change or ground disturbances, or Federal or State interference (governmental exercise of authority, court orders), the City of Mankato agrees (except in the case of total destruction or near total destruction of its properties) to diligently put its works in condition again, as soon as practicable, to dispose of sewage in the manner provided for in this Agreement. The City of Skyline shall hold, save, and defend the City of Mankato harmless for any damage or loss resulting from such impossibility, frustration, interruption, or suspension of performance of the terms of this Agreement.

XXII. TITLE TO REMAIN WITH THE CITY OF MANKATO

It is agreed and understood by the parties hereto that the title to, and all incidents of ownership in, the Mankato Treatment Works, any subsequent replacement or upgrades, improvements or expansions thereof, and all the grounds upon which the same is located shall remain in the City of Mankato and shall be the absolute property of said City of Mankato. It is further agreed and understood that the operation of the Mankato Treatment Works and employment of personnel therefore shall be in the full charge of the City of Mankato.

XXIII. TERM OF AGREEMENT

This Agreement shall be effective for a period of ~~(Thirty (30) years or the term of the loans if WIP funds are involved)~~ twenty (20) years from the date first mentioned above, but may be amended at any time by mutual written agreement of the parties hereto.

XXIV. DEFAULT

- A. The City of Mankato may declare a default under this Agreement for any of the following reasons:
1. Failure to factually report rate of flows and loadings;
 2. Failure to report significant changes in rate of flows and loadings;
 3. Refusing reasonable access for purposes of investigation, inspection, or monitoring; or
 4. Violating or breaching any other term or condition of this Agreement.

- B. Whenever the City of Mankato finds conduct which constitutes a default under the terms of Paragraph A of this Article, the City of Mankato shall serve or cause to be served upon the City of Skyline a written notice by certified mail, stating the nature of the alleged default. Within thirty (30) days of the date of receipt of the notice, the City of Skyline shall respond in writing to the City of Mankato, advising of its position with respect to the allegations. The City of Mankato may require representatives of the City of Skyline to meet three (3) times with representatives of the City of Mankato at a location chosen by the City of Mankato in order to ascertain the accuracy of the allegations and where necessary, establish a plan for the satisfactory correction thereof.
- C. In the event of any continuing default on the part of either party hereto, the aggrieved party, after first giving reasonable written notice and affording a reasonable opportunity to correct such default, may, at the non-defaulting party's option, submit said grievance to binding arbitration; or the non-defaulting party, may, at its option, institute any other action or proceedings as provided for herein, or available at law or in equity, as may be considered by it upon advice of legal counsel to be most effective for the enforcement of this Agreement.
- D. In addition to the remedies provided for in this Agreement and any other available remedies at law or in equity, in the case of a default, the non-defaulting party may bring an action for specific performance to compel the performance of this Agreement in accordance with its terms.

XXV. DISPUTES

- A. **Negotiation.** When a disagreement or dispute shall arise over interpretation of any provision of this Agreement and such dispute does not constitute an event of default under Article XXIV, the City of Mankato and the City of Skyline will direct staff members as they deem appropriate to meet at a mutually convenient time and place to attempt to resolve the disagreement or dispute through negotiation.
- B. **Arbitration/Adjudication.** When the parties to this Agreement are unable to resolve a disagreement or dispute over interpretation of any provision of this Agreement through negotiation, either party may seek relief by submitting a grievance to binding arbitration or through initiation of an action in a court of competent jurisdiction.

XXVI. RELATIONSHIP OF THE PARTIES

No party to this Agreement shall by virtue of this Agreement have any responsibility with respect to services provided or contractual obligations assumed by any other party, and nothing in this Agreement shall be deemed to constitute or to create any fiduciary or agency relationship among the parties or any other party.

XXVII. GOVERNING LAW

This Agreement is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota.

XXVIII. ATTACHMENTS

All Attachments or Exhibits referred to in this Agreement are hereby made a part hereof and incorporated herein by reference as fully and as completely as if set forth herein verbatim.

XXIX. WAIVER

The waiver by either party of an event of default of any term of this Agreement by the non-defaulting party shall not operate, or be construed to operate, as a waiver of any subsequent claim of default or any other claim available under this Agreement or available at law or in equity. The making or the acceptance of a payment by either party with knowledge of the existence of a default shall not operate, or be construed to operate, as a waiver of any subsequent claim of default or any other claim available under this Agreement or available at law or in equity.

XXX. ENTIRE AGREEMENT

The terms, covenants, conditions, and provisions of this Agreement, including present and all future attachments or exhibits shall constitute the entire agreement between the parties hereto superseding all prior agreements and negotiations. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City of Mankato and the City of Skyline.

XXXI. AMENDMENT

This Agreement may be amended or modified only by mutual, written agreement duly executed by both of the parties hereto. Such written

agreement shall be executed by a resolution duly adopted by the Board of the City of Skyline and the City Council of the City of Mankato.

XXXII. SEVERABILITY

In the event that any provision of this Agreement is determined to be invalid, illegal, or unenforceable by any court of competent jurisdiction, by reason of any existing or subsequently enacted legislation, or by the application of existing or subsequently adopted rules and regulations of any State or Federal agency, the other provisions of this Agreement shall remain in full force and effect, and the parties hereto shall negotiate in good faith and agree to such amendments or modifications of or to this Agreement or other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement, and give effect to the intentions of the parties hereto.

XXXIII. CAPTIONS AND HEADINGS

Captions and headings in this Agreement are for ease of reference only and are not intended to alter the terms of this Agreement.

XXXIV. NOTICE

Any notices required under the provisions of this Agreement shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, return receipt requested, postage prepaid, as follows:

If to the City of Mankato:

Mr. Patrick Hentges, City Manager (or his successor)
Intergovernmental Center
P.O. Box 3368
Mankato, MN 56002-3368

If to the City of Skyline:

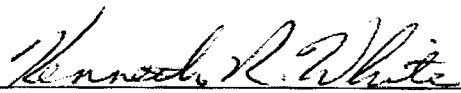
Mr. Kenneth White, Mayor (or his successor)
City of Skyline
P.O. Box 424
Mankato, MN 56002-0424

IN WITNESS WHEREOF, the City of Mankato has caused this Agreement to be signed in duplicate by its Mayor and City Manager, attested to by its City Clerk, and its corporate seal to be hereunto affixed pursuant to a resolution of the City Council of the City of Mankato, a certified copy of which is hereto attached; and the City of Skyline has caused this Agreement to be executed by its chairman, attested to by its secretary, pursuant to a resolution duly adopted by the City Council of the City of Skyline, a certified copy of which is hereto attached.


FOR THE CITY OF MANKATO

FOR THE CITY OF SKYLINE

Jeff Kagermeier
Mayor



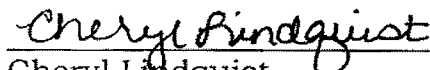
Kenneth White
Mayor



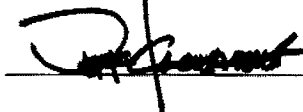
Patrick Hentges
City Manager



Carolyn Kapoun
City Clerk



Cheryl Lindquist
City Clerk

Dated this 18 day of May 2004

_____, 2004

Dated this 15th day of
April, 2004