



AGREEMENT

among

THE BOROUGHS OF GARWOOD,
KENILWORTH AND ROSELLE PARK, THE
CITY OF RAHWAY, THE TOWN OF
WESTFIELD, AND THE TOWNSHIPS OF
CLARK, CRANFORD, SCOTCH PLAINS,
SPRINGFIELD AND WOODBRIDGE,
MUNICIPAL CORPORATIONS OF THE
STATE OF NEW JERSEY.

Original Dated: August 8, 1951

Revision Dated: January 11, 1995

WHEREAS, the Boroughs of Garwood, Kenilworth, and Roselle Park, the City of Rahway, the Town of Westfield, and the Townships of Clark, Cranford, Springfield and Woodbridge, all municipal corporations of the State of New Jersey (hereinafter sometimes collectively referred to as the "Original Municipalities"), have heretofore entered into a contract dated October 20, 1928, which contract had been supplemented by further contracts dated March 3, 1932 and August 31, 1936, the purpose of which contracts was jointly to construct, maintain, rebuild, repair and operate a trunk sewer and sewage treatment plant within the Rahway Valley, and which Original Municipalities united in a Joint Meeting, pursuant to statute, and had been known familiarly as the Rahway Valley Joint Meeting (hereinafter referred to as the "Joint Meeting"); and

WHEREAS, a certain contract was then entered into by the Original Municipalities, dated August 8, 1951 ("1951 Agreement"), by which the Rahway Valley Sewerage Authority (hereinafter referred to as the "Sewerage Authority" or the "Authority") was created pursuant to Chapter 138 of the Laws of 1946 (N.J.S. 40:14A-1 et seq.) (hereinafter referred to as the "Statute"); and

WHEREAS, the 1951 Agreement has been amended on several occasions, the latest amendments occurring in or about 1993, by ordinances adopted in 1993, by which the definition of "measuring year" as contained therein was modified; and by further amendment authorized by ordinances adopted in 1994, as a result of the settlement of certain litigation entitled "Mountainside v. Rahway Valley Sewerage Authority, et al.," Docket No. L-016401-87, Superior Court of New Jersey, Union County (hereinafter referred to as the "Litigation"); and

WHEREAS, this Agreement is intended to incorporate the terms of the 1951 Agreement together with all amendments heretofore previously approved since 1951.

NOW, THEREFORE, it is mutually agreed as follows:

1. The Original Municipalities, together with the Township of Scotch Plains which became a member as of July 27, 1995 (hereinafter sometimes collectively referred to as the "Municipalities"), subject to the further provisions and conditions of this Agreement, have, pursuant to the Statute, formed the Authority and adopted parallel ordinances for the purpose of creating a public body corporate and politic under the terms of the Statute, to be known as "The Rahway Valley Sewerage Authority."
2. There shall be ten (10) members of the Authority, one to be appointed by the governing body of each of the ten (10) Municipalities, each of whom need not be members of the governing bodies of the respective Municipalities. The respective terms of said members shall be as in the Statute provided.
3. The Authority shall be empowered to adopt, as hereinafter provided, by-laws governing the fiscal affairs of the Authority

providing for necessary officers, meetings, the order of business, standing and special committees and the like; and also rules and regulations governing the use of the sewer and disposal plant. Schedule A, annexed hereto, is a copy of the original by-laws by which the Authority operated as of August 8, 1951, and Schedule B, annexed hereto, are the rules and regulations with which the Authority commenced operations as of August 8, 1951. The current by-laws in effect as of the date of this Agreement and previously adopted by the Authority in accordance with the 1951 Agreement are attached as Schedule C and the current rules and regulations in effect as of the date of this Agreement and previously adopted by the Authority are attached as Schedule D. The by-laws and rules and regulation may be amended by a two-thirds (2/3rds) vote of the members of the Authority, but no by-law nor rule or regulation shall be in any way inconsistent with the provisions of this Agreement.

