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**BILL NO. G-15-11-10**

**GENERAL ORDINANCE NO. G-17-15**

**AN ORDINANCE AMENDING CHAPTER 51 OF  
THE CITY OF FORT WAYNE CODE OF ORDINANCES  
PERTAINING TO THE RATES AND CHARGES  
THE CITY CHARGES THE TOWN OF HUNTERTOWN, INDIANA**

**WHEREAS**, in 1985, the Town of Huntertown, Indiana (“Huntertown”) and City of Fort Wayne, Indiana (“City”) entered into a “Water Pollution Control Treatment Agreement Between the City of Fort Wayne, Indiana and the Town of Huntertown Indiana,” which agreement was subsequently amended in 1998 and 2005 (collectively, the “Wholesale Sewage Agreement”); and

**WHEREAS**, pursuant to the Wholesale Sewage Agreement, from 1988 until 2013, the Town sent all of the sewage emanating from the Town’s wastewater collection system to the City, and the City accepted all of the sewage emanating from the Town’s wastewater collection system; and

**WHEREAS**, in furtherance of its desire to construct a Wastewater Treatment Plant, on January 5, 2010, the Town gave the City notice of its intent to terminate the Wholesale Sewage Agreement effective April 27, 2013; and

**WHEREAS**, after termination of the Wholesale Sewage Agreement, the Town continued to send all of the sewage emanating from the Town’s wastewater collection system to the City, and a dispute arose between the City and the Town concerning the terms, conditions, rates, and charges under and pursuant to which the City would accept the sewage emanating from the Town’s wastewater collection system; and



1 order to provide income sufficient to maintain the utility property in a sound  
 2 physical and financial condition to be able to render adequate and efficient  
 3 service to its users, to revise sewage rates charged to the Town as shown  
 4 herein for the years listed, effective January 1<sup>st</sup> of each respective year,  
 5 unless otherwise noted; and

6 **WHEREAS**, the Common Council of City of Fort Wayne now find it in  
 7 the best interest of the City and Fort Wayne City Utilities to approve the  
 8 Interlocal Settlement Agreement; and

9 **WHEREAS**, the Common Council for the City of Fort Wayne desires  
 10 to amend Chapter 51 of the Fort Wayne Code of Ordinances to insert  
 11 contract customer rates for the Town which are consistent with the Interlocal  
 12 Settlement Agreement.

13  
 14 **NOW THEREFORE, BE IT ORDAINED BY THE COMMON**  
 15 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA;**

16  
 17 **SECTION 1.** That the following sections or subsections of Chapter 51  
 18 of the Fort Wayne Code of Ordinances be amended as follows with all other  
 19 sections to remain unchanged:

20 **51.077 CONTRACT CUSTOMERS (ADD TO EXISTING)**

21  
 22 **TOWN OF HUNTERTOWN**

	4/28/13 – 6/30/13	7/1/13 – 12/31/14	2015	2016	2017	2018	2019
Treatment (per CCF)	\$1.9436	\$2.1187	\$1.733 4	\$1.903 6	\$2.024 7	\$2.044 1	\$2.1498
Conveyance & Collection (per CCF)	\$0.370	\$0.3698	\$0.298 0	\$0.305 0	\$0.328 3	\$0.323 8	\$0.3601

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Total Metered Rate (per CCF)	\$2.3136	\$2.4885	\$2.0314	\$2.2086	\$2.3530	\$2.3679	\$2.5099
Monthly Service Charge	\$7.10	\$7.73	\$7,886.24	\$8,222.43	\$8,604.58	\$9,662.63	\$10,056.90

In the event Section 2 of the Interlocal Settlement Agreement is renewed consistent with its terms and conditions, the City's rates and charges to the Town shall increase by 4% annually for each year of the renewal.

**SECTION 2.** That the Interlocal Settlement Agreement between the Town and City, attached hereto, is approved.

**SECTION 3.** That this Ordinance shall be in full force and upon passage and approval by the Mayor.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Carol Helton, City Attorney

**SETTLEMENT AND INTERLOCAL COOPERATION AGREEMENT BETWEEN AND AMONG FORT WAYNE, INDIANA AND THE TOWN OF HUNTERTOWN, INDIANA CONCERNING WASTEWATER AND POTABLE WATER UTILITY SERVICE**

**WHEREAS**, the City of Fort Wayne (“City”) is a second class city established and operating pursuant to IC 36-4-1 *et seq.*; and

**WHEREAS**, the City owns and operates a municipal water utility and a municipal wastewater collection and treatment utility; and

**WHEREAS**, the Town of Huntertown, Indiana (“Town”), is a town established and operating pursuant to IC 36-3-1 *et seq.*; and

**WHEREAS**, the Town owns and operates a municipal water utility and a municipal wastewater collection utility, but does not currently own or operate a wastewater treatment plant; and

**WHEREAS**, in 1985, the Town and City entered into a “Water Pollution Control Treatment Agreement Between the City of Fort Wayne, Indiana and the Town of Huntertown Indiana,” which agreement was subsequently amended in 1998 and 2005 (collectively, the “Wholesale Sewage Agreement”); and

**WHEREAS**, pursuant to the Wholesale Sewage Agreement, from 1988 until 2013, the Town sent all of the sewage emanating from the Town’s wastewater collection system to the City, and the City accepted all of the sewage emanating from the Town’s wastewater collection system; and

**WHEREAS**, the Town desires to construct its own Wastewater Treatment Plant (“WWTP”); and

**WHEREAS**, in furtherance of its desire to construct its WWTP, on January 5, 2010, the Town gave the City notice of its intent to terminate the Wholesale Sewage Agreement effective April 27, 2013; and

**WHEREAS**, after termination of the Wholesale Sewage Agreement, the Town continued to send all of the sewage emanating from the Town’s wastewater collection system to the City, and a dispute arose between the City and the Town concerning the terms, conditions, rates, and charges under and pursuant to which the City would accept the sewage emanating from the Town’s wastewater collection system; and

**WHEREAS**, the Town subsequently adopted regulatory ordinances (as such term is defined in IC 8-1.5-6, *et seq.*) establishing certain exclusive water and sewer service territory, which the City disputed; and

**WHEREAS**, the City and Town subsequently became involved in and remain involved in the following legal causes: (1) Allen County Circuit Court Cause No. 02C01-1306-MI-1194 (which includes the consolidated case of Allen County Superior Court Cause No. 02D01-1305-MI-10288); (2) Indiana Utility Regulatory Commission (“IURC”) Cause No. 44519; (3) Indiana Court of Appeals Cause No. 93A02-1505-EX-444; and, (4) Office of Environmental Adjudication (“OEA”) Cause No. 15-W-J-4783; and

**WHEREAS**, the Town received a construction permit for its WWTP from the Indiana Department of Environmental Management (“IDEM”) (Approval L-0446) on August 19, 2014, and an NPDES permit from IDEM (Permit No. IN0064289) on February 19, 2015; and

**WHEREAS**, on May 20, 2015, the IURC issued an order in IURC Cause No. 44519 permitting the Town to modify its regulatory ordinances (as such term is defined in IC 8-1.5-6, *et seq.*) establishing exclusive water and sewer service territories for the Town (the “IURC Order”);

**WHEREAS**, after the IURC’s order, the Town adopted Ordinance No. 15-002, to amend Ordinance No. 13-004, (which was previously amended by Ordinance No. 13-008) which regulatory ordinances collectively establish an exclusive water service territory (the “Water Service Area”); and

**WHEREAS**, the Town adopted Ordinance No. 15-001, to amend Ordinance No. 13-006, which regulatory ordinances collectively establish an exclusive sewer service territory (the “Sewer Service Area”); and

**WHEREAS**, the IURC Order determined that the City’s retail outside-city rates and charges for sewage treatment to the Town were unjust and unreasonable and required the City to set wholesale sewer service rates and charges for the Town in accordance with the provisions of the IURC Order; and

**WHEREAS**, the City has appealed the IURC Order in Indiana Court of Appeals Cause No. 93A02-1505-EX-444; and

**WHEREAS**, the Town represents that it has received notice from the Indiana State Revolving Fund (“SRF”) that its WWTP project has been ranked for funding on the project priority list for 2015 and time is of the essence for the Town to seek to close on that loan as soon as possible; and

**WHEREAS**, the parties acknowledge that the pending legal causes are an impediment to the Town securing funding for the WWTP through the SRF, and to the City from providing water and sewer service to certain customers and areas; and

**WHEREAS**, the Town and the City both stipulate and agree that the terms and conditions of this Interlocal Agreement, including the dismissal of all pending litigation so that the Town can have a period of time to pursue construction of its WWTP which is one of the purposes the Town is entering this Interlocal Agreement, are in the best interests of the City and the Town; and

**WHEREAS**, both parties recognize that the Town will need interim wastewater treatment service from the City; and

**WHEREAS**, both parties desire to give the Town a period of time, as defined in this Interlocal Agreement, to complete financing, permitting, and construction of its own WWTP; and

**WHEREAS**, the Town and City now desire to resolve the disputes between them, to resolve the above referenced legal causes, provide the Town with a period of time within which

it can seek to complete its WWTP, and to provide the terms and conditions for interim service between the City and the Town.

**NOW THEREFORE**, in consideration of the mutual terms, covenants and conditions set forth herein, the aforementioned parties hereby jointly agree as follows:

**Section 1. Purpose.** The purpose of this Settlement and Interlocal Cooperation Agreement (the “Interlocal Agreement”) is to: (1) resolve the disputes between the parties in the above-referenced legal causes which would allow the Town to seek to close on the SRF loan as soon as possible; (2) establish the terms and conditions under which the City provides interim wastewater collection and treatment services to the Town; and (3) modify the Town’s Sewer and Water Service areas so as to permit the City to provide water and sewer service to customers who were previously within the Town’s Water and Sewer Service Areas.

