

ORDINANCE 2004- 13

AN ORDINANCE APPROVING
AN INTERLOCAL AGREEMENT
PURSUANT TO IC § 36-1-7-2(A)
AND IC § 36-1-7-3

WHEREAS, Newburgh, Warrick County and the Warrick County Redevelopment Commission have concluded that an interlocal cooperative agreement should be entered into to facilitate the financing and construction of gravity sanitary sewers and a master lift station so as to allow economic development and growth to continue in Warrick County, and

WHEREAS, IC § 36-1-7-2(a) provides that a power that may be exercised by a political subdivision and by one or more governmental entities may be exercised jointly by such entities, and

WHEREAS, to jointly exercise such power the entities must enter into a written agreement pursuant to Ordinance or Resolution, and

WHEREAS, Newburgh has the power construct sanitary sewers under IC § 36-9-23; and

WHEREAS, the Warrick County Redevelopment Commission has the power, pursuant to IC § 36-7-14, §36-7-14.5 and § 36 -7-25 to participate in the contract for, and financing of, the construction of the gravity sanitary sewer system and master lift station project; and

WHEREAS, the Board of Commissioners of Warrick County have the power, pursuant to IC § 36-2-3.5-4 and IC § 6-3.5-7 to participate in the contract for, and financing of, the construction of the gravity sanitary sewer system and master lift station project; and

WHEREAS, the parties have agreed to exercise their respective powers jointly for the benefit of each other.

NOW THEREFORE, BY IT ORDAINED:

Section 1: Warrick County shall enter into an interlocal agreement with the Town of Newburgh and the Warrick County Redevelopment Commission for the purpose of the financing and construction of a gravity sanitary sewer system and master lift station, as more particularly described in Section 2.

Section 2: The contract to be entered into is set out as follows:

**INTERLOCAL AGREEMENT
REGARDING THE NEWBURGH
MASTER LIFT STATION PROJECT**

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the **TOWN OF NEWBURGH, INDIANA**, hereinafter referred to as "**Town**", the **WARRICK COUNTY REDEVELOPMENT COMMISSION**, hereinafter referred to as "**RDC**", and the **BOARD OF COUNTY COMMISSIONERS OF WARRICK COUNTY**, hereinafter referred to as "**Commissioners**".

WITNESSETH THAT:

WHEREAS, the parties have the power, under IC § 36-1-7 to enter into an interlocal agreement to provide for the construction of sanitary sewers to be built by the Town under IC § 36-9-23; and

WHEREAS, the parties are desirous of constructing and installing a sanitary sewer system to serve a portion of Ohio Township, Warrick County, located outside of the corporate limits of the Town of Newburgh, Indiana, but within four (4) miles of such corporate limits (the "Project"); and

WHEREAS, the Project is to be constructed pursuant to plans and specifications which are examined and approved by the parties which plans and specifications have been prepared by the Town; and

WHEREAS, the Town is agreeable to connecting the proposed Project to the existing Town sewer system, and to permit the flow of sewage from said installation through the system of the Town, and

WHEREAS, the RDC, Commissioners and Town have agreed to participate in the funding of such Project and desire to enter into an interlocal agreement to accomplish the construction of the Project.

NOW, THEREFORE, in consideration of the promises, covenants, conditions, and agreements herein contained, the parties hereto agree as follows:

1. Condition Precedent:

As a condition precedent to the parties' obligations hereinafter set forth, each party must receive applicable authorization and appropriation of funds to fund its portion of the Project in the amounts hereinafter set forth. Each party upon receiving such authorization and appropriation shall notify the other parties in writing and upon all parties obtaining such authorization and appropriation the obligations hereinafter set forth shall be binding upon the parties hereto in accordance with the terms of this Agreement. If all such authorization and appropriation is not obtained on or before November 1, 2004, this Agreement shall automatically terminate without notice and the parties hereto shall be relieved of any obligations hereunder, unless the time period is extended by written agreement of the parties hereto.

2. Duration:

This Agreement shall be in effect until the Project to be constructed hereunder has been fully accepted by the Town for ownership and maintenance and the final payment to the contractor who has built the Project has been made. Upon notice to the parties by the Town of such acceptance and payment, this Agreement shall terminate.

3. Purpose

This Agreement is entered into for the purpose of financing the construction of the Project, consisting of a force main and gravity sanitary sewer system in Warrick County in order to allow for the continuation of economic development and growth in Warrick County. The Town shall construct, on lands owned by the Town or easements and rights-of-way running to the Town, the Project pursuant to the Town's standards to be connected into the existing sewer system of the Town. The location and size of the Project is more particularly described by the plans prepared by the Town which plans have been inspected and approved by the parties and incorporated into this Agreement by reference. The Town will issue a 327 IAC 3 construction permit for the Project to be built.

4. Project Financing and Budget:

It is estimated that the construction cost for the Project will be Six Million Four Hundred Thousand Dollars (\$6,400,000). All costs in connection with the construction of the Project shall be paid by the parties, except, any debt service, debt service reserve and bond issue costs as may be required as a result of a party hereto utilizing debt to fund its portion of the project cost shall be born by the party utilizing debt. The RDC shall expend Three Million Seven Hundred Six Thousand Four Hundred Twenty Eight Dollars and Fifty Cents (\$3,706,428.50) to pay for the Project, and the Commissioners shall expend One Million Three Hundred Forty-six Thousand Seven Hundred Eighty-five Dollars and Seventy-five Cents (\$1,346,785.75) to pay for the Project and the Town shall expend One Million Three Hundred Forty-six Thousand Seven Hundred Eighty-five Dollars and Seventy-five Cents (\$1,346,785.75) to pay for the Project.