4. The following limitations shall be placed upon the compensation of members to comply with the requirements of the Statute.

a. No member shall receive greater compensation than at the rate of \$30.00 per meeting for his or her attendance at regular or special meetings of the Sewerage Authority or committees thereof, and not more than \$600.00 in any calendar year; except that the Chairman shall receive such compensation as the Sewerage Authority shall fix, not to exceed \$2000.00 during his or her one year term of office, and provided, further, that if the Chairman of the Sewerage Authority shall be a licensed professional engineer of five years' standing, the Sewerage Authority may, notwithstanding that he shall be a member of the same, pay such reasonable compensation as may be agreed, not to exceed \$500.00 per annum, for any extra and professional duties which may be assigned to the Chairman by the Sewerage Authority.

5. The Sewerage Authority, notwithstanding any other provisions of the statutes in such cases made and provided, or as hereafter supplemented or amended, shall not issue any bonds other than bonds of the Authority as provided in Section 12 of the Statute.

6.1. The Original Municipalities, upon the formation of the Sewerage Authority in 1951, joined in a conveyance to the Authority of their respective interests in the sewage treatment plant of The Rahway Valley Joint Meeting and in the trunk sewer and appurtenances of the said Rahway Valley Joint Meeting, reserving to each of the Municipalities its then flow rights in the sewer as set forth in Sections 8.1 to 8.5 of this Agreement, subject, however, to the provisions of Sections 9.1 to 9.3 of this Agreement, and also joined in a bill of sale of their respective interests in all personal property of the Joint Meeting. The said conveyance and bill of sale was on the express condition that the Sewerage

Authority shall, in consideration of the making of said conveyance and bill of sale, assume all obligations and contracts of the Joint Meeting and take over, maintain, and operate the properties of the Joint Meeting, and proceed with such construction or reconstruction as may be required or agreed upon from time to time. A further express condition of said conveyance and bill of sale was that no Original Municipality's credit was to be pledged without the consent of said Original Municipality. Scotch Plains, shortly after becoming a member of the Sewerage Authority in 1995, joined in a conveyance to the Authority of its interest, if any, in the treatment plant, trunk sewer and meters including the two (2) permanent meters installed by Scotch Plains in 1995, reserving to Scotch Plains its flow rights in the sewer as set forth in Sections 8.1 to 8.5 of this Agreement, subject, however, to the provisions of Sections 9.1 to 9.3 of this Agreement, and also joined in a bill of sale of its interest, if any, in all personal property related to the treatment plant, trunk sewer and permanent meters. The said conveyance and bill of sale was on the express condition that the Sewerage Authority shall, in consideration of the making of said conveyance and bill of sale, take over, maintain, and operate the properties of the Authority including the Scotch Plains permanent meters, and proceed with such construction or reconstruction as may be required or agreed upon from time to time. A further express condition of said conveyance and bill of sale was that Scotch Plains' credit was not to be pledged without the consent of Scotch Plains.

6.2. The Original Municipalities joined in a transfer to the Sewerage Authority of all funds standing on the books of the Joint Meeting on the date of transfer, except that a reserve fund set up in the sum of \$24,000.00, less proper charges against said fund, was distributed and refunded to the Original Municipalities in the proportions that said fund was paid by the respective Original Municipalities.

7. Definitions.

7.1. Wherever in this Agreement reference is made to "present trunk sewer," said term shall mean and include all joint trunk sewers, subtrunk sewers and spur sewers as shown on Plate A hereto annexed.

7.2. Wherever in this Agreement the term "average daily flow" is used, it shall mean the average number of gallons per day contributed to the sewer by the Municipalities or one of the Municipalities for the preceding measuring year, such average daily flows to be determined by continuous flow measurements.

7.3. Wherever in this Agreement reference is made to "average number of pounds per day of suspended solids", said term shall mean the average number of pounds of suspended solids per day

contributed to the sewer by the Municipalities or one of the Municipalities for the preceding measuring year:

7.4. Wherever in this Agreement reference is made to a "measuring year", the said term shall mean a year from October first of one calendar year through September 30th of the following calendar year. Reference to the "preceding measuring year" shall mean the most recently completed of such measuring years.