**Section 2. Wholesale Sewage Rates and Charges.** Pursuant and subject to the terms of this Interlocal Agreement, the City shall, for the term of this Section 2 of the Interlocal Agreement, be the sole provider of treatment services for any and all of the sewage emanating from the Town’s wastewater collection utility subject to the following terms and conditions:

(A) **Definitions.** The following words and phrases in this Section 2 of this Interlocal Agreement shall have the following meaning:

- a. **“Connection Point.”** A structure which provides for the conveyance of the Town’s sewage to the City for further transportation and treatment. The facilities comprising the Connection Points are generally described as a Town-owned sewer force main pipe discharging through a Town-owned structure, manhole, junction box, etc., into a City-owned sewer structure, manhole, junction box, etc.
- b. **“Monitoring.”** The analysis of sewage without taking a portion of the sewage. Examples include but are not limited to pH, conductivity, temperature, and flow rates.
- c. **“Prohibited Discharge.”** Waste or a pollutant which is prohibited to be discharged into the Water Pollution Control Utility under the Ordinances, Rules and Regulations of the City of Fort Wayne Sewer Utility, state or federal laws, or rules of any regulatory agency having jurisdiction.
- d. **“Sampling.”** The taking of an actual portion of the sewage for analysis. Examples include but are not limited to BOD, COD, metals, and total suspended solids.
- e. **“Sewage.”** The water-carried wastes from residences, businesses, buildings, institutions, and industrial establishments, singularly or in any combination.
- f. **“Sewage System.”** The network of sewers and appurtenances used for the possible collecting, transporting, or pumping of sewage to the Connection Point or to the Water Pollution Control Plant.

- g. **“User.”** Any domestic or non-domestic discharger of sewage which introduces pollutants into the Water Pollution Control Utility.
- h. **“Water Pollution Control Plant.”** The arrangement of devices, structures, and equipment used for treating and disposing of sewage and sludge.
- i. **“Water Pollution Control Utility.”** All facilities and systems, collectively, for collecting, transporting, pumping, treating, or disposing of sewage and sludge, including the Water Pollution Control Plant and sewage system.

(B) Effective April 28, 2013: The Town expressly consents to treatment as a wholesale contract customer of Fort Wayne subject to the then-applicable wholesale contract rates dating back to April 28, 2013, and subject to the terms and conditions of this Interlocal Agreement.

(C) Connection of Sewer Facilities:

- a. **Connection Points:** The locations of the current three Connection Points are generally identified as “Tap in Point A”; “Tap in Point B”; and “Tap in Point C” on the attached Exhibit A, hereby incorporated by reference.
- b. **Maintenance of Connection Points:** Each party shall be responsible for the maintenance and operation of its own sewage system and its portion of the Connection Points. The Town owns the force main piping on the Town’s side of the meter, the meter, and the force main piping that extends from the meter to the manhole where the Town’s sewage is ultimately discharged in to the City’s system at each of the Connection Points. The City may inspect the Town’s portion of the Connection Points at any time. If City inspection finds that The Town’s portion of the Connection Points are not being properly maintained or operated, the City may notify the Town in writing in accordance with Section 2(U) of this Interlocal Agreement. Upon its receipt of a written notification from the City, the Town shall, within ten (10) days, provide City with a written plan to complete all reasonably necessary maintenance, repairs or modifications. In the event Town fails to timely provide such a written plan or to promptly implement the actions described in the written plan to City’s reasonable satisfaction (which satisfaction shall not be unreasonably withheld), the City may complete the maintenance and the Town shall, within thirty (30) days, reimburse the City for all maintenance costs incurred by the City.

(D) Conveyance and Treatment of Sewage.

- a. **Responsibility for Conveyance:** The Town shall be solely responsible for delivery of the sewage to its Connection Points in a form compliant with Section 2(H) of this Interlocal Agreement. Thereafter, the City shall be responsible for conveyance of the sewage through its sewage system to its Water Pollution Control Plant.

- b. **Responsibility for Treatment:** The City shall be solely responsible for the proper treatment at the City's Water Pollution Control Plant of the sewage received from the Town in accordance with the laws, regulations, requirements, and standards of IDEM, the Indiana State Board of Health, and the United States Environmental Protection Agency ("EPA"), currently in effect and as may be amended from time to time. If, during any billing period, the Town delivers to the City sewage which does not comply with Section 2(H) of this Interlocal Agreement, then the Town shall be responsible for the fees and charges for such non-compliant material and shall indemnify the City pursuant to Section 2(U) of this Interlocal Agreement.

(E) Metering:

- a. **Fort Wayne to Read Meters:** The City shall continue to be responsible for reading the meters that it relies on for billing the Town. The City will calculate the Town's monthly sewer bill based on monthly meter readings of the meters at the Connection Points.
- b. **Telemetry Equipment:** The City shall provide and bear the cost of providing and maintaining all telemetry for transferring volume and peak flow data from the Town's meter to the City's telemetry system and website. Access to the Town's flow data on the website shall also be provided to the Town. The Town does not have its own electronic data on its collection system.
- c. **Bypass Valves:** The City shall have reasonable access at all times to any and all bypass valves.
- d. **Access to Metering Equipment:** The City shall have complete and free access to the metering equipment for inspection, testing and approval at all reasonable times. The Town shall provide reasonable access to the metering equipment.
- e. **Meter Testing:** Sewer metering equipment and remote readouts shall be annually tested, calibrated, maintained, and repaired by the Town at the Town's cost and expense. The Town shall provide the City with all information concerning the testing, calibration, maintenance and repair of the facilities. In addition, the City may annually test the sewer metering equipment while remaining in place at the Town's facilities. The City may require the Town to conduct additional calibration in the event that the meter does not test accurately.

- (F) Monthly Flow and Service Rates: For the initial term of the Agreement, as defined in Section 2(S) of this Interlocal Agreement, the monthly rates and charges the City shall charge the Town shall be as provided in the following chart. In addition to the rates and charges identified in the following chart, other rates and charges may apply as identified in this Interlocal Agreement including, but not limited to, Sections 2(L), 2(M), and 2(N) of this Interlocal Agreement.

	4/28/13 – 6/30/13	7/1/13 – 12/31/14	2015	2016	2017	2018	2019
Treatment (per CCF)	\$1.9436	\$2.1187	\$1.7334	\$1.9036	\$2.0247	\$2.0441	\$2.1498
Conveyance & Collection (per CCF)	\$0.370	\$0.3698	\$0.2980	\$0.3050	\$0.3283	\$0.3238	\$0.3601
Total Metered Rate (per CCF)	\$2.3136	\$2.4885	\$2.0314	\$2.2086	\$2.3530	\$2.3679	\$2.5099
Monthly Service Charge	\$7.10	\$7.73	\$7,886.24	\$8,222.43	\$8,604.58	\$9,662.63	\$10,056.90

(G) Pre-January Agreement Charges: The City acknowledges payment of all fees and charges from the Town from April 28, 2013 to the date of this Interlocal Agreement, and shall waive any claim to additional collection from April 28, 2013 to the date of this Interlocal Agreement. Nothing in this Section 2(G) shall be interpreted as waiving any charges after the date of this Interlocal Agreement.

(H) Quality:

a. **Excess Strength**: In the event the Town conveys sewage which has a strength in excess of domestic waste, as defined in the City of Fort Wayne’s Code of Ordinances (“City’s Ordinances”), the sewage will be accepted and treated subject to the City’s Ordinances and a surcharge will be applied accordingly.

b. **Prohibited Discharges**:

i. The Town shall not convey prohibited discharges to the City.

ii. Upon discovery that a prohibited discharge is being conveyed by the Town’s sewage system to the City’s Water Pollution Control Utility:

1. The Town shall immediately cease delivery of the prohibited discharge upon oral notification, and provide confirmation thereof in writing, within twenty-four (24) hours.

2. If the Town shall fail to cease said conveyance immediately, the City may, at its option, without liability and at the Town’s cost;

a. Cut off the particular user (if such user is ascertainable) who is found to be delivering prohibited discharges to the Town’s sewage system;

- b. If the particular user is not reasonably ascertainable or able to be cut off, the Town shall be solely responsible for using its best efforts to identify the particular user and otherwise remedying the situation.
- c. The Town shall bear all liabilities and costs which the City or the Town may incur or be liable for, caused either by the further conveyance and/or treatment of said prohibited discharge and the City's exercise of its rights to take action to remedy the situation.

