

**SEWAGE TREATMENT AGREEMENT
BETWEEN THE TOWN OF CULVER, INDIANA**

AND

**SOUTH-WEST LAKE MAXINKUCKEE CONSERVANCY DISTRICT
FOR SEWAGE TREATMENT SERVICES**

THIS SEWAGE TREATMENT AGREEMENT, (hereinafter referred to as "Agreement") made and entered into this 27 day of July, 2010, by and between the Town of Culver, Indiana, acting through its Town Council, (hereinafter referred to as "Town"), and the South-West Lake Maxinkuckee Conservancy District, Culver, Indiana, acting through its Board of Directors (hereinafter referred to as "District").

WITNESSETH:

WHEREAS, The Town has a sewage works system available and is willing to accept wastewater from the District not to exceed a maximum daily flow (as hereinafter defined) of 55,000 gallons per day of wastewater with an instantaneous flow rate not to exceed 150 gallons per minute from the point at which the District's sewer system is connected to the Town's sewer system; and

WHEREAS, The District has concluded and hereby represents that the wastewater to be generated and transported to Town shall not exceed a maximum daily flow of 55,000 gallons per day of wastewater with an instantaneous flow rate not to

exceed 150 gallons per minute through the District's force main connected to the Town's sewer system, which can be transported and treated by the Town's wastewater facilities; and

WHEREAS, the law of the State of Indiana (I.C. 36-1-7-1, et. seq., I.C. 36-9-23-16(b)) and I.C. 14-33-5-22 permits the Town and District to enter into an agreement for the services contemplated hereunder.

NOW THEREFORE, for the consideration hereinafter, the Town and District mutually agree as follows:

ARTICLE I
GENERAL REPRESENTATIONS BY DISTRICT

As part of the consideration to the Town for entering into this Agreement, the District does hereby make the following representations and covenants:

1. a. The capacity contracted for in this Agreement is based on the District boundaries as of the date hereof ("District Boundaries") and does not include any expansion of the District Boundaries. The District shall not permit more than 175 residential connections within the current existing District Boundaries. In the event the District proposes to expand connections beyond 175 residential homes, expand current district boundaries and/or alter existing boundaries, a new agreement shall be required in order for the District to permit the expansion.

b. The volume of wastewater discharged by the District into the Town's sewer system under this Agreement shall not exceed a maximum daily flow of 55,000 gallons per day (hereinafter referred to as "GPD") and an instantaneous flow rate not to exceed 150 gallons per minute. "Instantaneous flow" is that flow from the District's system into the Town's system measured on a per minute basis. "Daily flow" is hereby defined as the total flow from the District's system into the Town's system measured on a daily, 24-hour basis. Said 24-hour day begins at 12:00 a.m. and ends at 11:59 p.m. on any given day.

It is specifically represented by District that it will not enlarge the District. If an expansion is proposed, a new agreement shall be required.

2. The District shall enact resolutions and take all lawful steps in enforcing the same to prohibit the introduction into the District's sewer system of any prohibited discharge. Prohibited discharge shall be defined in said resolutions in substantially the same manner as those prohibited wastes as defined in the Town of Culver Wastewater Use Ordinance. The District shall also enact and take all reasonable steps to enforce resolutions substantially similar to those presently enacted by the Town of Culver regarding sewer use.

3. The District shall, if required by any environmental rule, state or federal law or state or federal regulation, monitor, inspect and sample the content and volume of the waste introduced into its sewer system and save the Town harmless for the

District's failure to so monitor. The District shall allow joint sampling by the Town to prove compliance. The Town shall have the right to unannounced inspections of District facilities as to the influent to the Town's connection point. The District shall take all reasonable steps in a timely manner to correct any violations of its resolutions. The Town shall have available all legal and equitable remedies against the District for the District's failure to do so, including but not limited to, an action for mandate or to compel compliance. In any such instances, the District shall be responsible for reasonable costs and attorney's fees to the Town of Culver in exercising these remedies.

4. The District shall provide, install and maintain a flow meter for recording the volume of wastewater transported to the Town's system along with a continuous recording chart. This flow meter shall be used by the Town for billing purposes to the District; consequently, the District shall keep the flow meter operable at all times. The flow meter shall be calibrated annually and said calibration documented with the Town. In the event the flow meter is inoperable, the Town shall provide written notice to the District. If the flow meter continues to be inoperable for a period of thirty consecutive days following written notice, the District shall be charged at the rate of the previous month's total utility bill. If the flow meter continues to be inoperable after a period of more than thirty consecutive days following written notice, the district shall be charged at the rate of 55,000 GPD until such time as the flow meter is operational. The parties specifically agree that the Town may read the flow meter daily.

