

## RESOLUTION NO. 194

### **A RESOLUTION OF THE CITY OF MOMENCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF KANKAKEE, CITY OF KANKAKEE, CITY OF MOMENCE, VILLAGE OF BOURBONNAIS, VILLAGE OF BRADLEY, AND THE VILLAGE OF MANTENO TO PROMOTE TOURISM**

WHEREAS, Article 7, Section 10 of the Constitution of the State of Illinois of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, authorize units of local government to contract or otherwise associate among themselves to obtain and share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law;

WHEREAS, Section 5-1030 of the Counties Code (55 ILCS 5/5-1030) authorizes any county to contract with any unit of local government to impose and collect for a period of not to exceed 40 years any portion or all of a tax imposed upon all persons engaged in the business of renting, leasing, or letting rooms in a hotel;

WHEREAS, the County of Kankakee, City of Kankakee, City of Momence, Village of Bourbonnais, Village of Bradley, and Village of Manteno (the "Units of Local Government") are units of local government duly organized and existing under the laws of the State of Illinois;

WHEREAS, the Units of Local Government entered into an intergovernmental agreement dated May 1, 2013, to encourage, foster, promote, and stimulate tourism and convention business in the County of Kankakee;

WHEREAS, the Units of Local Government find that tax revenue derived from the County Hotel Tax, as defined herein, is the best and most economical source of revenue available to them to encourage, foster, promote, and stimulate tourism and convention business in the County of Kankakee;

WHEREAS, the Units of Local Government find that Kankakee County Convention & Visitors Bureau, Inc. (the "Corporation"), which is an Illinois general not-for-profit corporation exempt from federal income taxes under Section 501(c)(6) of the Internal Revenue Code of 1986, is the most productive expedient to promote tourism and convention business within the Units of Local Government;

WHEREAS, the Units of Local Government have found that the success of the Corporation depends largely on its ability to attract qualified employees; and,

WHEREAS, the Units of Local Government are desirous of reaffirming their commitment to the Corporation, and increasing the likelihood of its success by encouraging the use employment-related benefits to attract and maintain highly-qualified persons; and,

WHEREAS, the Units of Local Government have determined that it is in the best interest to contract with one another with respect to the imposition, collection and distribution of a hotel tax under terms and conditions as they may agree.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Momence, Kankakee County, Illinois, as follows:

Section 1. The recitals set forth in the above prefatory clauses are hereby adopted as the findings of the City Council and are expressly incorporated herein as a part of this resolution.

Section 2. The Intergovernmental Agreement to Promote Tourism, in substantially the same form as attached hereto as Exhibit "A," between the County of Kankakee, City of Kankakee, City of Momence, Village of Bourbonnais, Village of Bradley, and Village of Manteno is hereby approved.

Section 3. The Mayor is hereby authorized and directed to execute the Intergovernmental Agreement to Promote Tourism in such form as may be deemed advisable and acceptable to the City Attorney.

Section 4. All resolutions or parts thereof in conflict with this resolution are hereby repealed.

Section 5. This resolution shall be in full force and effect upon its passage and approval.

Adopted and Approved October 2, 2017.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Chuck Steele, Mayor

ATTEST:

\_\_\_\_\_  
Christy Ritter, City Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF KANKAKEE, CITY OF KANKAKEE, CITY OF MOMENCE, VILLAGE OF BOURBONNAIS, VILLAGE OF BRADLEY, AND THE VILLAGE OF MANTENO TO PROMOTE TOURISM**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_, 2017, but actually executed by each of the undersigned units of local government on the date set forth beneath the respective signatures of their duly authorized officers below.

WITNESSETH

WHEREAS, the County of Kankakee, City of Kankakee, City of Momence, Village of Bourbonnais, Village of Bradley, and Village of Manteno (the “Units of Local Government”) are units of local government duly organized and existing under the laws of the State of Illinois;

WHEREAS, the Units of Local Government are authorized and encouraged by the Enabling Acts, as hereinafter defined, to share and combine services to foster and incentivize tourism, recreation, and business in and to the County of Kankakee;

WHEREAS, the Units of Local Government entered into an intergovernmental agreement dated May 1, 2013, to encourage, foster, promote, and stimulate tourism and convention business in the County of Kankakee;

WHEREAS, the Units of Local Government find that tax revenue derived from the County Hotel Tax, as defined herein, is the best and most economical source of revenue available to them to encourage, foster, promote, and stimulate tourism and convention business in the County of Kankakee;