(I) Sampling and Monitoring Quality:

- a. **Sampling Facilities:** The Town shall have proper and adequate facilities for the purpose of sampling and monitoring by the City of the sewage conveyed to the Connection Points. The City shall be able to access all three Connection Points for purposes of sampling and monitoring at any time, and the Town shall provide any necessary keys to the City so that the City may access such Connection Points. The City shall have the right, at its cost and expense, to install facilities including, but not limited to, an electronic data system which monitors the sewage conveyed to the City for treatment as well as physical locations where sewage may be sampled and monitored. The Town shall provide facilities at the Town's Equalization Basin including a source of electrical power, shelter, and security, and provide the City with reasonable access to said facilities for the City to install such equipment. The sampling and monitoring facilities shall be approved by the City prior to any modification.
- b. **Access:** The City shall have full and complete access to the Town's sampling and monitoring facilities at all times. The Town shall be required to maintain access to physical facilities, including snow removal. The Town does not have the technology, equipment, and/or hardware for remote read only access. The City may add, alter, or modify its final read out equipment at the City's cost and may maintain the added, altered or modified equipment with a lock, which key will be held by the City.
- c. **Cost:** The cost of planning, designing, installing, daily operation, and replacement, as necessary, of sampling and monitoring devices, including the acquisition of real estate, shall be the responsibility of the Town.
- d. **Testing, Calibration, Maintenance and Repair:** The City may test, calibrate, maintain, and repair as necessary sampling and monitoring devices, the costs of which shall be paid by Town in accordance with the City's Rate and Use Ordinances.
- e. **Samples and Testing Data:** Material samples as received from the sampling devices shall be available to both parties to this Interlocal Agreement. In the event the City provides testing for samples, the cost of such testing shall be

paid by the Town in accordance with the schedule of flat rate charges set forth in the City's Code of Ordinances. The Town may request sampling and analysis in addition to City's regular sampling as provided hereunder. The City shall conduct any such additional sampling and the Town shall pay for the costs associated with any such additional services. Sampling and testing shall follow approved protocol and procedures in accordance with EPA criteria. The Town may request split samples, and in the event of a disparity in results of whether a compliance violation has occurred, the Town shall have the right to a re-test of samples.

- f. Town Sampling Adjustments:** In the event the Town requests sampling and/or analysis as provided in Section 2(I)e. of this Interlocal Agreement, the additional sampling and/or analysis will apply to the billing cycle in which the Town requested the sampling and/or analysis.

**(J) Inspection and Enforcement:**

- a. Industrial Waste Survey List:** The Town shall maintain a current Industrial Waste Survey list in accordance with the following:
  - i.** The Industrial Waste Survey list shall include the facility name and address of all commercial and industrial users in the Town's Service Area, the nature of each user's business and the name and contact information of a responsible person to be contacted at each user.
  - ii.** An updated list shall be provided to the City within thirty (30) days of the execution of this Interlocal Agreement.
  - iii.** Updated lists shall be provided to the City annually by January 15 of each year.
- b. Industrial Customer:** The Town affirms that it does not currently have any industrial customers. In the event that the Town adds an industrial customer, the Town shall maintain an Industrial Waste Survey List and will provide the City the same by January 30 of each year. The town further hereby authorizes the City, and the City hereby agrees to:
  - i.** Apply the City's pretreatment limits to users of the Town's sewage system.
  - ii.** Establish industrial wastewater permits required under the City's Industrial Pretreatment and Sewer Ordinances to dischargers into the Town's system.
  - iii.** Require and receive all industrial pretreatment reports required by 40 CFR 403 and the City's Industrial Pretreatment and Sewer Ordinance. Reports will be maintained by the City's Industrial Pretreatment department.

- iv. Inspect all facilities of permitted industries discharging into the Town's sewage system.
- v. Collect and analyze samples of waste sewage from permitted industries discharging into the Town's sewage system.
- vi. Carry out all inspections, surveillance and monitoring procedures necessary to determine, independent of information supplied by permitted dischargers to the Town's system, their compliance statuses pertaining to pretreatment limits, reporting requirements, and the industry's wastewater permit.
- vii. Enter the premises of any permitted industrial facility or industrial user which has a discharge source or pretreatment system, in order to inspect same or view records, relevant to the user's operation, treatment, monitoring, or discharge.
- viii. Immediately and effectively make all reasonable attempts to prevent any discharge of pollutants into the Town's sewage system which would present an imminent endangerment to the health or welfare of the public, the environment or which threatens the operation of the Town's sewage system or the City's Water Pollution Control Utility.
- ix. Undertake a full range of enforcement when pretreatment violations occur, as provided in the City Ordinances and the Rules and Regulations of the City Sewer Utility, and as set out in the City's Enforcement Response Guide.
- x. Charge fees consistent with those assessed against industrial and commercial users discharging directly to the City for sampling.
- xi. Undertake any other action necessary to ensure compliance with 40 CFR 403 or with the City's National Pollutant Discharge Elimination System permit.

**c. City Board of Public Works As Agent:** The Town hereby appoints City Board of Public Works as its agent with full authority and license to enforce through the City's Attorney, the provisions of the City Ordinances and Rules and Regulations and all applicable State and Federal regulations upon industrial customers of the Town which have a pretreatment program at Town's reasonable expense.

**(K) Compliance with all Applicable Laws:** The Town shall comply with all relevant and lawful federal, state, and local laws, regulations, and codes pertaining to sewage collection, conveyance, and treatment services (including, but not limited to, City municipal codes and regulations which are not inconsistent with this Interlocal Agreement).

- (L) Volumetric Limit and Exceedance: In the event that sewage flows exceed 650,000 gpd for any 90 consecutive day period, the Town shall pay a capital surcharge rate to the flows billed during the exceedance period (“Capital Surcharge Rate”). The Capital Surcharge Rate will be calculated based upon the Town’s proportionate share (using the same methodology used in the City’s cost of service study that was submitted to the IURC in Cause No. 44519 as Fort Wayne’s Exhibit 11 (“Summary Cost of Service Study”)) of current “Common to All Conveyance Debt Service” costs divided by consumption of flow of the Town.
- (M) Volumetric Maximum: The Town’s flow volume shall not exceed 975,000 gpd for any 90 consecutive day period. If it does, the City shall be entitled to charge the Town \$5.5226 per ccf for each ccf (or portion thereof) over the 975,000 gpd from the date of this Agreement until December 31, 2015. After that date, the \$5.5226 per ccf shall be adjusted annually in direct proportion to the Town’s wholesale rate increase as provided in Section 2(F) of this Interlocal Agreement.
- (N) Peak Flow: The Town shall have a maximum peak flow rate of 1500 gpm. If the average peak flow exceeds 1550 gpm as averaged over a fifteen (15) minute period for all points of connection combined, then a peak flow charge shall be assessed (a “Peak Flow Charge”). The Peak Flow Charge shall be calculated based upon updating the capacity allocation for conveyance at the new peak flow rate (*i.e.*, the rate observed during the exceedance) and then new conveyance rates will be calculated using the same methodology as the Summary Cost of Service Study and then multiplied by either (1) a factor of 5 for peak flow exceedances of 0-10% and/or (2) a factor of 10 for peak flow exceedances over 10%. The recalculated conveyance rate and conveyance base charge will be charged for the next twelve (12) months, unless the new peak flow rate is exceeded, in which case the process described in this Section 2(N) of this Interlocal Agreement herein for an exceedance shall be calculated for the new exceedance. After twelve (12) months, the conveyance rate and conveyance base charge will return to the original Summary Cost of Service Study established level if another peak flow exceedance has not occurred.
- (O) Default:
- a. **Event of Default**: For the purposes of this Section 2 of this Interlocal Agreement, the term “Event of Default” shall mean the failure to observe or comply with a provision or covenant in this Section 2 of this Interlocal Agreement, and such default is not cured to the reasonable satisfaction of the non-defaulting party within fifteen (15) days of the date Notice of such default is given, which Notice shall specify with reasonable particularity the basis for the default claimed.
  - b. **Notice**: If either party discovers a violation of Section 2(E) Metering or Section 2(I) Sampling and Monitoring, then the non-defaulting party shall notify (in accordance with Section 2(U)) the defaulting party of the violation. The defaulting party shall have thirty (30) days to cure the violation or to notify the non-defaulting party of its plan to cure the violation. Failure to

cure or submit a plan to cure shall be considered a minor breach and the non-defaulting party shall have the right to cure the violation itself and the defaulting party shall be responsible for the costs to cure.

- c. **No Termination without Disconnection:** Consistent with Section 2(Q) below, the Town shall not terminate this Section 2 of this Interlocal Agreement without also disconnecting from the City's system. In the event the Town provides notice of termination but does not disconnect, then this Section 2 of this Interlocal Agreement shall not be terminated until the Town provides another sixty (60) day notice and disconnects and/or the Term expires under Section 2(R).

(P) Compliance with Rules, Regulations, Standards and Laws:

- a. **Compliance with Law:** Each of the parties to this Interlocal Agreement shall comply with all local, state, and federal regulations, standards, and laws of general applicability currently in effect and as lawfully amended, adopted, or enacted regarding the collection and treatment of sewage, the operation of their respective systems, and any additional services provided according to the terms and provisions of this Interlocal Agreement.
- b. **Town Ordinances:** The Town shall adopt and enforce ordinances providing for rates, rules, and regulations, and use of its sewage system which are in conformity with the reasonable requirements lawfully adopted and enforced by the City for the purpose of permitting the City on continuing basis, to be awarded grants and loans from the State of Indiana and from the EPA and other agencies which may now or in the future have such opportunities offered.

(Q) Termination: The Town shall have the right to terminate this Section 2 of this Interlocal Agreement provided that it (1) first gives the City sixty-day's (60) written notice of its intent to terminate; and (2) immediately upon the effective date of the termination disconnects from the City's system.

(R) Term: The rates in Section 2(F) of this Interlocal Agreement under the terms and conditions of this Section 2 of this Interlocal Agreement shall remain in effect until: (1) January 1, 2020; (2) termination of this Section 2 as provided in Section 2(Q) above; or (3) as provided in Section 2(S) below.

(S) Renewal of Interlocal Agreement: If, on January 1, 2020, the Town has not disconnected its wastewater utility from the City, this Section 2 of the Interlocal Agreement shall renew under one of the following scenarios:

- a. **Interim Renewal - Substantial Commencement:** Assuming that the Town has achieved substantial commencement of its WWTP on or before July 1, 2019, and the Town is not disconnected by December 31, 2019, Section 2 of this Interlocal Agreement shall renew for up to an additional two (2) year term and the applicable monthly rates shall be as established by ordinance, not to

exceed a 4% annual increase for each year of the renewal term over the monthly rates for 2019. For the purposes of this Section 2(S)a., substantial commencement in the initial five (5) year term shall be defined as acceptance of bids and commencement of construction of the wastewater treatment plant. If the Town has not achieved substantial commencement by July 1, 2019, and the Town is not disconnected by December 31, 2019, then the WWTP shall be deemed “not substantially commenced” and the parties shall follow subdivision 2(S)b. below.