5. The District agrees to indemnify and save harmless the Town from any and all loss, damage, expense, claims, demands, actions, or cause of actions arising out of the construction, maintenance, or operation of the District's sewer system up to and including the point at which the connection is made into the Town's sewer system, or occasioned by or in any way growing out of the District's sewage system, whether such loss shall be suffered directly by the Town or the District or through either's liability to third persons by reasons of injuries to persons or damages to property. However, nothing herein shall be construed to provide for said indemnification arising out of the negligence of the Town or any of its agents or employees.

6. The District shall maintain its own sewage collection system including its flow meter and including the point at which the connection is made into the Town's sewage system, which shall be at the point where the Town's collection system is connected to the District's meter.

7. The District shall, upon any reasonable request, allow inspection by the Town of the District's sewer collection system, including any meters or sampling reports, to verify compliance with this Agreement.

8. If necessary, the District shall provide odor control facilities. The Town shall have the right to sample odor levels at the Town's receiving manhole. Hydrogen sulfide levels shall not exceed 5 parts per million and total sulfides in solution shall be less than 1 mg/l at the receiving manhole. The District shall take all reasonable steps in a timely manner to correct any violations of exceeding the above odor limits. The Town

shall have available all legal and equitable remedies against the District for the District's failure to do so, including but not limited to, an action for mandate or to compel compliance, with reasonable costs and attorneys fees.

9. The District shall annually provide the Town with the name, title, phone, address and email of a contact person. The District shall immediately provide the Town with any changes in contact persons.

ARTICLE II GENERAL REPRESENTATIONS BY TOWN

As part of the consideration to the District for entering into this Agreement, the Town does hereby make the following representations and covenants:

1. The Town shall treat and properly dispose of all lawful wastewater transported to the Town's sewage system by the District's sewage system, up to a maximum daily flow of 55,000 GPD and with an instantaneous flow rate not to exceed 150 gallons per minute.
2. The Town shall agree to maintain its sewage system up to, but not including, the point at which the District's sewage system connects to the Town's sewage system.
3. The Town agrees to indemnify and save harmless the District from any and all loss, damage, expense, claims, demands, actions, or causes of action arising out of the construction, maintenance, or operation of the Town's sewer system up to and

including the point at which the connection is made into the District's sewer system, or occasioned by or in any way growing out of the Town's sewage system, whether such loss shall be suffered directly by the District or the Town or through either's liability to third persons by reasons of injuries to persons or damages to property. However, nothing herein shall be construed to provide for said indemnification arising out of the negligence of the District or any of its agents or employees.

ARTICLE III
JOINT REPRESENTATIONS MADE

The District and Town agree to comply with all applicable provisions of the Federal Water Pollution Act, Amendments of 1972 (as amended), and regulations promulgated pursuant thereto.

ARTICLE IV
CONNECTIONS AND METERING

1. The District shall connect its sewer system into the Town's sewer system at a point along West Shore Drive, said connecting point to be at the point agreeable to the Town engineer for the Town of Culver and agreeable to the engineers for the South-West Lake Maxinkuckee Conservancy District. The proposed point of tap-in shall be labeled on the attached Appendix "A" as "Receiving Manhole".

The District shall install a flow meter to record the volume of wastewater transported to the Town's sewage system. The Town shall have the right and means to take random samples at the flow meter point, said random samples to be conducted by the Town at the Town's expense. Upon final plans and specifications showing the points of the meter or meters, it shall be labeled as "Metering Station" on the attached Appendix "A". All costs associated with the actual physical connection, the flow meter and including, but not limited to, routine maintenance related thereto, shall be paid by the District. Additionally, the District shall purchase any additional pumps located at the Town's existing lift station needed by the Town to transport wastewater directly to the Town's wastewater facility, however, the routine maintenance related thereto shall be paid by the Town.

2. The Town shall not make any connection within the District's Boundaries, nor shall the District make any connection within the Town's service area unless written approval is received from the other party and is made an amendment to this Agreement.