WHEREAS, the Units of Local Government find that Kankakee County Convention & Visitors Bureau, Inc. (the “Corporation”), which is an Illinois general not-for-profit corporation exempt from federal income taxes under Section 501(c)(6) of the Internal Revenue Code of 1986, is the most productive expedient to promote tourism and convention business within the Units of Local Government;

WHEREAS, the Units of Local Government have found that the success of the Corporation depends largely on its ability to attract and maintain qualified employees; and,

WHEREAS, the Units of Local Government are desirous of reaffirming their commitment to the Corporation, and increasing the likelihood of its success, by encouraging the Corporation to offer certain employment-related benefits.

NOW THEREFORE, in consideration of the matters set forth above, the agreements, covenants, representations, and undertakings made and contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Units of Local Government hereby agree, covenant, represent, and undertake as follows:

Section 1. Recitals. The recitals of this Agreement are hereby incorporated and made a part of this Agreement as though fully set forth herein.

Section 2. Definitions. Unless the context hereof clearly indicates otherwise, the capitalized words, terms, and phrases hereinafter defined shall have the same meanings for all purposes of this Agreement:

- 2.1 *Act* means the Illinois General Not For Profit Corporation Act of 1986.
- 2.2 *Agreement* means this intergovernmental agreement.
- 2.3 *Board of Directors* means the board of directors of the Corporation.
- 2.4 *Board of Trustees* means the board of trustees of IMRF.
- 2.5 *Bylaws* means the bylaws of the Corporation.
- 2.6 *Corporation* means the Kankakee County Convention & Visitors Bureau, Inc.
- 2.7 *County* means the County of Kankakee.
- 2.8 *County Hotel Tax* means the tax imposed through Section 50-67 of the Kankakee County Code, as amended, otherwise authorized pursuant to Section 5-1030 of the Counties Code (55 ILCS 5/5-1030).
- 2.9 *County Hotel Tax Revenue* means revenues derived from the levy of the County Hotel Tax within the boundaries of the Units of Local Government.
- 2.10 *Discount Rate* means the single rate of return that results in the present value of all projected benefit payments to be equal to the sum of the funded and unfunded projected benefit payments for purposes of IMRF.
- 2.11 *Effective Date* means the date referenced in the introductory paragraph of this Agreement.
- 2.12 *Enabling Acts* means Section 5-1030 of the Counties Code; Section 1-1-5 and Section 8-3-14 of the Illinois Municipal Code; the Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*); and Section 6 and Section 10 of Article VII of the Constitution of the State of Illinois.

- 2.13 *GASB* means the Governmental Accounting Standards Board.
- 2.14 *Hotel Tax Revenue* means revenues derived from the levy of the County Hotel Tax and/or Municipal Hotel Tax.
- 2.15 *IMRF* means the Illinois Municipal Retirement Fund.
- 2.16 *IRC* means the Internal Revenue Code of 1986.
- 2.17 *Municipal Hotel Tax* means any tax imposed pursuant to Section 8-3-14 or 8-3-14a of the Illinois Municipal Code, or similar tax imposed pursuant to the home rule powers of any home rule Municipalities under the Illinois Constitution.
- 2.18 *Municipal Hotel Tax Revenue* means revenues derived from any Municipal Hotel Tax.
- 2.19 *Municipalities* means the City of Kankakee, City of Momence, Village of Bourbonnais, Village of Bradley, and Village of Manteno.
- 2.20 *Penalties* means any and all fines, penalties, or settlements in lieu thereof, collected by Kankakee County for violations of the Kankakee County Code in association with the County Hotel Tax.
- 2.21 *Pension Code* means the Illinois Pension Code.
- 2.22 *Population* means a number equal to the most recent census of population used by the Illinois Department of Transportation for purposes of its motor fuel tax fund revenue sharing calculations or, in the absence of such calculation, a number equal to the most recent census of population certified by the Federal Census Bureau to the State of Illinois Index Department. For Kankakee County, Population shall be determined as provided above except that the number shall be reduced by the Population of the Municipalities.
- 2.23 *Secretary* means the secretary of the Corporation.
- 2.24 *Units of Local Government* means the County and the Municipalities.

Section 3.     Hotel Tax.