- b. No Substantial Commencement:** In the event the Town has not achieved substantial commencement under Section 2(S)a. for reasons that are not caused by the City’s actions or inactions, and the Town has not otherwise disconnected from the City by December 31, 2021, the Town shall have the option to: (1) enter a Water Pollution Control Agreement for a twenty (20) year term; (2) remain connected to the City’s system under the then-applicable rate for Outside-city Governmental Users; or (3) disconnect from the City’s system.

**(T) Capacity:** During the term of this Interlocal Agreement, the parties agree that the Town shall have available to it 1150 ERUs of capacity on the City’s system. These 1150 ERUs shall be divided as follows:

- a. Preapproved Capacity:** Of the 1150 ERUs of available capacity to the Town, 240 of those ERUs have been preapproved by the City and shall be considered “Preapproved Capacity”.
- b. Reallocation of Capacity:** The Town may utilize any unused Preapproved Capacity that is available to serve new developments. No area connection fees apply to the use of the 240 ERUs of Preapproved Capacity.
- c. Additional Capacity:** In addition to the 240 ERUs of Preapproved Capacity, the City also agrees to give the Town an additional 910 ERUs of capacity (each an “Additional Capacity”) for use in the Town’s system.
- d. Area Connection Fees and Capital Surcharges:** The City shall waive the area connection fee (currently \$2,000 per ERU for the Upper Ely Interceptor) but not the capital surcharge (currently \$20/month/ERU) for the Preapproved Capacity (i.e. up to \$480,000 of area connection fees may be waived) certified after the execution of this Interlocal Agreement (each an “ACF Waiver”). The Parties shall track these available 240 ERUs of ACF Waivers using the spreadsheet that is attached hereto as Exhibit B. The Town is solely responsible for determining what allocations receive any ACF Waiver(s). Each of the 910 ERUs of additional capacity shall be subject to the City’s then applicable area connection fee (currently \$2,000/ERU) and capital surcharge (currently \$20/month/ERU). The then applicable area connection fee shall be collected as an upfront cost paid by the Town (or its designee) to the City prior to the City certifying the capacity to IDEM. In the event of a direct-connect where a capacity certification is not applicable, the Town shall notify the City prior to the connection and pay any applicable upfront ACF at time of

notification. The Town shall ensure that the applicable monthly capital surcharge is paid as part of the City's regular invoices.

(U) Miscellaneous:

**a. Notices and Invoice:**

- i. Any notices required under this Section 2 of this Interlocal Agreement shall be served by certified mailing, return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party.
- ii. Invoicing by the City under this Section 2 of this Interlocal Agreement shall be served by first class mail addressed to the Town at the last address filed by the Town.
- iii. At the execution date of this Interlocal Agreement, the City's address is:

Fort Wayne City Utilities, Attention of the Director  
200 E. Berry Street  
Fort Wayne, Indiana 46802

- iv. At the execution date of this Interlocal Agreement, the Town's address is:

Town of Hometown, Indiana  
15617 Lima Road  
PO Box 95  
Hometown, Indiana 46748

- b. Survival:** The obligations set forth in the following sections of this Interlocal Agreement shall survive termination of this Section 2 of this Interlocal Agreement:

- i. Section 2(D)b. shall survive until City no longer provides treatment services to the Town.
- ii. Section 2(U)c., shall survive termination of Section 2 of this Interlocal Agreement.

**c. Indemnities:**

- i. Environmental - Town:** The Town shall comply with all applicable laws, regulations, orders, and requirements of all governmental entities having jurisdiction over its sewage system, whether federal, state, or local. The Town agrees to defend, indemnify and hold the City (and its officers, directors, employees, contractors, representatives and duly authorized agents) harmless from any cost, damage (including indirect, special and consequential damage), award, action, or liability, including but not

limited to the recovery of reasonable attorney fees and costs, arising out of the Town's violation of law.

- ii. **Environmental - City:** The City shall comply with all applicable laws, regulations, orders, and requirements of all governmental entities having jurisdiction over its sewage system, whether federal, state, or local. The City agrees to defend, indemnify and hold the Town (and its officers, directors, employees, contractors, representatives and duly authorized agents) harmless from any cost, damage (including indirect, special and consequential damage), award, action, or liability, including but not limited to the recovery of reasonable attorney fees and costs, arising out of the City's violation of law.
- iii. **Personal Injury, Death, and Property Damage - Town:** The Town agrees to defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages (including, damages for personal injury, death or property damage), liabilities, costs and expenses (including reasonable attorney's fees), judgments, settlements, and penalties arising out of the Town's negligent, intentional, or willful non-performance under this Section 2 of this Interlocal Agreement and/or arising out of the Town's negligent, intentional, or willful failure to maintain or operate its sewage system.
- iv. **Personal Injury, Death, and Property Damage - City:** The City agrees to defend, indemnify, and hold harmless the Town (including its officers, employees, and agents) from all demands, damages (including, damages for personal injury, death or property damage), liabilities, costs and expenses (including reasonable attorney's fees), judgments, settlements, and penalties arising out of the City's negligent, intentional, or willful non-performance under this Section 2 of this Interlocal Agreement and/or arising out of the City's negligent, intentional, or willful failure to maintain or operate its sewage system.

**Section 3.** Non-Enforcement. The Town hereby waives any and all fees it may have been due under Ordinance 15-001 or Ordinance 15-002 (including any enforcement provisions in the precursor Ordinances 13-004, 13-008, and 13-006), including, but not limited to, the \$2,000 per day penalty for providing utility service inside the Town's territory. The Town also hereby waives any and all fees, charges, or claims it may have had against the City, including, but not limited to, City Utilities, which predate(s) the date of this Interlocal Agreement.

**Section 4.** Intermediate Service Areas. The City shall be permitted to serve water and sewer service in the area identified as "Fort Wayne's Permitted Area" on Exhibit C and Exhibit D hereto without any oversight of the Town. Within one (1) business day after execution of this Interlocal Agreement by the Town Council for the Town, the Town shall provide the City with a letter, signed by the Town Council President certifying that the City has the rights provided for in this Section 4. This Section 4 of this Interlocal Agreement shall not terminate, expire, or otherwise lapse except as expressly provided in Section 12 of this Interlocal Agreement.

**Section 5. Permanent Service Areas.** The Town and the City agree that the Town's water and sewer service areas as set forth in Ordinances 15-001 and Ordinance 15-002 (including the precursor Ordinances 13-004, 13-008, and 13-006) and otherwise previously authorized by the IURC shall be modified consistent with this Section 5 of the Interlocal Agreement.

- (A) **Modified Regulatory Ordinances:** If the IURC approves the Joint Stipulation and Settlement Agreement as discussed in Section 7 of this Interlocal Agreement, then within seven (7) days of the IURC's approval, the Town shall adopt modified regulatory ordinances modifying its exclusive water and sewer service territory consistent with the diagrams attached hereto as Exhibit C and Exhibit D, which ordinances shall be effective upon approval by the IURC as set forth herein. At least two (2) days prior to adoption, the Town shall share the draft Ordinances with the City for the City's comment on the same.
- (B) **Allen County Fair Grounds:** The City will coordinate with the Town for the transfer of sanitary sewer service at the Allen County Fairgrounds, Inc. owned site located at the Allen County Fairgrounds to the Town. The City recognizes that no area connection fee or capital surcharge will be assessed regarding this transfer. No Reallocated Capacity or Additional Capacity will be required for this transfer. In the event that the Town does not seek transfer of this area before expiration or termination of Section 2 of this Interlocal Agreement, then the Town shall waive its right to so seek such transfer.
- (C) **Irene Byron Campus:** The City will coordinate with the Town for the transfer of sanitary sewer service of the Allen County Commissioners' owned site located at the Allen County's Irene Byron Campus (limited to the campus areas north of Carroll Road) to the Town. The City recognizes that no area connection fee or capital surcharge will be assessed regarding this transfer. No Reallocated Capacity or Additional Capacity will be required for this transfer. In the event that the Town does not seek transfer of this area before expiration or termination of Section 2 of this Interlocal Agreement, then the Town shall waive its right to so seek such transfer.
- (D) **Annexation Waiver:** From the date of this Agreement until December 31, 2019, the City agrees not to annex territory within the boundaries identified in the attached Exhibit E. The City further agrees that it will not remonstrate or otherwise object to the Town's annexation within the boundaries identified in the attached Exhibit E.
- (E) **Utility Service Consent Area, Town and City:** From the date of this Agreement to and including December 31, 2022, unless otherwise agreed to by the Town in a writing signed by the Town Council President, the City shall not provide water and/or sewer service in the area identified as the "Utility Service Consent Area, Town and City" on the attached Exhibit F.

