

RESOLUTION NO. 17-03

**A RESOLUTION 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**

NOW THEREFORE BE IT RESOLVED by the Village President and Board of Trustees of the Village of Manteno, Kankakee County, Illinois, as follows:

Section 1

The agreement between the County of Kankakee, City of Kankakee, City of Momence, Village of Bourbonnais, Village of Bradley and the and the Village of Manteno to promote tourism through the Kankakee County Convention and Visitor's Bureau ("Agreement"), which shall be in substantially the form attached hereto and made a part of this resolution by reference as Exhibit "A," is hereby approved.

Section 2

The Village President is hereby authorized and directed to execute the Agreement, and to do all things necessary and essential, including the execution of any further agreements, instruments, documents and certificates incidental thereto or necessary to carry out the provisions and effectuate the purpose thereof.

This Resolution shall be in full force and effect from after its adoption.

This Resolution was adopted and deposited in the office of the Village Clerk of the Village of Manteno this 19th day of June, 2017.


ALISA BLANCHETTE, Village Clerk

APPROVED by me this 19th
day of June, 2017.


TIMOTHY O. NUGENT, Village President

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 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 *Effective Date* means the date referenced in the introductory paragraph of this Agreement.
- 2.10 *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.
- 2.11 *Hotel Tax Revenue* means revenues derived from the levy of the County Hotel Tax within the boundaries of the Units of Local Government.
- 2.12 *IMRF* means the Illinois Municipal Retirement Fund.
- 2.13 *IRC* means the Internal Revenue Code of 1986.

- 2.14 *Municipal Hotel Tax* means any tax imposed pursuant to Section 8-3-14 of the Illinois Municipal Code (65 ILCS 5/8-3-14), or similar tax imposed pursuant to the home rule powers of any home rule Municipalities under the Illinois Constitution.
- 2.15 *Municipalities* means the City of Kankakee, City of Momence, Village of Bourbonnais, Village of Bradley, and Village of Manteno.
- 2.16 *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.
- 2.17 *Pension Code* means the Illinois Pension Code.
- 2.18 *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.
- 2.19 *Secretary* means the secretary of the Corporation.
- 2.20 *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 permanent residents of hotels and motels.

3.2. *Collections and Distributions.* The County is authorized and shall collect the 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 actual 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 right, title and interest of the Units of Local Government in and to their respective share of the Hotel Tax Revenue, and the County shall transmit such Hotel Tax Revenue directly to the Corporation. This assignment, and the County's obligation to transmit the Hotel Tax Revenue to the Corporation, shall be absolute, unconditional, and irrevocable while the Corporation is in existence.

3.4. *Hotel Tax Revenue.* The Corporation shall deposit and hold any 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 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 the County Hotel Tax is imposed 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 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 Hotel Tax Revenue collections during the preceding quarter by jurisdiction and month. A copy 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 Hotel Tax Revenue. Under no circumstances shall Kankakee County's cost of the enforcement, prosecution or collection of Penalties reduce, diminish or otherwise set-off against, the amount of 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 (or for the County, its unincorporated Population); provided, however, any portion of the Corporation's assets constituting 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 Hotel Tax Revenue within the three (3) years preceding the date of dissolution in proportion to the actual Hotel Tax Revenue generated within the corporate boundaries of such Unit of Local Government (or for the County, within unincorporated areas) during such 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 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 of 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.

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.* The Corporation shall be primarily responsible for its IMRF contributions and liabilities, and any benefits (pension, disability, spousal, etc.) shall be paid primarily from the Corporation's IMRF reserve account. The Units of Local Government shall be secondarily responsible for any IMRF contributions and liabilities of the Corporation, and any benefits shall be paid secondarily 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 and liabilities, but only to the extent necessary to satisfy the failure or deficiency of the Corporation, and they agree to fund such obligation and liability with Hotel Tax Revenue or, if none, from such other sources as they may each decide but in proportion to their respective Population. The Units of Local Government's responsibility under this section shall survive the dissolution of the Corporation, the failure to levy the County Hotel Tax, and the expiration or termination of this Agreement. In the event of a failure or deficiency by the Corporation resulting in a secondary liability or claim against the Units of Local Government for the Corporation's IMRF obligations 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. The Corporation shall be obligated to fund any unfunded net IMRF liability to the greatest extent possible prior to its dissolution with such sources of revenue as it may have at its disposal.

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

5.6. *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 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.

[SIGNATURE PAGE TO FOLLOW]

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: Tony O'Leary
President

Dated: June 19, 2017