3. The volume of wastewater discharged by the District into the sewer system shall not exceed a transportation capacity of an instantaneous flow of 150 gallons per minute at the point of connection to the Town's sewer system and shall not exceed a maximum of 55,000 GPD unless an amendment to this Agreement is executed.

4. The District shall not permit any infiltration into the District's sewage system of any wastewater after the point at which the meter is placed unless any such

infiltration is also metered and sampled; reported to the Town; and is used in computing the user charge to the District pursuant to this Agreement.

ARTICLE V
DISTRICT'S REPORTING REQUIREMENTS

1. The District shall report to the Town once each month on a date otherwise agreed upon, the volume of the discharge of sewage into the Town's systems upon a form prescribed by the Town. When required by the Town, the characteristics of the wastewater shall be measured or otherwise identified and reported thereon and shall include waste constituents identified as BOD₅ (i.e., 5-day biochemical oxygen demand, hereinafter referred to as BOD), ammonia nitrogen and suspended solids (hereinafter referred to as S.S.), as detailed in the sewer ordinance of Culver, Indiana or as amended or as prescribed by applicable regulations. Sampling and analysis of the District's sewage shall be conducted in a comprehensive way and in accordance with generally accepted engineering practice(s), in effect at the time of sampling, to reflect an accurate profile of the sewage and to form the basis for fair and equitable charges to the District as hereinafter detailed. Any sample shall be analyzed by Culver's treatment plant or an independent laboratory. The Town shall be responsible for a priority pollutant scan on a grab sample of the District's wastewater annually. Wastewater constituent levels shall not exceed that of normal domestic wastewater namely, 220 mg/l BOD₅, 220 mg/l S.S. and 12.5 mg/l ammonia nitrogen. To satisfy the sampling and reporting requirement as

specified above, the Town shall, at the expense of the Town, periodically sample the wastewater constituent levels. Further, the Town shall analyze the profile of the wastewater and report the results to the District. The District shall pay for this sampling and analysis at the rate of \$125 per month per Appendix "B".

2. The Town reserves the right to verify reports submitted to the District, and the Town shall conduct such verifications in accordance with the standards contained in this Article at the Town's cost unless an overall percentage error of at least fifteen (15%) percent exists in which event the reasonable cost of such verification shall be the District's responsibility. The Town shall have rights to randomly sample the District's effluent at the Town's cost.

3. The Town may from time to time request that the District report additional data relating to the wastewater discharge into the Town's sewage system which may be requested or required by the State Board of Health, Indiana Department of Environmental Management, the Federal Environmental Protection Agency, or any other regulatory agency.

ARTICLE VI **CHARGES AND FEES**

1. The District shall pay to the Town an amount equal to the sums based on rates and charges set out in Appendix "B". The Town shall present the District with only one (1) monthly bill:

(a) Monthly Rate and Charge. The District shall pay the Town a meter fee (referred to as the "Meter Fee") plus a metered, wholesale bulk rate per gallon (referred to as the "District's Rate") which rates are set out in Appendix "B". The District's Rate shall include operating and maintenance costs ("Treatment Costs") but shall in the future include the cost of any future debt associated with any major capital improvements to the Town's wastewater treatment plant system that (1) the Town deems necessary, (2) is not associated with expanding the capacity of the Town's wastewater treatment plant system and (3) has an aggregate total cost of \$50,000 or greater ("Capital Improvement"). The District shall pay a prorated share for the Capital Improvement based on the District's agreed upon 55,000 gallons per day as obligated by Town as a percent of the Town's total permitted capacity. The District shall pay for its Treatment Costs, Meter Fee, and Capital Improvement costs within 15 days of being invoiced for said costs. If the Town rate is increased due to Treatment Cost increases or Capital Improvement cost increases, the District Rate shall likewise be increased. However, the District Rate may only be increased by the same percentage increase in the Treatment Costs and/or Capital Improvement costs as compared to the increase charged by Town to Culver's residential customers.

Town shall provide at least 45 days notice to the District of any impending rate increase to allow the District to modify any District Rate resolution. If the Town proposes an increase in Treatment Costs, the Town shall provide the District with a report from its rate consultant who provides an analysis of the proposed rate increase and the specific components of the proposed increase in the District's Treatment Costs.