**Section 6. Settlement of Remaining Lawsuits.** After execution of this agreement, but prior to petitioning the IURC for approval of the Joint Stipulation and Settlement Agreement as discussed in Section 7 of this Interlocal Agreement the following events shall occur:

- (A) **Twin Eagles/Timber Ridge Annexation:** Twin Eagles Development II, LLC and Timber Ridge Group, LLC shall agree to dismiss, with prejudice, Cause No. 02D09-1409-PL-341 in the Allen Superior Court; and
- (B) **Court of Appeals Case:** The City, Huntertown, and Twin Eagles Development II, LLC, shall request that the Court of Appeals remand the pending appeal in the Indiana Court of Appeals, Cause No. 93A02-1505-EX-444; and
- (C) **Allen Circuit Court Case(s):** The City, Town, Twin Eagles Development II, LLC, Timber Ridge Group, LLC, and IRM Partnership, LLC, shall dismiss, with prejudice, Cause No. 02C01-1306-MI-1194 (including all claims in the consolidated cause docketed as Cause No 012D01-1036-MI-10288) in the Allen Circuit Court.

**Section 7. IURC Joint Stipulation and Settlement Agreement.** The parties agree that Sections 2-5 of this Interlocal Agreement shall be memorialized in a joint stipulation and settlement agreement (“Joint Stipulation and Settlement Agreement”). The Town and the City shall jointly petition the IURC to adopt the Joint Stipulation and Settlement Agreement as a final order. The Town and the City shall also seek the joinder of the OUCC, Allen County Regional Water and Sewer District, and/or Twin Eagles Development II, LLC in that joint petition and in executing the Joint Stipulation and Settlement Agreement.

**Section 8. OEA Dismissal.** Within one (1) business day of execution of this Interlocal Agreement by the Town Council for the Town, the City shall dismiss, with prejudice, the petition for administrative review and stay filed by the City currently pending in the OEA Cause No. 15-W-J-4783. Additionally, it is a condition subsequent to this Interlocal Agreement that within one (1) business day of execution of this Interlocal Agreement by the Town Council for the Town, (i) the City shall instruct Thomas “Ted” Nitza, Jr. and The Secant Group, LLC, that they shall not provide any assistance to any individual or entity in OEA Cause No. 15-W-J-4783, or in any legal cause or legislative challenge to the Town’s 1.5 MGD WWTP as it is currently permitted except in connection with an action by the City consistent with this Interlocal Agreement for the duration of Section 2 of this Interlocal Agreement or until the Town has completed phase 1 (i.e., completion of 1.5 MGD facility) of its WWTP, whichever is first; and (ii) Mr. Nitza and the Secant Group, LLC shall agree that they will not provide any such assistance. In exchange, the Town, its agents, employees, and consultants shall agree not to bring any legal proceedings, claims, or causes of action of any kind against Thomas “Ted” Nitza, Jr. and/or The Secant Group, LLC, unless the Town can first prove that Mr. Nitza has not complied with the instructions in this Section 8.

**Section 9. No Further Prosecution of OEA Cause No. 15-W-J-4783.**

- (A) **No Further Prosecution:** As long as the Town adopts its amended ordinances consistent with Section 5 of the Interlocal Agreement, then the

City shall not further prosecute and/or renew the claims or actions asserted in its Petition for Administrative Review and Stay of Effectiveness and/or its Amended Petition for Administrative Review and Stay of Effectiveness in OEA Cause No. 15-W-J-4783, for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). Further, the City, its agents, employees, experts, and consultants shall not provide any technical, financial, or other similar support to any party other than the City concerning any such party's claims or actions in OEA Cause No. 15-W-J-4783, for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). The City, its agents, employees, experts, and consultants shall not raise any legal challenge, opposition, or objection in any administrative, judicial, or legislative proceeding to the construction of the Town's WWTP as it is permitted at the time of this Interlocal Agreement.

**(B) Conflict of Interest:** Because this Interlocal Agreement is in the best interests of both the City and the Town, the City agrees that future engagements by the counsel, experts, employees, consultants, witnesses, and agents for the City directed at any action which, if taken by the City would violate this Section 9 of the Interlocal Agreement would be materially adverse to the City and substantially related to the subject matter of the dispute that this Interlocal Agreement resolves, and, hence, a conflict of interest. The City agrees that it will not consent to or waive any such conflict of interest. The City shall inform its witnesses, attorneys, experts, consultants, officers, employees, and other similar agents, of the existence and terms of this Section 9 of this Interlocal Agreement, the conflict of interest, and the City's unwillingness to waive the conflict. In the event of any inconsistency between this Section 9 and Section 8 of this Interlocal Agreement concerning Thomas "Ted" Nitza, Jr. and/or The Secant Group, LLC, Section 8 shall control.

**Section 10. No Challenge to City's Right to Serve and/or its Rates and Charges.**

**(A) No Challenge:** The Town, its agents, employees, experts, and consultants shall not raise any challenge to the City's right to serve any area or intervene in any case involving the City's right to serve any area other than the Town's water and sewer service areas as set forth in Section 4 and/or Section 5 of this Interlocal Agreement for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). The Town, its agents, employees, experts, and consultants shall also not challenge the City's sewage rates and charges, including, without limitation, any wholesale sewage petition, legal proceeding, public hearing, or intervening in any action against the City for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). Further, the Town, its agents, employees, experts, and consultants shall not provide any technical, financial, or other similar support to any party concerning such party's claims, which, if brought by the Town would violate this Section 10 of this Interlocal Agreement. Other than to enforce this Interlocal Agreement, the Town its

agents, employees, experts, and consultants shall not raise any legal challenge, opposition, or objection in any administrative, judicial, or legislative proceeding to the City's sewage rates and charges and/or the City's right to provide sewer and water service.

**(B) Conflict of Interest:** Because this Interlocal Agreement is in the best interests of both the City and the Town, the Town agrees that future engagements by the counsel, experts, employees, consultants, witnesses, and agents for the Town directed at any action which, if taken by the Town would violate this Section 10 of the Interlocal Agreement would be materially adverse to the Town and substantially related to the subject matter of the dispute that this Interlocal Agreement resolves, and, hence, a conflict of interest. The Town agrees that it will not consent to or waive any such conflict of interest. The Town shall inform its witnesses, attorneys, experts, consultants, officers, employees, and other similar agents, of the existence and terms of this Section 10 of this Interlocal Agreement, the conflict of interest, and the Town's unwillingness to waive the conflict.

**Section 11. Remand.** Unless otherwise dismissed by the City, the City and the Town shall, by December 4, 2015, file a joint motion to remand Court of Appeals Cause No. 93A02-1505-EX-444 to the IURC (IURC Cause No. 44519), and the parties shall, pursuant to Section 7 of this Interlocal Agreement, petition the IURC to adopt the Joint Stipulation and Settlement Agreement.

**Section 12. Interlocal Expiration.** If the IURC approves the Joint Stipulation and Settlement Agreement in its entirety and adopts the parties' joint proposed order in its entirety, then Section 4 of this Interlocal Agreement between the parties shall expire, and the terms of the Joint Stipulation and Settlement Agreement and the IURC Order shall remain in full force and effect.

**Section 13. Severability.** If any term or provision of this Interlocal Agreement is declared to be invalid, null, void, or unenforceable, the remaining provisions shall not be affected and shall remain in full force and effect. Neither the City nor the Town shall contend in any judicial proceeding that any provision of this Interlocal Agreement is invalid, null, void, or unenforceable.

**Section 14. Counterparts.** This Interlocal Agreement may be executed in counterparts.

**Section 15. Successors, Heirs and Assigns.** Consent is not required for an assignment of this Interlocal Agreement. Any successor, heir, or assign of the parties hereto shall be bound by all terms and conditions of this Interlocal Agreement.

**Section 16. Merger.** This Interlocal Agreement sets forth the entire agreement between the parties regarding the subject matter hereof and fully supersedes any and all prior agreements or understandings, whether written or oral, express, constructive, or implied between the parties with respect to the matters that are the subject of this Interlocal Agreement. The City disputes that the parties ever had an implied contract covering any of the matters discussed in this

Interlocal Agreement, but to the extent any such implied contract existed, it is now superseded by this express Interlocal Agreement.

**Section 17. No Unilateral Termination.** The Town and the City mutually acknowledge and expressly agree that this Interlocal Agreement may not be terminated by either party except as expressly set forth in this Section 17, in Section 2 of this Interlocal Agreement, or upon a writing approved and executed by each of the parties hereto setting forth the specific provisions for such termination. The Town expressly acknowledges that the City has until December 2, 2015 to formally adopt this Agreement. In consideration of the City's dismissal of OEA Cause 15-W-J-4783 within one (1) business day of execution of this Interlocal Agreement by the Town, for the period between the formal adoption of this Interlocal Agreement by the Town and the formal adoption of this Interlocal Agreement by the City, the Town agrees to be bound by the terms of this Interlocal Agreement, and agrees that it shall not terminate, modify, alter, or amend in anyway this Interlocal Agreement (except where expressly permitted by the terms hereof), without the written agreement of the City, provided that the Town may only unilaterally terminate this Interlocal Agreement by written notice to the City if the City fails to formally adopt this Interlocal Agreement on or before December 2, 2015.

**Section 18. Amendments.** This Interlocal Agreement may only be modified and/or amended by a writing executed and approved by the parties.

**Section 19. Waiver.** Except as expressly stated herein, the failure of either party to exercise any right or power given hereunder or insist upon strict compliance with any obligation specified herein shall not constitute waiver of such party's rights to demand exact compliance with the terms hereof.

**Section 20. Headings.** Except for the headings in Section 2(A) of this Interlocal Agreement, the headings to the paragraphs of this Interlocal Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Interlocal Agreement.

**Section 21. Applicable Law.** This Interlocal Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Indiana.

**Section 22. Remedies.** In addition to any remedies that may be available at law, temporary, preliminary and permanent injunctive relief may be granted to enforce any provision of this Interlocal Agreement in the event of an actual breach or violation, or a threatened breach or violation, of any restriction or covenant under this Interlocal Agreement.

**Section 23. Mutual Drafting.** Each party has cooperated in the drafting, negotiation, and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such language.