3.1. *Imposition.* The County shall impose the County Hotel Tax upon all persons engaged in the business of renting, leasing, or letting rooms in a hotel or motel within the corporate boundaries of the Units of Local Government at a rate of not more than five (5%) percent of the gross rental receipts from the renting, leasing, or letting of rooms within any hotel or motel, but excluding therefrom the proceeds of such renting, leasing, or letting to permeant

residents of hotels and motels. The tax rate to be imposed shall not be altered from the current rate of five (5%) percent unless agreed to by all of the Units of Local Government.

3.2. *Collections and Distributions.* The County is authorized and shall collect the County Hotel Tax Revenue on behalf of the Units of Local Government and distribute the same to the Units of Local Government in proportion to the County Hotel Tax Revenue collected from businesses located within their respective corporate boundaries, less the direct expenses associated with the collection of the same.

3.3. *Assignment.* The Units of Local Government hereby assign and pledge to the Corporation all rights, title and interest of the Units of Local Government in and to their respective share of the County Hotel Tax Revenue, and the County shall transmit such County Hotel Tax Revenue directly to the Corporation. This assignment, and the County's obligation to transmit the County Hotel Tax Revenue to the Corporation, shall be absolute, unconditional, and irrevocable while the County is a member of the Corporation and the Corporation is in existence.

3.4. *Hotel Tax Revenue.* The Corporation shall deposit and hold any County Hotel Tax Revenue transmitted by the County in a segregated account separate and apart from such other funds and monies of the Corporation, and such County Hotel Tax Revenue, once transmitted, shall be deemed and constitute restricted funds and shall only be used to encourage, foster, promote, and stimulate tourism and convention business in the County.

3.5. *Deferment of Municipal Hotel Tax.* The Municipalities agree, covenant, and warrant that none of them shall impose a Municipal Hotel Tax for so long as they are a member of the Corporation and this Agreement remains in effect.

3.6. *Accounting.* The County shall prepare and deliver to each of the Units of Local Government a report of all County Hotel Tax Revenue collected within each of the Units of Local Government, such amounts thereof retained by the County for the administrative expense of collection, and such amounts transmitted to the Corporation. The report shall be delivered to each of the Units of Local Government no later than thirty (30) days after each quarter, as determined by the Corporation's fiscal year, and shall identify and delineate all County Hotel Tax Revenue collections during the preceding quarter by jurisdiction and month. Copies of such reports shall also be delivered to the Corporation.

3.7. *Penalties.* Any and all Penalties collected by the County shall be distributed and assigned in the same manner as County Hotel Tax Revenue. Under no circumstances shall the County's cost of the enforcement, prosecution or collection of Penalties reduce, diminish or otherwise set-off against, the amount of County Hotel Tax Revenue collected, distributed, and assigned under this Agreement.

Section 4.     The Corporation.

4.1.   *Organization and Operations.*   The Corporation shall constitute an Illinois general not-for-profit corporation exempt from federal income taxes pursuant to Section 501(c)(6) of the IRC. The Corporation shall be operated by the Board of Directors, who shall be appointed exclusively by the Units of Local Government (or, in the case of a public member, the Board of Directors). The Units of Local Government shall take all action necessary to provide for the timely appointment of directors to serve on the Board of Directors. The Units of Local Government agree and covenant to support the Corporation, and to defer to, honor, and abide by the judgment of the Board of Directors on matters pertaining to its business and affairs, including but not limited to, the establishment, exercise, and implementation of policy, employment-related decisions, the budgeting and expenditure of Hotel Tax Revenue, decisions affecting appointees of the Units of Local Government (removal or declarations of vacancy), and such other matters as may be within the Board of Directors' lawful authority under and pursuant to the Act, the IRC, and the Bylaws. The Units of Local Government agree and acknowledge that they have no voting rights as members of the Corporation.

4.2.   *Dissolution.*   Each of the Units of Local Government may request the Board of Directors to consider dissolving the Corporation by resolution passed by the concurrence of the majority of the members of the corporate authorities then holding office for the Unit of Local Government. Each resolution shall be delivered to the Secretary and to each of the other Units of Local Government within ten (10) days after passage and approval. Upon the Secretary's receipt of a resolution from not less than four (4) Units of Local Government requesting the dissolution of the Corporation, provided such resolutions are all received by the Secretary within a ninety (90) day period, the Corporation shall hold a special meeting on the question of whether the Corporation shall be dissolved. The special meeting shall be held not more than seventy-five (75) days after the receipt of the fourth resolution by the Secretary. Each director of the Corporation shall be entitled to vote on the question of the dissolution of the Corporation. The Corporation shall only be dissolved by an affirmative vote of not less than 2/3 of the Board of Directors then in office.

