

76-120-36
9/24/86

AGREEMENT

for

87-002665

SEWER EXTENSION

THIS AGREEMENT, made in triplicate, this 19th day of September, 1986, by and between MackKids, Inc. an Indiana Corporation hereinafter referred to as "OWNER" and the CITY OF FORT WAYNE, INDIANA, by and through its Board of Public Works & Safety hereinafter referred to as "CITY", WITNESSETH, THAT:

WHEREAS, the "OWNER" desires to construct a local sanitary sewer described

to follow:
1987 JAN 16 12 19
ALLER COUNTY RECORDS
John Schmitt

See Exhibit "A" And
Exhibit "C"

DULY ENTERED FOR TAXATION
OCT 16 1986

Richard J. Laughlin
AUDITOR OF ALLEN COUNTY

in accordance with plans, specifications, and profiles heretofore submitted to and approved by "CITY" and now on file in the Office of the Chief Engineer of the Water Pollution Control Engineering Department of "CITY" and known as Skellern Village as drawn by Darius under their Commission Number 15716 dated 9-8, 1986, which plans, specifications, profiles are by reference

incorporated herein and made a part hereof, which sewer will serve not only land in which the "OWNER" has an interest, but also an adjoining land areas, and;

WHEREAS, the cost of construction of said sewer is represented to be \$21,000 composed of \$19,500 for construction costs, \$ 400 for engineering services, \$ 300 for legal fees and \$ 800 for City Engineering and Inspection Fees.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

"OWNER" shall cause said sewer to be constructed and located in accordance with said plans, specifications and profiles all approved by "CITY" under private contract to be let within sixty (60) days after requisite "CITY" approval.

W.P.C.E. Box

16-00
[Signature]

All work and materials shall be subject to inspection by "CITY" and the right of "CITY" to halt construction if there shall be noncompliance therewith. Said sewer shall not be deemed completed and/or permanently connected into the sewer system of "CITY" until final acceptance by "CITY". Upon acceptance by "CITY" said sewer shall become the property of "CITY" and "CITY" shall accept sewage therefrom subject to such sewage service charges as may now or hereafter be regularly established by "CITY" and all further maintenance thereafter shall be borne by "CITY".

COST OF CONSTRUCTION

"OWNER" agrees to pay the entire cost and expense of construction of said sewer, in cash, including "CITY" engineering and inspection fees, and, to hold "CITY" harmless from any liability for claims connected herewith.

AREA OF "OWNER"

Said sewer when accepted by the "CITY" will serve the following described real estate:

See Exhibit "a"

As "OWNER" will pay for the cost of construction of said sewer as it pertains to the the above-described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charged by the "CITY" for connections to "CITY" sewer mains and treatment of sewage therefrom.

4. AREA CONNECTION CHARGE (Oversizing, etc., cost of existing sewage works).
An area connection charge of \$700 per acre must be paid to "CITY" at the time of connection. This area connection charge is in addition to the local charge as set forth above, and represents the installation and/or oversizing cost expended by "CITY" for sewer line(s) known as St Joe Interceptor Res # 74-22-04.

5. BOND

This contract is subject to "OWNER" and/or his contractor furnishing a satisfactory Maintenance Bond for 25% the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by "CITY".

6. LIMITATION ON USE

Said sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste in accordance with City Municipal Code.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

"OWNER" for himself, herself, his/her successors in title and assigns, waives and releases any and all rights which it may not or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by "CITY" of any territory now or hereafter owned by him/her as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In future consideration and to induce "CITY" to execute and ratify this contract, said "OWNER", for himself, herself, his/her successors and assigns, agree by this contract, to vest in "CITY" the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance to the said real estate described in Article 3 herein.

* New
deed reference

"OWNER" further agrees that any deeds, contracts, or other instruments of conveyance made by "OWNER", its successors or assigns transferring or conveying any interest in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article which provisions shall run with the land and the acceptance of the delivery of any such instruments from "OWNER" his/her successors and assigns by any grantee, vendee or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

"OWNER" further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Board of Public Works & Safety of the City of Fort Wayne as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of "CITY" who connect into the sewer constructed hereunder shall be deemed to thereby waive his/her, their or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by "CITY" of such land or of the territory in which it is located or of the area served by said sewer. (I.C. 36-9-22-2, as added by Acts 1981, P.L. 309, 395).

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

"OWNER"

Charles R. McLochlin
CHARLES R. McLOCHLIN President

Shirley R. McLochlin
SHIRLEY R. McLOCHLIN Secretary

"CITY"

Win Moses, Jr.
Win Moses, Jr., Mayor

Board of Public Works & Safety

H. James Haley
H. James Haley, Acting Director
of Public Works

Cosette R. Simon
Cosette R. Simon, Director
of Administration & Finance

Lawrence D. Conalvos
Lawrence D. Conalvos, Director
of Public Safety

ATTEST: ^{for} Helen V. Gochenour
Helen Gochenour, Clerk
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ACKNOWLEDGEMENT

STATE OF INDIANA)
)SS:
COUNTY OF ~~XX~~)
) DELAWARE

Before me, the undersigned, a Notary Public, in and for said County and State, personally acknowledged CHARLES R. McLOCHLIN and SHIRLEY R. McLOCHLIN who acknowledged the execution of the foregoing Agreement as and for his/her/their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 21st day of September, 1986.