**Section 24. Conflicting Ordinances.** Except where otherwise stated, in the event there are any Ordinances or Resolutions of the City or the Town that conflict with this Interlocal Agreement, this Interlocal Agreement shall control to the fullest extent permitted by law.

**Section 25. Survival.** In addition to Section 2(U)b and except as otherwise specifically stated, Sections 3-25 of this Interlocal Agreement shall survive the termination of Section 2 of this Interlocal Agreement.

This Agreement, having been approved by the Common Council of the City of Fort Wayne, the Mayor of the City of Fort Wayne, and the Town Council for the Town of Huntertown shall constitute the entire Agreement between the parties, and there are no other terms, statements, obligations, representations, oral or otherwise, of any nature whatsoever.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

TOWN COUNCIL OF THE TOWN OF  
HUNTERTOWN, INDIANA

*Patricia Freck*

Patricia Freck, President

*Dave Garman*

Dave Garman, Council Member

*Gary Grant*

Gary Grant, Council Member

Brandon Seifert, Council Member

*Mike Stamets*

Mike Stamets, Council Member

Attest:

*Cathy Mittendorf*

Cathy Mittendorf, Clerk-Treasurer

**RECOMMENDED FOR APPROVAL BY THE  
CITY OF FORT WAYNE , INDIANA  
BOARD OF PUBLIC WORKS**

By         Absent          
Robert P. Kennedy, Chair

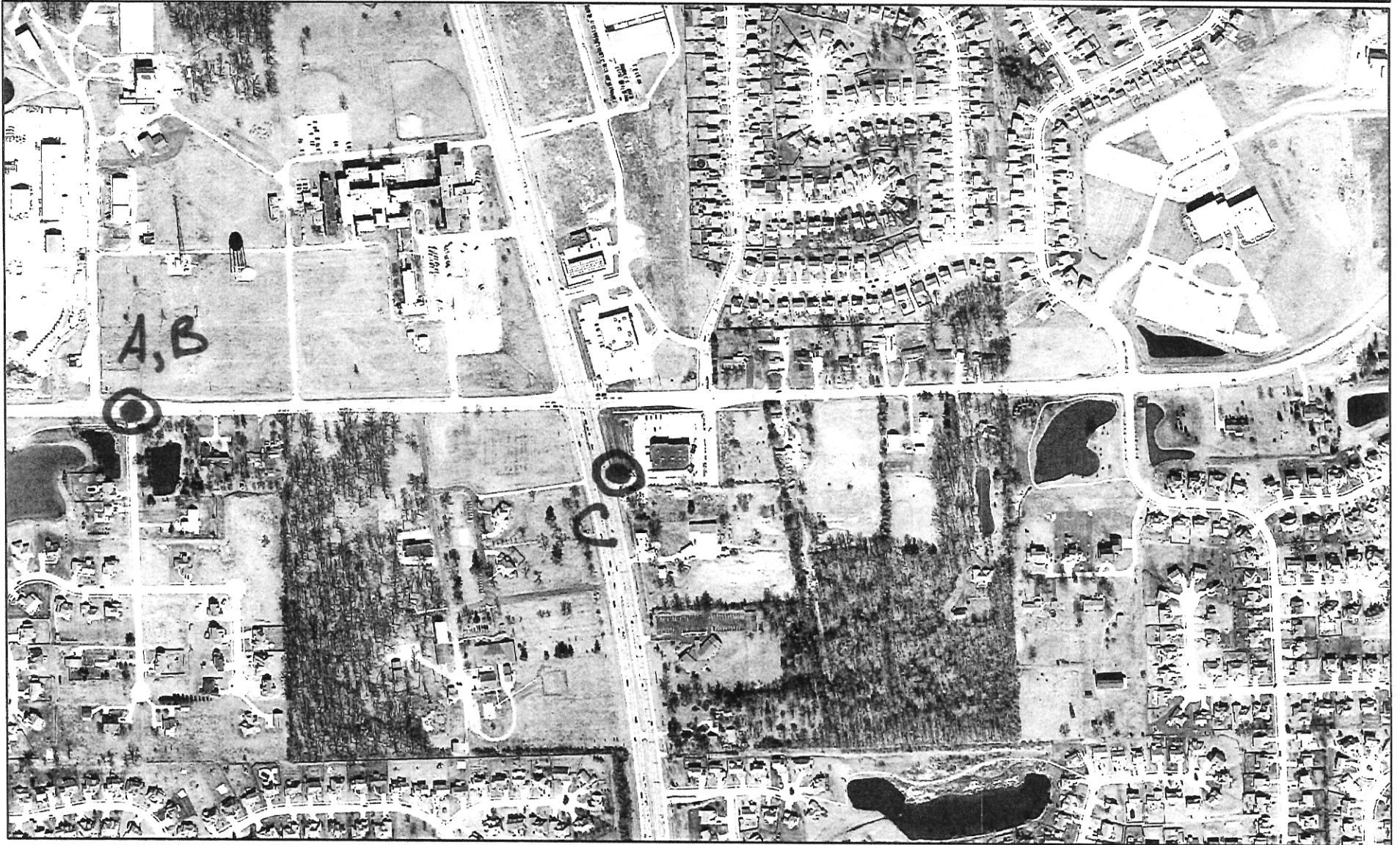
By         Mike Avila          
Mike Avila, Member

By         Kumar Menon          
Kumar Menon

ATTEST:         Lyndsey Richards          
Lyndsey Richards, Clerk



# Exhibit A: Tap in Points for Huntertown



Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen  
North American Datum 1983  
State Plane Coordinate System, Indiana East



Date: 8/12/2015 1" = 500'

# EXHIBIT B- REMAINING CAPACITY TOWN OF HUNTERTOWN

No.	Project Name	Initial Allocation	Date of Allocation
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**Running Total of Remaining  
ERUS (Starting Total = 904)**

**ACF Waiver Applied? - Number  
of Waivers in ERUs**





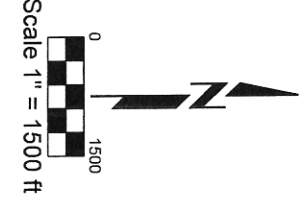
DATE	DESCRIPTION	DESIGN BY
08/14/2015	AS NOTED	CHECKED BY:
1404-03B	1 OF 1	

**Exhibit "D"**

Allan County Indiana

**DABEC**

D.A. Brown Engineering Consultants  
 5419 County Road 427, Suite C, Auburn, IN 46708  
 Phone: (260) 925 - 2020 Fax: (260) 925 - 1212  
 www.dabrownengineering.com





DATE	DESCRIPTION

DATE:	08/29/2015	DRAWN BY:	
SCALE:	AS NOTED	CHECKED BY:	
JOB NO.	1404-03B	SHEET NO.	1 OF 1

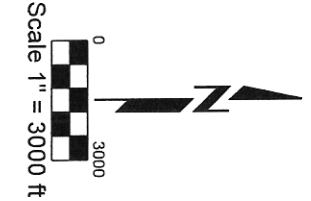
**Exhibit "E"**

Annexation Area

Allen County      Indiana

**DABEC**

D.A. Brown Engineering Consultants  
 5419 County Road 427, Suite C, Auburn, IN 46706  
 Phone: (260) 925 - 2020      Fax: (260) 925 - 1212  
[www.dabrownengineering.com](http://www.dabrownengineering.com)





**COMMON COUNCIL OF THE CITY OF  
FORT WAYNE, INDIANA**

  
\_\_\_\_\_  
Presiding Officer *Tom Spratt*

Attest:


*Marell D. Chace*  
\_\_\_\_\_  
City Clerk

**MAYOR OF THE CITY OF FORT WAYNE,  
INDIANA**

*Thomas P. Henry*  
\_\_\_\_\_  
Hon. Mayor Henry, City of Fort Wayne, Indiana

Attest:

*Marell D. Chace*  
\_\_\_\_\_  
City Clerk  
2850049\_4



Public Hearing Date, if applicable 11-24-15

Read the first time in full and on motion by Councilman Thomas Smith,  
Read the second time by title and referred to the City Utilities Committee  
Committee. Read the third time in full and on motion by Councilman  
Thomas Smith, placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>7</u>	<u>      </u>	<u>      </u>	<u>2</u>
BENDER	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
CRAWFORD	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
DIDIER	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
HARPER	<u>      </u>	<u>      </u>	<u>      </u>	<u>✓</u>
HINES	<u>      </u>	<u>      </u>	<u>      </u>	<u>✓</u>
JEHL	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
PADDOCK	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
SHOAFF	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
SMITH	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

DATED: 11-24-15 Michelle D. Chambers  
MICHELLE D. CHAMBERS, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as  
~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ ~~(SPECIAL)~~ ~~(ZONING)~~ ORDINANCE  
(RESOLUTION) NO. G-17-15 on the 24<sup>th</sup> day of  
November, 2015

Michelle D. Chambers ATTEST: John N. Crawford  
MICHELLE D. CHAMBERS, CITY CLERK      PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25<sup>th</sup> day  
of November, 2015, at the hour of 10:45 o'clock A.M. E.S.T.

Michelle D. Chambers  
MICHELLE D. CHAMBERS, CITY CLERK

Approved and signed by me this 25<sup>th</sup> day of NOVEMBER  
2015, at the hour of 11:00 O'clock AM E.S.T.