4.3.   *Distribution of Assets.*   The Units of Local Government agree that the assets of the Corporation, upon dissolution, shall be distributed to the Units of Local Government in proportion to their respective Population; provided, however, any portion of the Corporation's assets constituting County Hotel Tax Revenue shall be distributed exclusively to those Units of Local Government that have one or more businesses within their corporate boundaries that have generated County Hotel Tax Revenue within the three (3) years preceding the date of dissolution in proportion to the County Hotel Tax Revenue generated within the corporate boundaries of such Unit of Local Government during such period in relation to the total Hotel Tax Revenue generated within all the Units of Local Government for the same time period.

4.4.   *Use of Assets.*   Upon distribution, the assets of the Corporation shall be used exclusively for public purposes, or in the case of County Hotel Tax Revenue, for the exclusive public purpose of promoting tourism; conventions; expositions; and theatrical, sports and cultural activities within the respective Unit of Local Government; or to otherwise attract nonresident

overnight visitors thereto. Any assets not so disposed of shall be disposed by a court of competent jurisdiction of the county in which the principal office of the corporation is then located as such court shall determine and shall not affect the Corporation's Section 501(c)(6) status.

#### 4.5. *Withdrawal of Membership.*

4.5.1. Any Unit of Local Government may withdraw its membership in the Corporation at any time on or after a date not less than ten (10) years after the Effective Date by serving written notice of its intent to withdraw on the other Units of Local Government and the Secretary; provided, however, such withdrawal shall only take effect on December 31 of the calendar year in which said notice is served, and only if such notice is served not less than one hundred twenty (120) days before the end of the calendar year.

4.5.2. Not more than ninety (90) days after receipt of such notice of intent to withdraw, each of the other Units of Local Government shall meet and consider the question of whether they shall continue their membership in the Corporation in the absence of the withdrawing Unit of Local Government. The Corporation shall be dissolved by the Board of Directors unless each of the non-withdrawing Units of Local Government authorize continued membership in the Corporation. If the County is the withdrawing Unit of Local Government, then the Corporation shall be dissolved by the Board of Directors unless each of the non-withdrawing Units of Local Government authorize continued membership in the Corporation, impose a Municipal Hotel Tax within their respective corporate boundaries at a rate not less than the County's then current rate, and provide for the assignment of such Municipal Hotel Tax Revenue to the Corporation.

4.5.3. If the Corporation is dissolved through the failure of the non-withdrawing Units of Local Government to authorize their continued membership, then the withdrawing Unit of Local Government's withdrawal shall be deemed ineffective and of no force or effect. Thereafter, each of the Units of Local Government, including the Unit of Local Government that initiated withdrawal, shall be governed by Section 5 of this Agreement through and after dissolution of the Corporation.

4.5.4. If the Corporation is not dissolved because the non-withdrawing Units of Local Government have authorized continued membership, then the withdrawing Unit of Local Government shall be deemed to be withdrawn as of December 31, but shall remain responsible for satisfying its proportionate share of the Corporation's net IMRF liability existing on the effective date of its withdrawal as determined by a report prepared for purposes of complying with GASB Statement No. 68 "Accounting and Financial Reporting for Pensions," or the then current standard. The withdrawing Unit of Local Government's proportionate share of the net IMRF liability shall be affixed in proportion to County Hotel Tax Revenue generated within its corporate boundary while this Agreement was in effect, but prior to its withdrawal, in relation to the total County Hotel Tax Revenue generated within all the Units of Local Government for the same time period. To the extent the withdrawing Unit of Local Government had no County Hotel Tax Revenue generated within its boundaries within such period then its proportionate share of the Corporation's net IMRF liability shall be affixed in proportion to its Population in



relation to the total Population of all the Units of Local Government.

4.5.5. If the withdrawing Unit of Local Government proportionate share of the Corporation's net IMRF liability is determined by Population, or if the withdrawing Unit of Local Government imposes a County or Municipal Hotel Tax within its corporate boundaries after withdrawal but while its proportionate share of the Corporation's net IMRF liability is outstanding, then its proportionate share of the Corporation's net IMRF liability, plus annual interest at a rate equal to the then applicable Discount Rate, shall be paid by the withdrawing Unit of Local Government to the Corporation from such funds as the withdrawing Unit of Local Government deems advisable no later than one hundred twenty (120) days following receipt of: (a) the Corporation's GASB No. 68 report for the previous calendar year; or, (b) the date on which the withdrawing Unit of Local Government imposes a County or Municipal Hotel Tax if the withdrawing Unit of Local Government's share was originally being paid pursuant to Section 4.5.6.