8.1. The Municipalities respectively shall have the right to use the trunk sewer system, as shown on Plate A hereto annexed, by contributing sewage to the various parts thereof as follows:

<u>Municipalities</u>	<u>Parts of the Trunk Sewer System</u>	<u>Rates of Flow In Millions of Gallons Per Day</u>
Westfield	Joint Trunk Section 1	10.42
	" " " 1A	10.42
	" " " 2	10.42
	" " " 3	10.42
	Westfield Spur	6.61
	Cranford Sub Trunk	4.31
	Cranford Spur	4.31
	Garwood Main Spur	4.31
	S. Garwood Spur	1.72
	N. Garwood Spur	2.59
Scotch Plains	Joint Trunk Section 1	4.5
	" " " 1A	4.5
	" " " 2	4.5
	" " " 3	4.5
	Westfield Spur	4.5
Springfield	Joint Trunk Section 1	3.7
	Joint Trunk Section 1A	3.7
	Joint Trunk Section 2	3.7
	Joint Trunk Section 3	3.7
	Cranford Sub Trunk	3.7
	Cranford Spur	3.7
	Springfield Spur	3.7
Kenilworth	Joint Trunk Section 1	2.62
	Joint Trunk Section 1A	2.62
	Joint Trunk Section 2	2.62
	Joint Trunk Section 3	2.62
	Cranford Sub Trunk	2.62
	Cranford Spur	2.00
	Roselle Park Spur	0.62
Springfield Spur	2.00	

<u>Municipalities</u>	<u>Parts of the Trunk Sewer System</u>	<u>Rates of Flow In Millions of Gallons Per Day</u>
Roselle Park	Joint Trunk Section 1	1.85
	Joint Trunk Section 1A	1.85
	Joint Trunk Section 2	1.85
	Joint Trunk Section 3	1.85
	Cranford Sub Trunk	1.85
	Roselle Park Spur	1.85
Garwood	Joint Trunk Section 1	4.38
	" " " 1A	4.38
	" " " 2	4.38
	" " " 3	4.38
	Cranford Sub Trunk	5.29
	Cranford Spur	5.29
	Garwood Main Spur	5.29
	N. Garwood Spur	3.47
	S. Garwood Spur	2.32

Garwood's contribution to the North Garwood Spur and the South Garwood Spur shall be made at such points as not to exceed the capacities of the spurs when added to Westfield's right of contribution to said spurs.

Cranford	Joint Trunk Section 1	11.75
	Joint Trunk Section 1A	11.75
	Joint Trunk Section 2	11.75
	Joint Trunk Section 3	10.25
	Cranford Sub Trunk	10.25

Also Cranford has the right to contribute to the various spurs and sub-trunks within its limits for a total contribution at a rate not to exceed 10.25 M.G.D. but such contribution shall be made at such points as not to exceed the capacity of the spurs and sub-trunks when added to the rights of contribution to such spurs and sub-trunks of Westfield, Garwood, Kenilworth, Springfield and Roselle Park, provided, however, that Cranford shall have no right to contribute to the Garwood spurs and shall have no right to contribute in excess of 1.5 M.G.D. to the Roselle Park Spur.

If and when the Borough of Mountainside (hereinafter referred to as "Mountainside") becomes a member of the Authority in accordance with a certain agreement between Mountainside, the Original Municipalities and the Authority, dated as of April 1, 1994 ("Mountainside Agreement"), then and in such event, alternative provisions as they relate to Cranford and Mountainside shall become applicable and effective, as follows:

<u>Municipality</u>	<u>Parts of the Trunk Sewer System</u>	<u>Rates of Flow In Millions of Gallons Per Day</u>
Cranford	Jt Trunk Section 1	11.75 minus MPFR ¹
	" " " 1A	11.75 minus MPFR
	" " " 2	11.75 minus MPFR
	" " " 3	10.25 minus MPFR
	Cranford Sub Trunk	10.25 minus MPFR

Also Cranford has the right to contribute to the various spurs and sub-trunks within its limits for a total contribution at a rate not to exceed 10.25 M.G.D. but such contribution shall be made at such points as not to exceed the capacity of the spurs and sub-trunks when added to the rights of contribution to such spurs and sub-trunks of Westfield, Garwood, Kenilworth, Springfield, Roselle Park, and Scotch Plains and/or Mountainside, if Mountainside possesses any such rights, and if Mountainside becomes a member of the Authority; provided, however, that Cranford shall have no right to contribute to the Garwood spurs and shall have no right to contribute in excess of 1.5 M.G.D. to the Roselle Park Spur.

