

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE  
KISHWAUKEE WATER RECLAMATION DISTRICT, THE VILLAGE OF MALTA,  
AND KISHWAUKEE COLLEGE**

**THIS AGREEMENT** is made and entered into this 14 day of July, 2021, by and between the Kishwaukee Water Reclamation District, a sanitary district organized under the Sanitary District Act of 1917 (hereinafter referred to both as "KWRD" and the "District"), the Village of Malta (hereinafter referred to as "Malta"), and Kishwaukee College (hereinafter referred to as "KC"), collectively referred to as the "Parties."

**WHEREAS**, the Parties are public agencies within the meaning of the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, as authorized by Article VII Section 10 of the 1970 Constitution of the State of Illinois; and

**WHEREAS**, the Intergovernmental Cooperation Act (5 ILCS sec. 220/1 *et seq.*) provides for intergovernmental contracts and cooperation in providing services and for the protection of the citizens and general public between the Parties; and

**WHEREAS**, the Illinois Constitution and the Illinois statutes encourage and provide for units of local government to cooperate and enter into intergovernmental agreements in any manner not prohibited by law or ordinance to their mutual benefits; and

**WHEREAS**, the Parties are desirous of extending sewers and services of KWRD for the purpose of receiving and disposing of sewage of Malta and KC; and

**WHEREAS**, in order to continue the process of extending such services to KWRD, the Parties intend to enter into this Agreement in order to work together to provide construction guidelines for the Project; and

**WHEREAS**, the Parties agree that the agreements made herein are in the best interest of all of the users of both KWRD's sanitary sewer facilities and the Malta's and KC's wastewater facilities.

**NOW, THEREFORE**, in consideration of the foregoing and other mutual covenants hereinafter contained, the Parties hereto agree as follows:

**1. Recitals.** The above recitals are hereby incorporated into this Agreement as if fully set forth in this Paragraph 1.

**2. The Project.** KWRD agrees to construct and install sanitary improvements as generally described below:

- a. Pumping station, force main, and ancillary improvements to connect KC's existing wastewater treatment plant to KWRD's system and utilize existing treatment lagoon as excess flow storage;
- b. Pumping station, force main, and ancillary improvements to connect Malta's existing wastewater treatment plant to KWRD's gravity sewer extension, and the conversion of Malta's existing treatment lagoons to excess flow storage/treatment facility;
- c. KWRD gravity sewer or force main extension from KWRD's existing gravity sewer located on IL Route 38 at President's Boulevard; and
- d. Any other anticipated sanitary improvement necessary to complete the Project.

It is anticipated that the pumping stations will be constructed at or near the existing wastewater treatment plants and the force mains will be extended and connected to the sanitary system owned and operated by KWRD. It is further anticipated that KWRD will apply for project funding through the IEPA's State Revolving Loan Funding (SRF) Program and will further seek to take advantage of any State or Federal grants that may be available to assist in funding the construction and installation.

**3. Territory.** It is expressly agreed by the Parties that the Territory is that property which Malta is currently providing sanitary sewer service to, and the entire KC campus as it exists on the date of this agreement. It is expressly agreed and understood that although the Project includes improvements to provide a reserve capacity to allow for the future expansion of service, other properties not serviced by Malta or KC are not included in this Project.

**4. Bidding and Awarding of Contracts.** The parties understand that the plans and specifications for the Project are complete and KWRD shall invite bids from qualified bidders for the installation and construction of the Project. The contracts for the construction and installation of the Project shall be awarded to the lowest responsive, responsible bidder in accordance with the plans and specifications, and within the time-period provided for in the contract for the construction and installation of the Project.

**5. Commencement of Construction.** The construction of the aforementioned facilities installed pursuant to this Agreement shall not commence until the bids, plans, including but not limited to, engineering drawings and supporting calculations, and specifications therefore have been approved by any local, State, or Federal agencies from which approval must be secured by law. Further, all Parties shall have the right to monitor, inspect, and enforce compliance with the approved plans and specifications. There shall be no deviations from the approved plans and

specifications without prior approval by all Parties and any applicable State and Federal authorities from which approval must be secured by law.

No construction shall commence under the terms of this Agreement until KWRD has supplied to Malta and KC proof of insurance coverage by all the contractors and subcontractors in the form of certificates of insurance which name all Parties as additional insured with coverages and limits acceptable to all parties. In addition, the following is the general schedule and anticipated timeline for the work contemplated by this agreement:

- Aug 1, 2021 – out to bid
- Sept 15, 2021 – bid opening
- Nov 1, 2021 – commence construction

NOTE: Schedule is subject to change due to various factors both within and beyond the control of the parties.

**6. Connection Fee.** Malta shall pay a connection fee to KWRD to be agreed upon by the parties but not exceeding \$2,800,000.00 for the full and complete right to connect to the KWRD connection line for the transportation of wastewater to KWRD for treatment. The Connection Fee can be paid in installments over a period of time and at an interest rate agreeable to the parties, to be determined based upon considerations referenced in Paragraph 9 of this Agreement. The first payment on said connection fee is anticipated to be due on or before the 15<sup>th</sup> day of May, 2023. There shall be no prepayment penalty in connection with any accelerated payments Malta may wish to make. If not timely paid, KWRD shall have the right to accelerate all payments and pursue all reasonable means of collection against Malta.