5. Administration:

The Project shall be administered by a Joint Board made up of one representative of the RDC, one representative of the Commissioners and one representative of the Town. Any two of such representatives shall constitute a quorum of the Joint Board to transact business. The contract for construction of the Project shall be subject to the approval of the Joint Board and thereafter administered by the Town for the benefit of the parties and construction of the Project shall be performed under the supervision and control of the Town for the benefit of the Joint Board. Request for payment for construction of Project shall be submitted and subject to approval of the Joint Board.

6. Disposition of property upon completion of contract:

Upon the completion and total acceptance by the Town of all of the Project built pursuant to this Agreement, the same shall become the property of the Town and all further maintenance, operation and cost thereof shall be the responsibility of the Town and at no further cost to RDC or Commissioners. Any funds remaining unexpended, which were funds contributed by a party to this Agreement for this Project, shall be returned to the contributing party in proportion with that party's prior contribution.

7. Fiscal Officer for the Project:

The Clerk-Treasurer of the Town is designated as the officer to receive, disburse and account for the funds of the joint undertaking set out herein. Such officer shall:

1. Create a fund entitled the "Master Lift Station Sewer Fund," and
2. Deposit to such fund all moneys received from each of the parties to this Agreement as provided in paragraph 4, and
3. Submit requests for payment for the Project to the Joint Board created herein for approval, and
4. After approval of a pay claim by the Joint Board, pay such claim, and
5. Keep such books and records as are necessary to fully account for the funds expended pursuant to this Agreement, and
6. Provide such reports and information as are needed or requested by the Joint Board and any party to this Agreement regarding expenditures for this Project, and
7. Perform such other tasks and duties normally performed by a fiscal officer of a governmental unit.

8. Manner of acquiring property by the Joint Board:

Real property needed for the Project shall be acquired in the name of the Town. The contract for construction of the Project shall be let in the name of all parties to this Agreement with the facility built thereunder to be titled to the Town upon its completion as specified in paragraph 6.

9. Town's right to serve and tap-in fee:

It is specifically agreed that the Town, by permitting flowage of sewage through its sewer system and expecting the sewer system to be built and agreeing to the maintenance of said system, is furnishing sewer service to each and all of the owners of any land who may connect into said proposed sewer to be constructed, and the Town is entitled to charge all of such persons a sewage charge. It is further understood and agreed that there shall be collected by the Town on

each tap-in to said sewer a tap-in or connection fee, in accordance with Town Ordinances now existing or as amended in the future. Such fees shall be collected by Town and shall be the sole property of Town.

10. **Recoupment:** RDC and Commissioners shall be allowed to recoup their respected funds contributed for the cost of construction of the Project. Such Recoupment shall be allowed for a period of five (5) years from the date Project is completed and transferred to the Town, or until RDC and Commissioners funds, plus interest, have been fully recouped, whichever occurs first. RDC and Commissioners shall be allowed simple interest at a rate of eight percent (8%) per annum on its unrecouped balance of construction costs.

RDC and Commissioners' Recoupment fee shall be an additional amount over and above the sewer connection fee charged by Town, and shall be an amount equal to One Thousand Dollars (\$1,000.00) per residential tap equalization charged by Town at the time of connection. Town shall collect on RDC and Commissioners' behalf the appropriate Recoupment fee at the time it collects its sewer connection fee for each connection made directly to the gravity sewer or onto any direct extension of a new gravity sewer connecting into the gravity sewer or master lift station within the Project, as described in Exhibit A attached hereto and made a part hereof. Such collected sums shall be remitted to RDC and Commissioners by Town on a monthly basis. RDC and Commissioners agree that Recoupment fees collected shall be divided in proportion to their respective contribution of funds for construction of Project by the RDC and Commissioners. The Town shall have no liability regarding the division of the Recoupment Fee by the RDC and Commissioners. RDC and Commissioners may waive, in writing, all or any portion of the Recoupment fee.

11. **Hold Harmless:**

Town agrees to save harmless RDC and Commissioners from all claims arising from the construction of the Project, including claims arising from the negligence of the Town or its agents, servants, contractors and employees and in this regard, the Town agrees to provide, or

require the selected construction contractor to provide, general liability insurance wherein the Town, RDC and Commissioners shall be named an insured, which policy will cover liability occurring during the construction, installation and up to the total acceptance of the sewer herein described, and in which the policy limits shall not be less than Five Hundred Thousand Dollars (\$500,000) per person, and One Million Dollars (\$1,000,000) per occurrence, for personal injuries and death, and not less than Five Hundred Thousand Dollars (\$500,000) for property damage.

12. **Successors and assigns:**

This Agreement shall be binding on, and the benefits shall accrue to, the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have affixed their hands hereto this _____ day of _____, 2004.

TOWN OF NEWBURGH, INDIANA

William F. Kavanaugh, President

ATTEST:

Rebecca Gentry
Clerk-Treasurer

"Town"

WARRICK COUNTY
REDEVELOPMENT COMMISSION

Chairman

Member

Member

Member

Member

"RDC"

BOARD OF COMMISSIONERS OF
WARRICK COUNTY

President

Member

Member

"COMMISSIONERS"

ATTEST:

Richard Kixmiller Warrick County Auditor

Section 3. This Ordinance shall be in full force and effect on and after its adoption.

ADOPTED this 22 of September, 2004.

BOARD OF COUNTY COMMISSIONERS
WARRICK COUNTY, INDIANA

Don Williams
President

Carl Jay Carver
Member

Phillip H. Batten
Member

ATTEST:

Richard Kixmiller
Richard Kixmiller, Auditor *by af.*