

EXECUTION COPY

THIRD AMENDMENT TO SEWAGE COLLECTION AND TREATMENT  
AGREEMENT BETWEEN THE SANITARY DISTRICT  
OF THE CITY OF HAMMOND, INDIANA, AND  
TOWN OF GRIFFITH (CUSTOMER CITY)

This Third Amendment is made and entered into this 5<sup>th</sup> day of Dec, 2023 by and between the Sanitary District of the City of Hammond, Indiana (the "District"), and the Town of Griffith, Indiana ("Customer City") (collectively, the "Parties").

RECITALS

1. The District owns and operates a publicly owned treatment works ("POTW") for the collection and treatment of sanitary sewage wastewater.
2. Customer City has, for many years, transmitted, and the District has received, Customer City's wastewater, which has been treated at the POTW. Customer City desires to continue to transmit its locally generated wastewater to the District for collection and treatment, and the District is willing to continue to provide that service to Customer City upon the terms and conditions stated herein.
3. The District and Customer City first entered into an agreement for sewage collection and treatment on May 17, 1994. HSD and Customer City amended the original agreement in 1995 and 1997 (collectively, the "Agreement") to give Customer City the right to transmit wastewater to HSD in an instantaneous flow rate of 5.5 million gallons per day ("MGD"), but pump at a higher rate from time to time unless HSD informs Customer City it cannot do so.
4. On November 15, 2016, the District and Customer City entered into a Binding Letter of Intent & Settlement Agreement (the "LOI") to memorialize their mutual understanding concerning outstanding claims between the Parties. Under the LOI, the District and Customer City agreed to several obligations that became immediately binding, including payments by Customer City for prior capital improvements, "True-up" payments, and an "interim rate" pending completion of a cost-of-service study. The District also agreed to review and approve capacity certification applications from Customer City in the normal course and in accordance with applicable laws and procedures. These obligations, which are provided in Sections 1(a)-(e) of Exhibit A, are incorporated herein.
5. The Parties also agreed that they would work in good faith to negotiate the terms for a Third Amendment to the Agreement to address allocation of Long-Term Control Plan ("LTCP") capital costs, a cost-of-service study to set future rates, procedures for when Customer City exceeds its instantaneous flow rate of 5.5 MGD, and cooperation regarding engineering issues associated with Customer City's compliance with Sanitary Sewer Overflow ("SSO") remediation efforts.
6. The Parties agreed that the LOI would continue in effect until the Parties executed a Third Amendment to the Agreement, with the caveat that the "Immediately Binding Terms" in the LOI would survive the Third Amendment.

7. On January 7, 2020, HSD issued to Customer City a capital cost contribution notice for the remainder of Bond Issue (SP7) and Near-Term Headworks Improvement Project in the amount of \$1,494,708, which Customer City has not yet paid.

8. On September 18, 2020, HSD submitted a LTCP for the control of Combined Sewer Overflows (“CSOs”), subject to United States Environmental Protection Agency (“EPA”) and Indiana Department of Environmental Management (“IDEM”) approval. On March 17, 2021, EPA and IDEM conditionally approved HSD’s LTCP. A schematic of the District’s Selected Alternative for the LTCP is shown as Exhibit B.

9. A cost-of-service study was completed by the District on March 14, 2022 (the “Cost of Service Study”) and District notified Customer City that its new rate is \$1.864/1,000 gallons for FY2022, effective July 1, 2022. A copy of that notification is provided as Exhibit C.

10. The Parties now desire to amend the Agreement with this Third Amendment consistent with the foregoing events and conditions.

#### COVENANTS

NOW, THEREFORE, in consideration of the recitals and other mutual obligations and promises of the Parties herein expressed, the District and Customer City do agree as follows:

1. Section 4.E of the Agreement be added to include the following:

4.E Notwithstanding Section 4.D, Customer City agrees to pay a total of \$672,500 in twelve equal monthly installments of \$56,041.67 beginning on December 15, 2023 to the District for the right to transmit to District an additional 2.5 million gallons of wastewater per day (MGD) for a new maximum Instantaneous Flow Rate of 8 MGD, which shall become effective on December 15, 2023. This amount shall be in addition to all other amounts due to District pursuant to the Agreement, as amended. Customer City acknowledges, accepts, and agrees that the Customer City will need to tie its proposed 24” force main into the District’s proposed 66” force main as part of the District’s future LTCP upgrades, to avoid pumping Customer City’s wet weather flow twice. Once this is completed, Customer City will need to construct this new force main and reduce pumping via the existing Cline Avenue Pump Station back to 5.5 MGD, which shall only be used for dry-weather flows. The Customer City shall be allowed to transmit to the District a maximum Instantaneous Flow Rate of 8 MGD of wet-weather flow into the district’s 66” force main.