4.5.6. If the withdrawing Unit of Local Government's proportionate share of the Corporation's net IMRF liability is determined under the County Hotel Tax Revenue methodology and it does not impose a County or Municipal Hotel Tax after withdrawal while its proportionate share of the Corporation's net IMRF liability is outstanding, then its proportionate share of the Corporation's net IMRF liability, plus annual interest at a rate equal to the then current Discount Rate, shall be sequestered by the Corporation from Hotel Tax Revenue in amounts that will satisfy the withdrawing Unit of Local Government's proportionate share of the Corporation's net IMRF liability over a period of not less than one (1) year (unless directed otherwise by the Corporation) and not more than four (4) years following receipt of the Corporation's GASB No. 68 report for the previous calendar year.

4.5.7. No later than ten (10) business days following the receipt or the sequestering of the withdrawing Unit of Local Government's proportionate share of the Corporation's net IMRF liability, or any portion thereof, the Corporation shall pay over such amount(s) to IMRF in addition to any regular contribution or payment that may be due.

4.5.8. A Unit of Local Government that has withdrawn its membership as provided for herein shall be deemed released and no longer responsible for any further payments or contributions to or on behalf of the Corporation under this Agreement or otherwise, but shall remain responsible for its proportionate share of the Corporation's net IMRF liability until satisfied.

4.5.9. Upon withdrawal, any person serving on the Board of Directors as an appointee of the withdrawing Unit of Local Government shall be deemed immediately disqualified and have no privileges in or to the Corporation, including the right to vote.

4.5.10. A withdrawn Unit of Local Government's obligations and liabilities under this subsection shall survive the dissolution of the Corporation and the expiration or termination of this Agreement.

Section 5. Illinois Municipal Retirement Fund.

5.1. *Application.* The Corporation may apply to participate in the IMRF as a participating instrumentality of the Units of Local Government.

5.2. *Employer.* The Corporation is and shall remain the employer of the employees working at or for the Corporation. The Corporation shall retain all power and authority over the employees with respect their hiring, promotion, demotion, suspension, discipline, termination, the determination and payment of employee wages and benefits, the assignment of work and scheduling, and to otherwise dictate the terms and conditions of their employment.

5.3. *Assumption of Responsibility.* Notwithstanding Section 5.2, and subject to the priorities established in Section 5.4, the Units of Local Government hereby assume and accept all rights, obligations, and liabilities of the Corporation imposed by and through Article 7 of the Pension Code.

5.4. *Priority of Responsibilities and Sources.* The Corporation shall be primarily responsible for its IMRF obligations, including but not limited to contributions and liabilities (pension, disability, spousal, etc.), and the same shall be paid by the Corporation or from the Corporation's IMRF reserve account, as the case may be. The Units of Local Government shall be secondarily responsible for the Corporation's IMRF obligations, and the same shall be payable at such time and from such sources as the Board of Trustees may direct. The Units of Local Government agree that they shall assume and share responsibility for the Corporation's IMRF obligations, but only to the extent necessary to satisfy the failure or deficiency of the Corporation, and they agree that their respective responsibility shall be affixed as follows: (a) in proportion to County Hotel Tax Revenue generated within their respective corporate boundaries while this Agreement is/was in effect, but prior to dissolution of the Corporation, in relation to the total County Hotel Tax Revenue generated within all the Units of Local Government for the same time period; or (b) to the extent a Unit of Local Government had no County Hotel Tax Revenue generated within its boundaries during the said time-period, then: (i) its proportionate share shall be affixed in proportion to its Population in relation to the total Population of all the Units of Local Government; and, (ii) the remaining Unit of Local Government's share of the responsibility shall be adjusted by multiplying the balance of the Corporation's IMRF obligations by each of those Unit of Local Government's respective percentage of the whole determined under the County Hotel Tax Revenue methodology. Notwithstanding how their respective share of the responsibility is affixed, the Units of Local Government agree that they shall collectively fund the Corporation's IMRF obligations according to the following priority of sources: (a) with County Hotel Tax Revenue while this Agreement remains in effect, and Hotel Tax Revenue after the termination or expiration of this Agreement, or, (b) if none or to the extent insufficient, from such other sources as they may each decide. The Corporation shall be obligated to fund its net IMRF liability to the greatest extent possible prior to its dissolution with such sources of revenue as it may have at its disposal. The Corporation's IMRF obligations shall be a lawful direct general obligation of the Corporation payable from any funds of the Corporation lawfully available for such purpose. The Corporation shall budget and appropriate funds in a timely manner so as to provide for the timely payment of all its IMRF obligations.