Virginia F. Pinchum
Notary Public Virginia F. Pinchum
Resident of Delaware County



My commission Expires:
May 14, 1990

ACKNOWLEDGEMENT

STATE OF INDIANA)
)SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State personally appeared Win Moses, Jr., Mayor, H. James Haley, Cosette R. Simon, and Lawrence D. Consalvos, as the Board of Public Works & Safety of the City of Fort Wayne, Indiana, and acknowledged the execution of the foregoing Agreement as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 25 day of September, 1986

Virginia Settlem
Notary Public Virginia Settlem
Resident of Allen County



My Commission Expires:

3-1-88

This instrument prepared by Dennis C. Becker, Attorney at Law.

Exhibit "A"

An easement for sanitary sewer purposes in the Southwest Quarter of the Southwest Quarter of Section 22, Township 31 North, Range 13 East, Allen County, Indiana, said easement being 14 feet in width and lying 7 feet on each side of the following described centerline, to wit:

Commencing on the West line of said Southwest Quarter at a point situated 908.8 feet, N 00°-00' E (deed bearing and is used as the basis for the bearings in this description) from the Southwest corner of said Southwest Quarter; thence N 89°-47' E, a distance of 100.3 feet to the true point of beginning; thence N 38°-55' E, a distance of 180 feet; thence S 75°-10' E, a distance of 195 feet; thence N 14°-50' E, a distance of 20 feet; thence N 86°-00' E, a distance of 105 feet; thence S 75°-10' E, a distance of 217.2 feet to the point of termination of said easement centerline.

Exhibit "B"

Part of the Southwest Quarter of Section 22, Township 11 North, Range 13 East, Allen County, Indiana, more particularly described as follows, to wit:

Commencing on the West line of said Southwest Quarter at a point situated 625.0 feet, N 00°-00' E (assumed bearing) from the Southwest corner of said Southwest Quarter; thence S 90°-00' E, a distance of 50.0 feet to the true point of beginning; thence S 90°-00' E, a distance of 165.0 feet; thence S 00°-00' W and parallel to said West line, a distance of 373.37 feet to a point situated 150.0 feet, N 00°-00' E from the South line of said Southwest Quarter; thence N 89°-34' E and parallel to said South line, a distance of 506.7 feet; thence N 00°-00' E and parallel to said West line, a distance of 806.72 feet; thence S 83°-30' W, a distance of 299.01 feet; thence N 00°-00' E and parallel to said West line, a distance of 20.13 feet; thence N 29°-30' E, on and along a Westerly line of a 2.221 acre tract of land dedicated for drainage easement purposes in Document #81-005033 in the Office of the Recorder of Allen County, Indiana, a distance of 110.16 feet; thence S 83°-30' W, a distance of 187.4 feet to the point of curvature of a regular curve to the left having a radius of 190.40 feet; thence Southwesterly, on and along the arc of said curve, an arc distance of 142.89 feet, being subtended by a long chord having a length of 139.56 feet and a bearing of S 62°-00' W to the point of tangency; thence S 40°-30' W and tangent to said curve, a distance of 10.0 feet to the point of curvature of a regular curve to the right having a radius of 190.40 feet; thence Southwesterly, on and along the arc of said curve, an arc distance of 132.53 feet, being subtended by a long chord having a length of 129.87 feet and a bearing of S 60°-26'-30" W, to a point situated 50.0 feet East of the West line of said Southwest Quarter; thence S 00°-00' W and parallel to said West line, a distance of 360.98 feet to the true point of beginning, containing 11.180 acres of land, subject to all easements of record.

Exhibit "C"

LEGAL

An 8" sanitary sewer located in the following described easement:

An easement for sanitary sewer purposes in the Southwest Quarter of the Southwest Quarter of Section 22, Township 31 North, Range 13 East, Allen County, Indiana, said easement being 14-feet in width and lying 7 feet on each side of the following described centerline, to-wit:

Commencing on the West line of said Southwest Quarter at a point situated 908.8 feet, N 00°-00' E (deed bearing and is used as the basis for the bearings in this description) from the Southwest corner of said Southwest Quarter; thence No 89°-47' E, a distance of 100.3 feet to the True Point of Beginning; thence N 32°-55' E, a distance of 180 feet; thence S 75°-10' E, a distance of 195 feet; thence N 14°-50' E a distance of 20 feet; thence N 86°-00' E, a distance of 105 feet; thence S 75°-10' a distance of 217.2 feet to the Point of Termination of said easement centerline.

Also, a 10" sanitary sewer described as follows:

Beginning at the above described Point of Beginning, thence Northeasterly 222± LF, thence Northerly 387± LF and terminating at proposed Manhole #11.

Said Sewer shall be 8" and 10" in diameter.