(b) Excessive Strength Charge. In addition to the total processing charge, charges shall also be computed on the strength and character of the sewage and waste of which the Town is required to treat and dispose. Normal domestic wastewater strength should not exceed a five (5) day biochemical oxygen demand (BOD) of 220 milligrams per liter (MG/L), a suspended solids (SS) concentration of 220 milligrams per liter or an ammonia nitrogen level exceeding 12.5 milligrams per liter. Exceeding these strengths, as calculated according to the provisions of the Town's ordinances, shall result in a surcharge to the billing rate. The method and amounts for calculating the excessive strength surcharges are set forth in Appendix "B".

c. Excessive Flow. In the event the volume of wastewater discharged by the District into the Town's sewer system exceeds 55,000 GPD or an instantaneous flow rate of 150 gallons per minute, the Town shall notify the District in writing within twenty-four hours. The District shall pay an

additional excessive flow surcharge as set forth on the schedule of rates and charges in Appendix "B".

2. Upon the execution of this Agreement, the District shall pay the Town a one-time capacity buy-in fee of \$725,000. Said fee can be utilized by the Town at any time and in any manner for the Town's sewage works. The capacity buy-in permits the District to transport a maximum daily flow of 55,000 GPD with an instantaneous flow rate not to exceed 150 gallons per minute to the Town's collection system and treatment by the Town's wastewater treatment plant.

A map of the approved service area for the District is to be labeled "South-West Lake Maxinkuckee Conservancy District Service Area" on the attached Appendix "C".

3. Subject to the terms of Article VI (1)(a), in the case of future wastewater treatment plant Capital Improvements required for either achieving or maintaining compliance with NPDES Permit requirements but not for increasing the treatment capacity of the Town's wastewater treatment plant, the South-West Lake Maxinkuckee Conservancy District shall pay to the Town its pro-rata share of the costs based on the District's average daily flow for the previous one year period as a percentage ratio of the District's 55,000 GPD to the Town's total permitted capacity.

4. Any changes to this agreement require renegotiation between the Town and the District.

5. This agreement shall be reviewed annually. The District shall provide the Town with a financial statement annually demonstrating the financial condition of the District.

ARTICLE VII
APPLICATION OF STATE AND FEDERAL REGULATIONS

In the event State or Federal legislation or regulations substantially alter the position of the parties or their rights and duties, this Agreement shall be subject to renegotiation in order to comply with any such new State or Federal legislation or regulation in accordance with Article VI, paragraph 3.

ARTICLE VIII
TERMINATION

In addition to all other remedies as provided by law, the parties shall have the right to terminate this Agreement upon a breach of this Agreement by the District or Town upon thirty (30) days written notice detailing the breach, but only if the breach is not cured within such interval and only if the District has a reasonable alternative to process its wastewater approved by the State of Indiana and the U.S. Environmental Protection Agency.

ARTICLE IX
MISCELLANEOUS

1. This instrument upon legal execution shall be binding upon the Town and District, their legal officers, successors and assigns unless the Town and District mutually agree to terminate this Agreement.

2. This Agreement embodies the entire understanding of the parties as to the subject matter hereof, and supersedes any and all prior agreements or understandings between the parties. The parties acknowledge and agree that no contractual or other relationship between the parties, apart from the one expressly described in this Agreement, exists at the time of execution of this Agreement, or will exist until execution of the Agreement. No modification of this Agreement will be valid or binding upon the parties unless made in writing, and signed by an authorized representative of each party.

3. This Agreement and any agreement entered into by the parties shall be governed by the laws of the State of Indiana, USA. Each party hereby agrees to submit to the jurisdiction of the Circuit Court of the County of Marshall, State of Indiana, USA, in any action or proceeding arising out of or relating to this Agreement.

4. If any provision of the Agreement is held to be invalid, illegal or unenforceable by a Court of competent jurisdiction, the provisions shall be stricken, and

all other provisions of the Agreement which can operate independently of such stricken provision shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned certify that they are duly authorized and empowered to execute this Agreement and thus bind the governmental unit in whose behalf they sign on the date and year first written above.

TOWN OF CULVER

By: Sally Rice

By: Ray Winter

By: Ed [unclear]

By: Lyn [unclear]

By: Vivian B. Monroe (Bim)

SOUTH-WEST LAKE MAXINKUCKEE
CONSERVANCY DISTRICT

By: _____
Chairman

ADOPTED BY ~~ORDINANCE~~ this 27 day of July, 2010 by the Town of
Culver, Indiana

Casey Howard
Clerk Treasurer