Mountainside	Jt Trunk Section 1	MPFR
	" " " 1A	MPFR
	" " " 2	MPFR
	" " " 3	MPFR
	Cranford Sub Trunk	MPFR
	Cranford Spur	MPFR

Clark	Joint Trunk Section 1	4.32
	Joint Trunk Section 1A	4.32
	Joint Trunk Section 2	4.32
	Joint Trunk Section 3	4.32

Also Clark Township has the right to contribute to the various spurs and sub-trunks within its limits for a total contribution at a rate not to exceed 3.92 M.G.D. throughout Clark, except Clark may contribute at a rate not to exceed 4.32 M.G.D. at or below where the Winfield Park Spur connects with the Joint Trunk. However, such contributions shall be made at such points as not to exceed the capacity of the spurs and sub trunks when added to the rights of contribution to such spurs and sub-trunks of Westfield, Garwood, Kenilworth, Springfield, Roselle Park, Cranford, and Scotch Plains and/or Mountainside, if Mountainside becomes a member of the Authority. Also Clark has the right to contribute to Joint Trunk Section 3, but such contribution shall be limited to an amount which will not exceed the capacity of the said Joint Trunk Section 3 when added to the rights of contribution of Westfield, Garwood, Kenilworth, Springfield, Roselle Park, Cranford, and Scotch Plains

¹ "Mountainside Peak Flow Requirements".

and/or Mountainside, if Mountainside becomes a member of the Authority.

<u>Municipality</u>	<u>Parts of the Trunk Sewer System</u>	<u>Rates of Flow In Millions of Gallons Per Day</u>
Rahway	Joint Trunk Section 1	16.44
	" " " 1A	14.46
	" " " 2	11.46
	Woodbridge Spur	1.98

Also Rahway has the right to contribute to Joint Trunk Section 3 but such contribution shall be limited to an amount which will not exceed the capacity of the said Section 3 when added to the rights of contribution of Westfield, Garwood, Kenilworth, Springfield, Roselle Park, Cranford, Clark Township and Scotch Plains and/or Mountainside, if Mountainside becomes a member of the Authority.

Woodbridge	Old Woodbridge Spur	3.32
	Joint Trunk Section 1	3.32
	Woodbridge Owned and Operated Spur	Not Applicable

Woodbridge had the a limited right to use the treatment plant before construction of the Woodbridge Owned and Operated Spur. When Woodbridge exceeded its authorized flow rights in the Old Woodbridge Spur for any parts of ten (10) separate days in any measuring year, said Municipality was then required to construct, within one (1) year of that occurrence at its own cost and expense, a separate spur or spurs from Woodbridge to the treatment plant to convey such excess flow, which separate spur was constructed by Woodbridge in or about 1958.

8.2. Adequate pumping shall be done by the Authority at the treatment plant to maintain a capacity of 63.3 M.G.D. in Section 1, and a capacity of 58 M.G.D. in Section 1A.

8.3. The rates of flow herein stated are the maximum rates of flow permitted, and no municipality shall have the right to exceed its rate in any part of the sewer for any period of time however brief.

8.4. The rate of flow herein stated for any part of the sewer means the total rate of the Municipality at such part including not only the contribution made to or at such part but also the contribution made to any upper parts which must pass through such part.

8.5. The allocations set up in the tables in this Agreement, granting flow rights to the Municipalities, are based upon the

calculated capacity of the Trunk Sewer, but should the capacity as actually determined be greater or less than these in the aggregate, the allocations to the Municipalities are to be either increased or decreased in the proportion of the rates of flow as allocated herein. Regardless of rights in spurs and sub-trunks the capacity allocation in the main trunks shall not be exceeded by any Municipality.

8.6. Until such time as Mountainside becomes a member of the Authority, if ever, Mountainside and Cranford shall be considered as jointly utilizing the Peak Flow Rights belonging to Cranford pursuant to various agreements previously executed between Cranford and Mountainside, dated September 1, 1951 ("Original Mountainside Agreement") and September 1, 1992 ("Supplemental Mountainside Agreement"); provided that (i) the combined Peak Flow Rights generated by Cranford and Mountainside do not exceed Cranford's Peak Flow Rights as set forth in this Agreement; and (ii) Mountainside conforms fully to the terms and conditions of the Mountainside Agreement.