Thomas C. Henry  
THOMAS C. HENRY, MAYOR

**BILL NO. G-15-11-10**

**REPORT OF COMMITTEE ON CITY UTILITIES**

**NOVEMBER 24, 2015**

*Thomas Smith, Chair  
Martin Bender, Co-Chair  
All Council Members*

**AN ORDINANCE AMENDING CHAPTER 51 OF THE CITY OF FORT WAYNE CODE OF ORDINANCES PERTAINING TO THE RATES AND CHARGES THE CITY CHARGES THE TOWN OF HUNTERTOWN, INDIANA. COMMITTEE ON CITY UTILITIES HAVE HAD SAID**

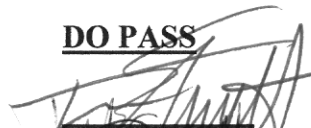


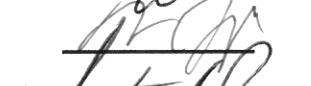
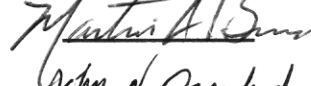
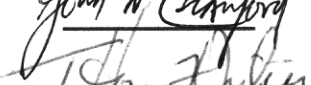
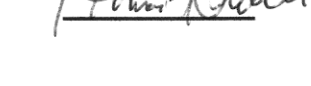
Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance


DO PASS

DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
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**MICHELLE D. CHAMBERS**  
**CITY CLERK** 

Gazette  
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was nearly triple what it was the year before.

Agencies have fewer resources, said Kelly McBride, the network's executive director - and victims are staying longer because

were men, and the rest were women.

The Domestic Violence Network is doing training in schools, businesses and community agencies about the signs of domestic vio-

the young people in the community to respect themselves," O'Connor said.

"When we respect ourselves better, we are all less vulnerable."

NOTICE OF PUBLIC HEARING CONCERNING PROPOSED CHANGES OR ADJUSTMENTS OF FEES CHARGED TO THE TOWN OF HUNTERTOWN BY THE CITY OF FORT WAYNE WATER POLLUTION CONTROL UTILITY ("SEWAGE WORKS")

NOTICE IS HEREBY GIVEN THAT THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, WILL CONDUCT A PUBLIC HEARING ON TUESDAY, NOVEMBER 24, 2015 AT 5:30 PM (LOCAL TIME) IN THE COMMON COUNCIL CONFERENCE ROOM, ROOM 30, CITIZENS SQUARE, 200 EAST BERRY STREET, FORT WAYNE, INDIANA, CONCERNING CHANGES OR READJUSTMENTS IN RATES AND FEES CHARGED TO THE TOWN OF HUNTERTOWN BY THE FORT WAYNE WATER POLLUTION CONTROL UTILITY ("SEWAGE WORKS") INTRODUCED AT THE NOVEMBER 10, 2015, MEETING OF THE COMMON COUNCIL. THE PROPOSED READJUSTMENT OF RATES AND FEES IS AS FOLLOWS:

51.077 Town of Huntertown	CONTRACT CUSTOMERS (ADD TO EXISTING)						
	4/28/13 - 6/30/13	7/1/13 - 12/31/14	2015	2016	2017	2018	2019
Treatment (per CCF)	\$1.9436	\$2.1187	\$1.7334	\$1.9036	\$2.0247	\$2.0441	\$2.1498
Conveyance & Collection (per CCF)	\$0.370	\$0.3698	\$0.2980	\$0.3050	\$0.3283	\$0.3238	\$0.3601
Total Metered Rate (per CCF)	\$2.3136	\$2.4885	\$2.0314	\$2.2086	\$2.3530	\$2.3679	\$2.5099
Monthly Service Charge	\$7.10	\$7.73	\$7,886.24	\$8,222.43	\$8,604.58	\$9,662.63	\$10,056.90

USERS OF THE SEWAGE WORKS, OWNERS OF PROPERTY SERVED OR TO BE SERVED BY THE SEWAGE WORKS, AND OTHER INTERESTED PERSONS ARE INVITED TO APPEAR AND BE HEARD CONCERNING THE PROPOSED FEES. THE HEARING MAY BE ADJOURNED FROM TIME TO TIME WITHOUT FURTHER PUBLISHED NOTICE. AFTER THE HEARING, THE COMMON COUNCIL MAY ADOPT THE SCHEDULE OF FEES, EITHER AS ORIGINALLY INTRODUCED OR AS MODIFIED. MORE INFORMATION IS AVAILABLE BY CALLING 311 OR AT CITYOFFORTWAYNE.ORG/UTILITIES/RATES-AND-CHARGES.

PER IC 36-9-23-26.1, OWNERS OF PROPERTY CONNECTED OR TO BE CONNECTED TO AND SERVED BY THE SEWAGE WORKS AUTHORIZED UNDER 36-9-23 MAY FILE A WRITTEN PETITION OBJECTING TO THE RATES AND CHARGES OF THE SEWAGE WORKS SO LONG AS:

- (1) THE PETITION CONTAINS THE NAMES AND ADDRESSES OF THE PETITIONERS;
- (2) THE PETITIONERS ATTENDED THE PUBLIC HEARING PROVIDED UNDER SECTION 36-9-23-26;
- (3) THE WRITTEN PETITION IS FILED WITH THE MUNICIPAL LEGISLATIVE BODY WITHIN FIVE (5) DAYS AFTER THE ORDINANCE ESTABLISHING THE RATES AND CHARGES IS ADOPTED UNDER 36-9-23-26;
- (4) THE WRITTEN PETITION STATES SPECIFICALLY THE GROUND OR GROUNDS OF OBJECTION; AND
- (5) THE PETITIONERS HAVE NOT FILED A PETITION WITH THE COMMISSION UNDER IC 8-1.5-3-8.3 APPEALING THE SAME RATES AND CHARGES OF THE UTILITY.

PER IC 8-1.5-3-8.1(c) THIS NOTICE INCLUDES THE FOLLOWING STATEMENT: FOLLOWING ADOPTION OF THE ORDINANCE, USERS OF THE SEWAGE WORKS FOR SERVICE TO PROPERTY LOCATED OUTSIDE THE CITY'S CORPORATE BOUNDARIES MAY BE ENTITLED TO PETITION THE INDIANA UTILITY REGULATORY COMMISSION UNDER IC 8-1.5-3-8.3 TO REVIEW AND ADDRESS THE RATES AND CHARGES IMPOSED ON THE USERS IF A PETITION UNDER IC 8-1.5-3-8.2 OR UNDER IC 36-9-23-26.1 WITH RESPECT TO THE SAME RATE ORDINANCE HAS NOT BEEN FILED. THIS NOTICE DOES INCLUDE THIS STATEMENT IN ORDER TO COMPLY WITH IC 8-1.5-3-8.1, BUT THIS NOTICE DOES NOT CREATE A CAUSE OF ACTION OR OTHERWISE ALTER THE INTERLOCAL SETTLEMENT AGREEMENT BETWEEN HUNTERTOWN AND FORT WAYNE.

"REASONABLE ACCOMMODATIONS" FOR PERSONS WITH A KNOWN DISABLING CONDITION WILL BE CONSIDERED IN ACCORDANCE WITH THE STATE AND FEDERAL LAW. ANY PERSON NEEDING A REASONABLE ACCOMMODATION SHOULD CONTACT THE FORT WAYNE 311 CALL CENTER BY DIALING 311 OR (260) 427-8311, AT LEAST SEVENTYTWO (72) HOURS PRIOR TO THE MEETING.

CITY CLERK  
CITY OF FORT WAYNE, INDIANA  
11-13

1214985 hspaxf

# DIABETES?

## Who Wants To Help You with Your Medications!!!

**SETTLEMENT AND INTERLOCAL COOPERATION AGREEMENT BETWEEN AND AMONG FORT WAYNE, INDIANA AND THE TOWN OF HUNTERTOWN, INDIANA CONCERNING WASTEWATER AND POTABLE WATER UTILITY SERVICE**

**WHEREAS**, the City of Fort Wayne (“City”) is a second class city established and operating pursuant to IC 36-4-1 *et seq.*; and

**WHEREAS**, the City owns and operates a municipal water utility and a municipal wastewater collection and treatment utility; and

**WHEREAS**, the Town of Huntertown, Indiana (“Town”), is a town established and operating pursuant to IC 36-3-1 *et seq.*; and

**WHEREAS**, the Town owns and operates a municipal water utility and a municipal wastewater collection utility, but does not currently own or operate a wastewater treatment plant; and

**WHEREAS**, in 1985, the Town and City entered into a “Water Pollution Control Treatment Agreement Between the City of Fort Wayne, Indiana and the Town of Huntertown Indiana,” which agreement was subsequently amended in 1998 and 2005 (collectively, the “Wholesale Sewage Agreement”); and

**WHEREAS**, pursuant to the Wholesale Sewage Agreement, from 1988 until 2013, the Town sent all of the sewage emanating from the Town’s wastewater collection system to the City, and the City accepted all of the sewage emanating from the Town’s wastewater collection system; and

**WHEREAS**, the Town desires to construct its own Wastewater Treatment Plant (“WWTP”); and

**WHEREAS**, in furtherance of its desire to construct its WWTP, on January 5, 2010, the Town gave the City notice of its intent to terminate the Wholesale Sewage Agreement effective April 27, 2013; and

**WHEREAS**, after termination of the Wholesale Sewage Agreement, the Town continued to send all of the sewage emanating from the Town’s wastewater collection system to the City, and a dispute arose between the City and the Town concerning the terms, conditions, rates, and charges under and pursuant to which the City would accept the sewage emanating from the Town’s wastewater collection system; and

**WHEREAS**, the Town subsequently adopted regulatory ordinances (as such term is defined in IC 8-1.5-6, *et seq.*) establishing certain exclusive water and sewer service territory, which the City disputed; and