5.5. *Priority Amongst Sources Post-Agreement.* With respect to the funding and priorities of sources of revenue following the the expiration or termination of this Agreement, it is expressly agreed by the Units of Local Government that so long as Hotel Tax Revenue is sufficient to satisfy the Corporation's IMRF obligations: (a) only Hotel Tax Revenue shall be used to satisfy such obligations; (b) such obligations shall be satisfied from Hotel Tax Revenue ratably between County Hotel Tax Revenue and the respective Municipal Hotel Tax Revenues in proportion to their respective gross collections as ascertained by their most recently available reports of account; and (c) none of them shall in any way take or omit to take action that would reduce the amount or availability of such Hotel Tax Revenue until after being accounted for and applied in accordance with this subsection. By way of example only, in the event the Corporation's post-Agreement IMRF obligation payable in March totaled \$2,000, and the Hotel Tax Revenue collections for the last ascertainable monthly period for any Unit of Local Government levying a hotel tax totaled \$50,000, broken down as \$20,000 from County Hotel Tax Revenue, \$20,000 Bradley Municipal Tax Revenue, and \$10,000 Manteno Municipal Tax Revenue, then \$800 would be payable from the County Hotel Tax Revenue, \$800 would be payable from Bradley Hotel Tax Revenue, and \$400 would be payable from Manteno Hotel Tax Revenue. No other Unit of Local Government, nor any other source of revenue, shall be assessed for the Corporation's IMRF obligation unless and to the extent Hotel Tax Revenue collections are insufficient therefor. Then, and only then, shall the Units of Local Government be obligated to fund or contribute or pay the balance, but in no event shall any Unit of Local Government be obligated to contribute to the unpaid balance if such contribution would result in that Unit of Local Government contributing an aggregate amount greater than its proportionate share of the responsibility as determined in accordance with Section 5.4, taking into account its respective share Hotel Tax Revenue contributed for that period. In the event a Unit of Local Government is assessed or required to pay an obligation they are not responsible for, or any portion thereof, there shall be an accounting and the overpaying Unit of Local Government shall be reimbursed by the other Units of Local Government within thirty (30) days' notice of such expenditure in accordance with their proportionate share of the responsibility.

5.6. *Cooperation.* The Units of Local Government agree and covenant that they will cooperate with, and account to, one another and the Board of Trustees with respect to Hotel Tax Revenues and the Corporation's IMRF obligations, that they shall budget and appropriate funds in a timely manner so as to provide for the timely payment of the Corporation's IMRF obligations post-Agreement, and that they shall take the aforementioned actions in a timely manner. To the extent required by the Board of Trustees, the Units of Local Government shall establish a joint account into which their respective share of funding shall be deposited and from which the Corporation's IMRF obligations shall be paid. Such account shall be administered by the Units of Local Government as they may agree, including on a rotating basis. To the extent applicable, the Units of Local Government further agree that the Corporation's IMRF assets shall be distributed to the Units of Local Government in a corresponding ratio to their respective proportionate responsibility for the Corporation's IMRF liability.

5.7. *IMRF Trust Account; Intercept.* No later than January 20 and July 20 of each calendar year, the Corporation shall deposit funds into a separate account to be named the "IMRF