8.7. In the event that Mountainside becomes a member of the Authority pursuant to the terms of the Mountainside Agreement, Cranford's Peak Flow Rights shall be reduced by the Peak Flow Rights allocated to Mountainside pursuant to Section 8.8, as hereafter amended.

8.8. In the event that Mountainside becomes a member of the Authority pursuant to the Mountainside Agreement, Mountainside's Peak Flow Rights for purposes of this Agreement ("Mountainside Peak Flow Rights" or "MPFR") shall be determined at that time to be a minimum of 3.0 M.G.D. and a maximum of 3.3 M.G.D., depending upon the final amount of additional Peak Flow Rights purchased by Mountainside pursuant to the Supplemental Mountainside Agreement.

9.1. Any member Municipality's authorized flow rights shall be its own individual property. A member Municipality may sell or assign its unused authorized flow rights, as may be determined by the Authority, in whole or in part to a member or nonmember municipality, provided, however, that no such assignment or sale shall be made unless the same flow rights shall first be offered, at the same price, to all member Municipalities in writing at a meeting of the Authority, and unless, at the expiration of thirty (30) days thereafter, such offer shall not have been accepted in writing, mailed to the Clerk of the Municipality making the offer. If more than one member Municipality desires to share in the purchase of such flow rights, such flow rights shall be assigned to them in proportion to their authorized flow rights under this Agreement. Nothing contained herein shall affect any sales of flow rights previously made.

9.2.1. Whenever the Authority shall be advised that any member Municipality has exceeded or is exceeding its authorized

flow rights, as described in Section 8.1 as amended ("Peak Flow Rights"), the Authority shall adopt a resolution fixing a time and place at which a meeting of the Authority shall be held to consider the matter, and a certified copy of said resolution shall be mailed to the Clerk of said Municipality at least one (1) week prior to the date fixed for such meeting. At said meeting or any adjournments thereof, a hearing shall be conducted by the Authority for the purpose of providing said Municipality with the opportunity to present evidence disputing the exceedence or the amount thereof. If the Authority shall find that said Municipality has exceeded its Peak Flow Rights for any parts of ten (10) separate days in the preceding measuring year, said Municipality shall pay, in addition to all other charges for services during the year in which such excess use occurs, an annual Peak Flow Rights rental charge for the prior measuring year on the Peak Flow Rights used in excess of said Municipality's Peak Flow Rights including the exceedences during the parts of said first ten separate days ("Excess Rental Charge").

9.2.2. The Excess Rental Charge shall be assessed at the rate of \$5,000.00 per annum per M.G.D. and shall be paid as provided in Section 11.10 hereof. Monies paid to the Authority on account of such excess use in the trunk sewer, excepting that of the Woodbridge Spur, shall be credited to the account of all member Municipalities in the proportion that the then unused Peak Flow Rights of each member Municipality in Joint Trunk Section 1-A bears to the total unused Peak Flow Rights of all other member Municipalities in such Section 1-A. Monies paid to the Authority on account of excess use of the Woodbridge Spur shall be credited to the account of the member Municipality then having unused Peak Flow Rights in the Woodbridge Spur.

9.2.3. Notwithstanding anything herein contained in this Section 9.2 to the contrary, Clark shall only be assessed an Excess Rental Charge on an annual basis for Peak Flow Rights if Clark has exceeded Peak Flow Rights of 5.0 M.G.D. ("Surcharge") on more than ten (10) separate days, as more fully described in Article 5 of a certain settlement agreement made as of the 1st day of September, 1994, by and among the Original Municipalities and the Authority ("Clark Settlement Agreement"). The amount of the Surcharge shall be determined annually based upon the eleventh (11th) highest Peak Flow Rights reading for Clark in excess of 5.0 M.G.D. during the preceding measuring year as shown on the graph attached as Exhibit A to the Clark Settlement Agreement, a copy of which is attached as Schedule E to this Agreement. Clark shall be required to adopt a bond ordinance in the amount of the Surcharge assessed on Clark for the preceding measuring year, and the Surcharge for each measuring year shall be expended by Clark on Infiltration/Inflow work to the Clark sewerage system, all as more fully described in the Clark Settlement Agreement.