On or before the 15<sup>th</sup> day of May, 2023, KC shall pay a one-time connection fee to KWRD to be agreed upon by the parties but not exceeding \$1,400,000.00 for the full and complete cost to connect to the KWRD connection line for the transportation of wastewater to KWRD for treatment. If not timely paid, KWRD shall have the right to accelerate all payments and pursue all reasonable means of collection against KC.

This connection fees shall only apply to connection of the lines installed in Malta. All other developments in the future that may require connection to KWRD's services shall require either the Village or the Malta or KC to pay a connection fee as per District Ordinances for any other connection to its services.

The parties understand that when the final schedule, fees and costs are known, an addendum to this agreement will be prepared and executed by the parties incorporating those and other terms that may be relevant at the time.

The parties further understand that the fees to be charged by KWRD to KC and the various users in the Village shall be in accordance with District Ordinances and be consistent with the charges to all other similarly situated users receiving service from KWRD both within and outside of the corporate boundaries of the District.

**7. Engineering.** KWRD has engaged Baxter and Woodman to perform all engineering services required in connection with the design, bidding and construction of the Project, including but not limited to, the preparation of plans, specifications, and contract documents, the administration of bid invitations and contract award procedures, the supervision and inspection of all construction, and the certification of all payments required pursuant to the construction contracts awarded for the Project. The Engineer's fees for the engineering services described above shall be paid by KWRD. In addition, KWRD may utilize its professional staff to supervise and inspect all Construction – thus minimizing engineering expenses for the project.

**8. Land Acquisition.** KWRD shall be responsible for the acquisition of all the necessary rights of way or easements of whatever nature to construct, operate, and maintain such facilities and for the securing of all construction permits or approvals recorded under law. It is understood, however that Malta and KC will need to dedicate permanent utility easements on their respective properties to KWRD to accommodate the sanitary sewer improvements that KWRD will install in furtherance of this agreement.

**9. Contingencies.** The Parties agree that this Agreement is expressly contingent upon KWRD receiving a IEPA Low Interest Loan for the purposes of this Project, and in the event KWRD fails to be the recipient of such Loan and it is reasonably anticipated that such Loan will not be forthcoming in the near future, that this Agreement shall, at the option of KWRD, become null and void. This agreement is further contingent upon the total costs of construction (including engineering) (less any forgiveness or grants which may be applicable) will be less than \$5,600,000.00. In the event costs exceed said amount, any party may, by notice to the others, and after reasonable discussion and negotiation on alternatives and ways to otherwise make a revised construction cost acceptable to all parties, declare this agreement to be null and void

**10. Public Rights of Way.** In addition to any other right or entitlement any Party may have or hereafter acquire, each Party agrees to grant other Parties the reasonable use of its public rights of way for the construction, operation, and maintenance of its respective public utility systems. There shall be no fee or other charge imposed for the use of such rights of way. Provided, however, that a Party using a right of way of another shall promptly reimburse such other Party for its actual out of pocket expenses incurred in the review of a request to use the right of way. A party using the right of way of another shall comply with reasonable permit conditions established to protect, repair, and restore the right of way and its appurtenances. A party using the right of way of the other party shall defend and indemnify the other party from and against any claim asserted by a third party in connection with said Party's use of the right of way.

**11. Notice.** Any notice or demand hereunder from either party to another party hereto, shall be in writing and shall be deemed served if mailed by prepaid certified mail addressed as follows:

KISHWAUKEE WATER RECLAMATION DISTRICT  
1301 Sycamore Road  
DeKalb, IL 60115

KEITH FOSTER  
Attorney for Kishwaukee Water Reclamation District  
2040 Aberdeen Court  
Sycamore, IL 60178

VILLAGE OF MALTA  
P.O. Box 53  
302 South 2nd Street  
Malta, IL 60150

KEVIN BUICK  
Attorney for Village of Malta  
2040 Aberdeen Court  
Sycamore, IL 60178

KISHWAUKEE COLLEGE  
21193 Malta Rd  
Malta, IL 60150

Robbins Schwartz  
55 West Monroe  
Chicago, IL 60603  
Attorneys for Kishwaukee College

**12. Future Operation.** It is the Parties' intentions to negotiate and enter into a separate agreement regarding the future operating duties and costs at the time construction portion of the Project is finished. The Parties therefore agree to make all reasonable efforts to enter into such agreement in a timely manner.

**IN WITNESS WHEREOF,** the parties hereto have entered into this Agreement by their duly authorized officers as of the day first set forth above.

**VILLAGE OF MALTA**

BY: Robert D'Amico

ATTEST:

Mary Ann

**KISHWAUKEE COLLEGE**

BY: Dr. Laurie S. Borowicz  
Dr. Laurie S. Borowicz, President

ATTEST:

Cathy King

**KISHWAUKEE WATER  
RECLAMATION DISTRICT**

BY: Dr. Dennis Collins  
Dr. Dennis Collins, President

ATTEST:

Dawn Cosentino  
Ms. Dawn Cosentino, P.E., District Clerk