Trust Account” in an amount equal to the product of the sum of the last six (6) (July-December or January-June) monthly reports of earnings for covered employees (in the aggregate) multiplied by the Corporation’s then applicable IMRF contribution rate; provided, any excess funds remaining in the IMRF Trust Account after the last monthly IMRF employer contribution of the previous period shall be credited against the Corporation’s current deposit obligation. Such funds, once deposited into the IMRF Trust Account, shall be deemed irrevocably pledged and appropriated for the Corporation’s next six (6) monthly IMRF employer contributions. No later than the 5<sup>th</sup> of each month, the Corporation shall examine the balance of the IMRF Trust Account and if the balance of such account is less than the last ascertainable IMRF employer contribution, it shall replenish the IMRF Trust Account in amount equal to the difference between the then current balance and the last ascertainable IMRF employer contribution. The Corporation shall be obligated to fund any deficiency between the IMRF Trust Account balance and its actual next monthly IMRF employer contribution upon certification of such amount by IMRF, but in no event later the 9<sup>th</sup> of such month in which said IMRF employer contribution is due. Any Unit of Local Government shall be entitled to inspect, and the Corporation shall be obligated to supply, an IMRF Trust Account balance no later than forty-eight (48) hours after Corporation’s receipt of such a request in writing. Notwithstanding the above, in the event the Corporation fails to fund or replenish the IMRF Trust Account as specified above, fails to make any IMRF employer contribution, or takes any action that results in liability or a claim against the Units of Local Government while the Corporation is in existence, the County shall be and is authorized to withhold from Hotel Tax Revenue collections amounts corresponding to such liability or claim for the benefit of the Units of Local Government, and such amounts shall be applied to the payment, or for reimbursement for the prior payment, of the Corporation’s IMRF obligations.

5.8. *ERI.* The Corporation shall not adopt or offer an early retirement incentive program without the approval of all of the Units of Local Government.

5.9. *Inducement.* The Units of Local Government, individually and collectively, have entered into this Agreement in order to induce the reliance of the Board of Trustees to include and accept the Corporation as a participating instrumentality of the Units of Local Government subject to Article 7 of the Pension Code. In furtherance thereof, and in addition to such other representations and covenants set forth in this Agreement to be relied upon by the Board of Trustees, the Units of Local Government make the following representations: (a) the Corporation is an Illinois general not-for-profit corporation whose membership is limited to municipalities, as defined by Section 7-105 of the Pension Code; (b) the Units of Local Government have the authority to enter into this Agreement under and pursuant to the Enabling Acts; (c) none of the area served by the Units of Local Government or within their jurisdiction is located entirely within a municipality having more than one million inhabitants; and (d) the Units of Local Government reasonably expect the Corporation to continue operations as an instrumentality of the Units of Local Government for a period of not less than ten (10) years.

Section 6. Default. Except as otherwise provided in this Agreement, the failure on the part of any Unit of Local Government to comply with any material term, representation, warranty, covenant, agreement, or condition of this Agreement, that continues uncured for thirty (30) days after written notice thereof, shall constitute an “Event of Default.” No default by a

Unit of Local Government shall be actionable or be of other consequence unless and until it shall constitute an Event of Default.

Section 7. Remedies. In the Event of Default by one or more Units of Local Government in the performance of any of the obligations under this Agreement, the remedies shall be specific performance (including payment of money), and such other rights or remedies as one or more Units of Local Government may be entitled under this Agreement.

Section 8. Rights of Enforcement. Each of the Units of Local Government, individually or in concert with others, shall have the right and authority to exercise and enforce any and all provisions of this Agreement, and no Unit of Local Government shall be obligated to seek the approval of other Units of Local Government before taking action in their own name; provided, however, the other Units of Local Government shall be notified of such action and/or be named as interested parties.

Section 9. Term. This Agreement shall remain in full force and effect for a period of twenty (20) years unless otherwise terminated in accordance with the terms and provisions of this Agreement. Unless otherwise extended, the Units of Local Government shall take such actions as may be necessary to dissolve the Corporation in year 19 of the Term such that the assets of the Corporation can be distributed to the Units of Local Government prior to the expiration of the Term.

Section 10. Termination. This Agreement shall be subject to automatic termination upon the completion of the distribution of the Corporation's assets following dissolution.

Section 11. Survival of Provisions. The obligations and liabilities of the Units of Local Government under and pursuant to Section 4 and 5 of this Agreement, including rights of enforcement and remedies in the Event of Default thereof, shall survive the expiration and termination of this Agreement. Such obligations, liabilities and rights shall be binding upon and inure to the Units of Local Government until such time as obligations to participating employees and beneficiaries are satisfied, and activities in the fund are dormant, as certified by the Board of Trustees.

Section 12. Authority. The Units of Local Government represent to one another that they are each authorized to and have the power to enter into, and by proper action have duly authorized the execution, delivery and performance of the Agreement.