9.3. The rights of the Authority against a Municipality which shall exceed its authorized flow rights as hereinabove provided,

shall not be deemed exclusive, and the Authority, or any Municipality, shall be entitled to injunctive or other equitable relief as may be proper under the circumstances.

10.1. The cost of future extraordinary repairs and rebuilding of any parts of the existing trunk sewer, with the exception of the Woodbridge Spur, shall be paid by each Municipality in accordance with the percentages in Table I. The cost of future extraordinary repairs and rebuilding of any part of the Woodbridge Spur shall be paid by the Municipalities as follows:

Woodbridge -- 62.5% of the total cost and the remaining 37.5% to be apportioned among the Municipalities in accordance with the percentages in Table I.

TABLE I.

<u>Name of Municipalities</u>	<u>Percentage of Cost to be Paid By Each Municipality</u>
City of Rahway.....	19.388156
Borough of Garwood ²	8.110585
Borough of Roselle Park.....	3.909860
Borough of Kenilworth.....	6.578743
Township of Cranford.....	20.063347
Township of Cranford (In the event Mountainside becomes a member with a Peak Flow Rate of 3.0 M.G.D.....	14.941175)
Borough of Mountainside (In the event Mountainside becomes a member with Peak Flow Rate of 3.0 M.G.D.....	5.122172)
Town of Westfield.....	17.342026
Township of Springfield.....	9.065892
Township of Clark ³	8.052337
Township of Scotch Plains.....	7.489054
Total.....	100.000000%

The percentages set forth above in Table I shall be revised to reflect any transfers of flow rights from time to time between Municipalities.

10.2. If and when an increase in the capacity of the trunk sewer system shall be necessary, additional facilities shall be constructed by the Authority, and the cost of construction and maintenance thereof shall be apportioned among and paid by those

² Percentage will vary based upon purchases by Township of Clark or other Municipalities.

³ Percentage will change based upon additional purchases from Garwood.

Municipalities making use of the increased or enlarged facility in proportion to their use of said increased or enlarged facility. The apportionment of the cost of increased or enlarged facilities hereinabove referred to shall be determined by measurements, and adjusted each year and paid over a period of twenty (20) years, beginning one (1) year after the completion of the construction of the increased or enlarged facility. After said twenty (20) year period, any increased flow rights shall be allocated to the member Municipalities in the proportion that such Municipality has paid for said facility over the said twenty (20) year period. No Municipality, in the absence of consent by it, shall be deemed to be using an additional, increased or enlarged facility until its authorized use of the existing facility shall have been exceeded.

11. The Municipalities are responsible for the annual costs of maintenance, ordinary repairs and operation of all units of the sewage collection and treatment system incurred by the Sewerage Authority, as well as interest and amortization on capital improvements ("Annual Cost").

11.01. Whereas, the Annual Cost is allocated among the Municipalities each year in equal proportion to the fractional share of the contribution of each of the Municipalities ("Percent Share") to the (i) total average daily flow ("flow"), (ii) Total Suspended Solids ("TSS"), and (iii) Biochemical Oxygen Demand ("BOD"), from all of the Municipalities and certain user municipalities ("Users") during the prior measuring year ("General Formula").

11.02. Whereas, because of the variable nature of flow, TSS and BOD data from one measuring year to the next, the General Formula, prior to 1994 produced assessments which varied widely and unpredictably from one measuring year to the next for one or more of the Municipalities and, in turn, the Users, and the General Formula had the potential for wide and unpredictable fluctuation in the Assessment Percent Share, which in turn raised serious difficulties for the Municipalities and Users in their financial projection and budgeting processes.

11.03. Whereas, the equitable nature of the allocation methodology heretofore used is to be retained, while reducing the potential for fluctuation of the Assessment Percent Share for each of the Municipalities and Users from one year to the next.

11.04. Whereas, variations in the three separate components utilized to determine the Percent Share, i.e. flow, TSS, and BOD, is to be reduced by using a five year average established over a five (5) year transition period starting in 1994, using data for the measuring year of 1993 and each year thereafter until there is five years of data available to be used.