2. Section 6.A.1 of the Agreement be deleted and substituted with the following in its place:

6.A.1(a) Operation and Maintenance Costs.

i. Customer City shall pay for its proportionate use of the District's wastewater treatment plant and transmission facilities in a manner consistent with the findings presented in the Cost-of-Service Study, but delayed by one year, resulting in Effective Rates for the Customer City as follows:

FY 2023: \$1.864/1,000 gallons

FY 2024: \$1.970/1,000 gallons

FY 2025: \$2.078/1,000 gallons

FY 2026: \$2.186/1,000 gallons

iii After FY 2026, the Rates shall increase in proportion to the yearly O&M budget established by the District compared to the prior year.

iv. Customer City agrees that an update to the Cost-of Service Study shall be conducted upon completion of constructing a Cloth Disk Media Filter ("CMDf") and new force main and installing additional Kennedy Ejector Pumps in the southeast quadrant of its system (collectively known as "the Southeast Quadrant Projects") under the District's LTCP as provided in **Exhibit B** for the purpose of evaluating and incorporating the cost-of-service for the Southeast Quadrant Projects and any associated POTW upgrades or infrastructure constructed pursuant to the District's LTCP completed as of the date of the commencement of the study. The updated Cost-of-Service Study shall be conducted by a third-party consultant mutually agreed upon by the parties in a manner and using a methodology consistent with the Cost-of-Service Study, the cost of which will be shared on a pro rata basis by the parties.

v. The Customer City rates determined by the updated Cost-of-Service Study in Paragraph 6.A.1(a)(iv) shall automatically go into effect within 30-days of finalization of the study.

vi. The parties shall reserve the right to have the cost-of-service study updated prior to the conditions set forth in Paragraph 6.A.1(a)(i) or (ii) for changed circumstances, as provided for in Exhibit D of the LOI.

3. **Capacity Certification.** If Customer City is in compliance with the Agreement, including current on all payments due to District pursuant to the Agreement and operating within the instantaneous maximum peak capacity limit, as amended by this Third Amendment, the District will in good faith review and, if satisfactory, approve capacity certifications for any construction permits submitted by Customer City attributable to its remedial measures project under the SSO Consent Decree with a capacity that allow Customer City to transmit no more than an instantaneous maximum peak flow of 8 MGD to the District. District will in good faith review and, if satisfactory, approve capacity certifications for any other construction permits submitted or approved by Customer City, including those submitted by private developers in Customer City's service territory, in the ordinary course. Any disputes regarding capacity

certifications for construction permits submitted or approved by Customer City to District shall be resolved in the manner provided for under Section 10 of the Agreement.


4. **Payment for Completed Capital Projects.** Customer City agrees to pay the District in equal monthly installments over a 24-month period with the first payment on December 15, 2023 and the last payment on December 15, 2025 for a total of \$1,494,708 for its share for the remainder of Bond Issue SP7 and Near-Term Headworks Project identified in **Exhibit D**. Upon satisfaction of this provision, HSD shall waive any late penalties, interest, and financing costs owed by Customer City under the Agreement for these already completed capital projects.

5. **LTCP Costs.** Customer City shall deposit its allocated portion of the costs of each project under the LTCP provided in **Exhibit D** into an escrow account (the "Escrow Account") not later than the date the District awards a construction contract for each project. Upon receipt by the District of construction cost estimates from a qualified professional for a particular project, the District shall notify the Customer City of the maximum anticipated amount of the Customer City's required contribution for such project. The Customer City shall then have one hundred twenty (120) days in which to complete all authorizing actions for the issuance of its bonds (other than the actual sale thereof) to fund such contribution. The District shall schedule the receipt of construction bids to occur after such one hundred twenty (120) day period. Within thirty (30) days after the District receives construction bids for the project and provides the Customer City with the Customer City's actual allocable share (which shall occur prior to the District's award of the construction contract for the project), Customer City shall sell and issue its bonds in an amount that generates net proceeds sufficient to fund its contribution and deposit such net proceeds into the Escrow Account. Customer City shall receive a pro rata credit for any reduction in the cost of LTCP projects in **Exhibit D**. If District receives grant funding for any portion of the LTCP projects in **Exhibit D**, Customer City shall receive a pro rata credit for the amount of the grant funding. After construction of each project provided for in **Exhibit D**, the District shall submit a notice to Customer City reconciling the estimated and actual construction costs of the project, and indicate either a debit or credit from Customer City, which shall be paid by the Customer City or the District within 180 days of the notice.

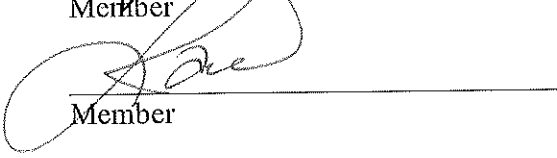
6. **Final LTCP Plans.** The District shall continue to be bound by, and the Customer City shall retain its rights to, Section 6.A.2d of the Second Amendment to the Agreement regarding submission of final plans regarding the Southeast Project Quadrant Projects and the Customer City's right to reply or object, as provided by the Agreement dated May 17, 1994 by and between the Sanitary District of Hammond and the Town of Griffith. In the event that the District is granted an extension to complete the Southeast Quadrant Projects contained in the District's Consent Decree or approved LTCP Plan, the District agrees to work in good faith to amend the Customer City's payment obligations for the Southeast Quadrant Projects accordingly.

7. This Third Amended Agreement does not amend any other provisions of the Agreement, including that the term of the Agreement shall be until December 31, 2043.

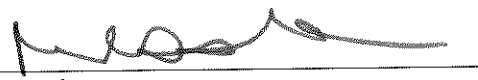
TOWN COUNCIL OF THE  
TOWN OF GRIFFITH, INDIANA

  
\_\_\_\_\_  
President

  
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Member

  
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Member

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ATTEST:   
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SANITARY DISTRICT OF THE  
CITY OF HAMMOND, INDIANA

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ATTEST: \_\_\_\_\_