Section 13. Notices and Communications. All notices, demands, requests for reimbursement, or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (i) deposited in the United States mail and sent by first class mail, postage prepaid or (ii) delivered, in each case, to the Units of Local Government at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

- (1) County of Kankakee, 189 East Court Street, Kankakee, IL 60901, Attn: County Board Chairman
- (2) City of Kankakee, 304 South Indiana Avenue, Kankakee, IL 60901, Attn: Mayor
- (3) City of Momence, 105 West Washington Street, Momence, IL 60954, Attn: Mayor
- (4) Village of Bourbonnais, 600 Main Street NW #1, Bourbonnais, IL 60914, Attn: President
- (5) Village of Bradley, 147 South Michigan, Bradley, IL 60915, Attn: President
- (6) Village of Manteno, 98 East Third Street, Manteno, IL 60950, Attn: President

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 14. Illinois Law. This Agreement shall be deemed to be an intergovernmental agreement made under and shall be construed in accordance with and governed by the laws of the State of Illinois.

Section 15. Binding Effect. The Units of Local Government intend that the terms and conditions of this Agreement shall be a covenant running with the land and shall be binding upon and inure to the benefit of the Units of Local Government hereto, their grantees, nominees, successors in interest, assignees, heirs, executors, or lessees.

Section 16. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

Section 17. Written Modification. Neither this Agreement nor any provisions hereof may be changed, revised, modified, waived, discharged, terminated, or otherwise abrogated, diminished, or impaired other than by an instrument in writing duly authorized and executed by the Units of Local Government.

Section 18. Entire Agreement. This Agreement contains the entire agreement and understanding of the Units of Local Government with respect to the subject matter hereof, and supersede all prior or contemporaneous negotiations, commitments, agreements, and writings, and all such other negotiations, commitments, agreements, and writings shall have no further force or effect, and the parties thereto shall have no further rights or obligations thereunder. Each of the Units of Local Government represent, warrant, covenant, and agree that no representation, warranty, covenant, or agreement shall be binding on the other party unless expressed in writing

herein or by written modification pursuant to Section 17 hereof.

Section 19. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 20. Non-Waiver. None of the Units of Local Government hereto shall be under any obligation to exercise any of the rights granted to them in this Agreement. The failure of a Unit of Local Government to exercise at any time any right granted to said Unit of Local Government shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect such Unit of Local Government's right to enforce that right or any other right.

Section 21. Severability. It is hereby expressed to be the intent of the Units of Local Government that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby; but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

Section 22. Interpretation. This Agreement shall be construed without regard to the identity of the Unit of Local Government who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Units of Local Government to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Unit of Local Government shall not be applicable to this Agreement.

Section 23. Third-Party Beneficiaries. Nothing in this Agreement is intended, nor shall it be interpreted, to create any rights or remedies to and in any third party. No claim as a third party beneficiary under this Agreement by any person shall be made, or be valid, against the Units of Local Government.

Section 24. Personal Liability. No covenant or agreement contained in this Agreement shall be deemed to be the agreement of any official, officer, partner, member, director, agent, employee, planning consultant or attorney of any of the Units of Local Government, in his or her individual capacity, and no official, officer, partner, member, manager, director, agent, employee or attorney of any of the Units of Local Government shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of, in connection with, or arising out of the execution, delivery, and performance of this Agreement, or any failure in connection therewith.

IN WITNESS WHEREOF, Units of Local Government have each caused this Agreement to be executed by proper officers duly authorized to execute the same as of the date set forth beneath the signatures of their respective officers set forth below.

COUNTY OF KANKAKEE, ILLINOIS

By: \_\_\_\_\_  
Chairman

Dated: \_\_\_\_\_, \_\_\_\_\_, 2017

CITY OF KANKAKEE, ILLINOIS

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_, \_\_\_\_\_, 2017

CITY OF MOMENCE, ILLINOIS

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_, \_\_\_\_\_, 2017

VILLAGE OF BOURBONNAIS, ILLINOIS

By: \_\_\_\_\_  
President

Dated: \_\_\_\_\_, \_\_\_\_\_, 2017

VILLAGE OF BRADLEY, ILLINOIS

By: \_\_\_\_\_  
President

Dated: \_\_\_\_\_, \_\_\_\_\_, 2017

VILLAGE OF MANTENO, ILLINOIS

By: \_\_\_\_\_  
President

Dated: \_\_\_\_\_, \_\_\_\_\_, 2017