

RESTATED AGREEMENT FOR FUNDING, DESIGN, CONSTRUCTION, OPERATION,  
AND MAINTENANCE OF SANITARY SEWER SYSTEM

between

TOWN OF LONG BEACH

and

MICHIGAN CITY SANITARY DISTRICT

WHEREAS, the Town of Long Beach, Indiana (Town), is desirous of having a sanitary sewer system installed within the Town's boundaries and connected to a permitted sanitary sewer system and treatment facility (Project); and

WHEREAS, the Michigan City Sanitary District (District) is the NPDES permitted publicly owned treatment works that is in the business of collecting, transporting, and treating sewage and will be the recipient of the sewage discharged from the Town's sanitary sewer system; and

WHEREAS, because of the District's extensive experience and capabilities in designing, constructing, and operating a sanitary sewer system the Town has asked the District to collaborate with the Town in getting a sanitary sewer system funded, designed, constructed, and operated in the Town; and

WHEREAS, the District is desirous of collaborating with the Town in getting a sanitary sewer system funded, designed, constructed, and operated in the Town,

WHEREAS, the parties intend for this Agreement to represent the entire agreement between the parties and further intend that it shall supersede any and all others written or otherwise,

Now, therefore, the Town and the District agree as follows:

1. The Project is to be designed and constructed by engineers and contractors under contract with MCSD consistent with MCSD standards but the Town shall have the right to exercise reasonable control over the location of the sewer system, including any pump stations, and to review and approve the Project's design, which approval will not be unreasonably withheld.
2. The Project will be designed to be constructed in a right-of-way or easement which is either owned or to be acquired by the Town at its expense.
3. The Project will include providing sanitary sewer service for the parcels abutting Lake Shore Drive (LSD) east of the Town's boundary with Michigan City, including east of Moore Road, to the Town's eastern boundary, all as shown in the attached Exhibit "A" which is incorporated into this Agreement by virtue of this reference.
4. Customers of the Project, which includes all residences on both sides of that part of LSD within Long Beach, are to be solely responsible for the costs of the Project. For purposes of

this Agreement, the term costs shall include, but is not limited to, construction of the Project, which shall include any land acquisition costs, pump stations, improvements to infrastructure, and the stubs to be installed from the sewer main to the street side property line of each existing residence and connection to the sewer.

5. All residences abutting the entire length of LSD within the Town of Long Beach, both North and South sides, will be required to pay for the construction of the Project as defined in Paragraph 4, above, on a pro-rata basis regardless of whether they are connected to the sewer. Connection costs are to be paid by the individual property owners at the time of connection. All property owners are to begin paying the monthly user fee at the time of connection. The Project will be designed to have sufficient capacity for the proper collection and transport of sewage from all of the Project's design area to be described by the Town. In order to accumulate the funds necessary to make the payments on the loan used to construct the Project, each and every customer (residence on Lake Shore Drive) will be responsible to pay their pro-rata share, as determined by a licensed financial consultant, of the capital cost for the Project which will be included in their monthly sewer bill from the District. Residences North of Lake Shore Drive and those presently on "pump and haul" will be required to hook up to the system as soon as it is possible. Residences with failing septic systems will be required to hook up at the time of the failure. Other residences can hook into the system at the time of their choosing unless mandated by the Town or other governmental authority. However, the parties specifically agree that the District shall not mandate any hook up unless first directed in writing by the Town. Monthly service charges begin at the time of that hook up.

6. Any new residences that are constructed on LSD after the completion of the Project will be subject to a graduated connection fee established by the Town for access to the public sewer. The owner of any such new residence will be required to pay all fees and costs associated with the connection to the sewer, including, but not limited to, installation of the necessary stub, street cut, and any associated street repair costs.

7. All connection fees will be applied to the outstanding principle of the Project loan.

8. It is the intent of the parties that the District is not to bear any of the costs of the Project and all such costs are to be borne by the Town and its residents. It is also the intent of the parties that all of the costs associated with the Project, including, but not limited to, all engineering, financial consulting, and related fees, are to be covered and paid for from proceeds of the contemplated SRF funding to the maximum extent the State allows. However, this commitment by the Town to reimburse the District for Project related expenditures shall be enforceable even if the Project is not completed. The Town shall reimburse the District as required herein within sixty (60) days of it being determined that the District cannot be reimbursed from the proceeds of the Project's financing or the determination that the Project will not be completed for any reason.

9. Both parties agree to use their best efforts to obtain SRF funding for the Project and, if required, and only to the extent required, by the State, the Town will be the guarantor on the loan.

10. Both parties will attempt to get the State to approve the Project's customers as the sole source of revenue for loan payments. The District will not be responsible for any costs of the Project, including loan payments. If the capital cost revenue collected from the Project customers is insufficient to make the SRF Loan payments, the Town shall pay the District the deficiency so that District funds are not used to make the SRF Loan payments.

11. The Town, and not the District, will bill the Project's customers for any unpaid capital charges and applicable connection fees, after thirty (30) days from Project completion and may file an appropriate lien if they do not pay.

12. The Town will provide the District water usage data of connected sewer customers for use by the District to bill those customers for its services.

13. Sewer customers will be billed at the District's standard rates for all of its outside customers as established in the District's Rate Ordinance plus a special assessment to cover the loan payments.

14. The District, at its sole cost, will be solely responsible to own, operate, and maintain the Project upon completion of construction, including the pump stations and any accessories, up to then current industry standards and its NPDES Permit requirements. The Town will have no responsibility to operate, maintain, or repair any part of the Project.

15. At the Town's written request, the District will take the necessary steps to have the area within the Town's borders incorporated into the District pursuant to IC 36-9-25-14(b)(1).

16. At the Town's written request, the District will not mandate any Town parcel to be connected to the Project.

17. Any future, post-Project expansion of the sanitary sewer system in the Town may only be undertaken upon the written agreement of both parties; must be designed and constructed in conformance with the District's standards and the Town's Building Code; must be connected to the District's sanitary sewer system; and all of the costs therefor shall be borne by the Town and/or sewer customers in the Town.

18. Each party will hold the other party harmless for any losses, expenses, damage, injury, or claim resulting from the party's negligent, intentional, or unlawful conduct or substantial violation of its duties under this agreement.

19. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana without regard for its choice of laws rules.

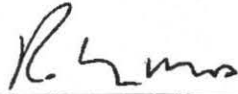
20. This Agreement shall be binding upon the parties upon it being approved by their respective officials authorized by law to enter into this agreement.

21. This Agreement may only be amended by written agreement of both parties.

22. This agreement is for the benefit of only the parties and no third party shall have any right or interest in this Agreement or the performance of either party hereunder.

**Town of Long Beach**


By:



Robert LeMay,  
Town Council President

Dated this 9<sup>th</sup> day of November, 2020

Attest:



Bill DeFuniak, Clerk-Treasurer

**Michigan City Sanitary District**

By:



Garry Mitchell,  
President, Board of  
Commissioners

Date this 16 day of <sup>December</sup> ~~November~~, 2020

Attest:



HOLT EDINGER,  
SECRETARY