**WHEREAS**, the City and Town subsequently became involved in and remain involved in the following legal causes: (1) Allen County Circuit Court Cause No. 02C01-1306-MI-1194 (which includes the consolidated case of Allen County Superior Court Cause No. 02D01-1305-MI-10288); (2) Indiana Utility Regulatory Commission (“IURC”) Cause No. 44519; (3) Indiana Court of Appeals Cause No. 93A02-1505-EX-444; and, (4) Office of Environmental Adjudication (“OEA”) Cause No. 15-W-J-4783; and

**WHEREAS**, the Town received a construction permit for its WWTP from the Indiana Department of Environmental Management (“IDEM”) (Approval L-0446) on August 19, 2014, and an NPDES permit from IDEM (Permit No. IN0064289) on February 19, 2015; and

**WHEREAS**, on May 20, 2015, the IURC issued an order in IURC Cause No. 44519 permitting the Town to modify its regulatory ordinances (as such term is defined in IC 8-1.5-6, *et seq.*) establishing exclusive water and sewer service territories for the Town (the “IURC Order”);

**WHEREAS**, after the IURC’s order, the Town adopted Ordinance No. 15-002, to amend Ordinance No. 13-004, (which was previously amended by Ordinance No. 13-008) which regulatory ordinances collectively establish an exclusive water service territory (the “Water Service Area”); and

**WHEREAS**, the Town adopted Ordinance No. 15-001, to amend Ordinance No. 13-006, which regulatory ordinances collectively establish an exclusive sewer service territory (the “Sewer Service Area”); and

**WHEREAS**, the IURC Order determined that the City’s retail outside-city rates and charges for sewage treatment to the Town were unjust and unreasonable and required the City to set wholesale sewer service rates and charges for the Town in accordance with the provisions of the IURC Order; and

**WHEREAS**, the City has appealed the IURC Order in Indiana Court of Appeals Cause No. 93A02-1505-EX-444; and

**WHEREAS**, the Town represents that it has received notice from the Indiana State Revolving Fund (“SRF”) that its WWTP project has been ranked for funding on the project priority list for 2015 and time is of the essence for the Town to seek to close on that loan as soon as possible; and

**WHEREAS**, the parties acknowledge that the pending legal causes are an impediment to the Town securing funding for the WWTP through the SRF, and to the City from providing water and sewer service to certain customers and areas; and

**WHEREAS**, the Town and the City both stipulate and agree that the terms and conditions of this Interlocal Agreement, including the dismissal of all pending litigation so that the Town can have a period of time to pursue construction of its WWTP which is one of the purposes the Town is entering this Interlocal Agreement, are in the best interests of the City and the Town; and

**WHEREAS**, both parties recognize that the Town will need interim wastewater treatment service from the City; and

**WHEREAS**, both parties desire to give the Town a period of time, as defined in this Interlocal Agreement, to complete financing, permitting, and construction of its own WWTP; and

**WHEREAS**, the Town and City now desire to resolve the disputes between them, to resolve the above referenced legal causes, provide the Town with a period of time within which

it can seek to complete its WWTP, and to provide the terms and conditions for interim service between the City and the Town.

**NOW THEREFORE**, in consideration of the mutual terms, covenants and conditions set forth herein, the aforementioned parties hereby jointly agree as follows:

**Section 1. Purpose.** The purpose of this Settlement and Interlocal Cooperation Agreement (the “Interlocal Agreement”) is to: (1) resolve the disputes between the parties in the above-referenced legal causes which would allow the Town to seek to close on the SRF loan as soon as possible; (2) establish the terms and conditions under which the City provides interim wastewater collection and treatment services to the Town; and (3) modify the Town’s Sewer and Water Service areas so as to permit the City to provide water and sewer service to customers who were previously within the Town’s Water and Sewer Service Areas.

**Section 2. Wholesale Sewage Rates and Charges.** Pursuant and subject to the terms of this Interlocal Agreement, the City shall, for the term of this Section 2 of the Interlocal Agreement, be the sole provider of treatment services for any and all of the sewage emanating from the Town’s wastewater collection utility subject to the following terms and conditions:

(A) **Definitions.** The following words and phrases in this Section 2 of this Interlocal Agreement shall have the following meaning:

- a. **“Connection Point.”** A structure which provides for the conveyance of the Town’s sewage to the City for further transportation and treatment. The facilities comprising the Connection Points are generally described as a Town-owned sewer force main pipe discharging through a Town-owned structure, manhole, junction box, etc., into a City-owned sewer structure, manhole, junction box, etc.
- b. **“Monitoring.”** The analysis of sewage without taking a portion of the sewage. Examples include but are not limited to pH, conductivity, temperature, and flow rates.
- c. **“Prohibited Discharge.”** Waste or a pollutant which is prohibited to be discharged into the Water Pollution Control Utility under the Ordinances, Rules and Regulations of the City of Fort Wayne Sewer Utility, state or federal laws, or rules of any regulatory agency having jurisdiction.
- d. **“Sampling.”** The taking of an actual portion of the sewage for analysis. Examples include but are not limited to BOD, COD, metals, and total suspended solids.
- e. **“Sewage.”** The water-carried wastes from residences, businesses, buildings, institutions, and industrial establishments, singularly or in any combination.
- f. **“Sewage System.”** The network of sewers and appurtenances used for the possible collecting, transporting, or pumping of sewage to the Connection Point or to the Water Pollution Control Plant.

- g. **“User.”** Any domestic or non-domestic discharger of sewage which introduces pollutants into the Water Pollution Control Utility.
- h. **“Water Pollution Control Plant.”** The arrangement of devices, structures, and equipment used for treating and disposing of sewage and sludge.
- i. **“Water Pollution Control Utility.”** All facilities and systems, collectively, for collecting, transporting, pumping, treating, or disposing of sewage and sludge, including the Water Pollution Control Plant and sewage system.

(B) Effective April 28, 2013: The Town expressly consents to treatment as a wholesale contract customer of Fort Wayne subject to the then-applicable wholesale contract rates dating back to April 28, 2013, and subject to the terms and conditions of this Interlocal Agreement.

(C) Connection of Sewer Facilities:

- a. **Connection Points:** The locations of the current three Connection Points are generally identified as “Tap in Point A”; “Tap in Point B”; and “Tap in Point C” on the attached Exhibit A, hereby incorporated by reference.
- b. **Maintenance of Connection Points:** Each party shall be responsible for the maintenance and operation of its own sewage system and its portion of the Connection Points. The Town owns the force main piping on the Town’s side of the meter, the meter, and the force main piping that extends from the meter to the manhole where the Town’s sewage is ultimately discharged in to the City’s system at each of the Connection Points. The City may inspect the Town’s portion of the Connection Points at any time. If City inspection finds that The Town’s portion of the Connection Points are not being properly maintained or operated, the City may notify the Town in writing in accordance with Section 2(U) of this Interlocal Agreement. Upon its receipt of a written notification from the City, the Town shall, within ten (10) days, provide City with a written plan to complete all reasonably necessary maintenance, repairs or modifications. In the event Town fails to timely provide such a written plan or to promptly implement the actions described in the written plan to City’s reasonable satisfaction (which satisfaction shall not be unreasonably withheld), the City may complete the maintenance and the Town shall, within thirty (30) days, reimburse the City for all maintenance costs incurred by the City.

(D) Conveyance and Treatment of Sewage.

- a. **Responsibility for Conveyance:** The Town shall be solely responsible for delivery of the sewage to its Connection Points in a form compliant with Section 2(H) of this Interlocal Agreement. Thereafter, the City shall be responsible for conveyance of the sewage through its sewage system to its Water Pollution Control Plant.

- b. Responsibility for Treatment:** The City shall be solely responsible for the proper treatment at the City's Water Pollution Control Plant of the sewage received from the Town in accordance with the laws, regulations, requirements, and standards of IDEM, the Indiana State Board of Health, and the United States Environmental Protection Agency ("EPA"), currently in effect and as may be amended from time to time. If, during any billing period, the Town delivers to the City sewage which does not comply with Section 2(H) of this Interlocal Agreement, then the Town shall be responsible for the fees and charges for such non-compliant material and shall indemnify the City pursuant to Section 2(U) of this Interlocal Agreement.

(E) Metering:

- a. Fort Wayne to Read Meters:** The City shall continue to be responsible for reading the meters that it relies on for billing the Town. The City will calculate the Town's monthly sewer bill based on monthly meter readings of the meters at the Connection Points.
- b. Telemetry Equipment:** The City shall provide and bear the cost of providing and maintaining all telemetry for transferring volume and peak flow data from the Town's meter to the City's telemetry system and website. Access to the Town's flow data on the website shall also be provided to the Town. The Town does not have its own electronic data on its collection system.
- c. Bypass Valves:** The City shall have reasonable access at all times to any and all bypass valves.
- d. Access to Metering Equipment:** The City shall have complete and free access to the metering equipment for inspection, testing and approval at all reasonable times. The Town shall provide reasonable access to the metering equipment.
- e. Meter Testing:** Sewer metering equipment and remote readouts shall be annually tested, calibrated, maintained, and repaired by the Town at the Town's cost and expense. The Town shall provide the City with all information concerning the testing, calibration, maintenance and repair of the facilities. In addition, the City may annually test the sewer metering equipment while remaining in place at the Town's facilities. The City may require the Town to conduct additional calibration in the event that the meter does not test accurately.

- (F) Monthly Flow and Service Rates: For the initial term of the Agreement, as defined in Section 2(S) of this Interlocal Agreement, the monthly rates and charges the City shall charge the Town shall be as provided in the following chart. In addition to the rates and charges identified in the following chart, other rates and charges may apply as identified in this Interlocal Agreement including, but not limited to, Sections 2(L), 2(M), and 2(N) of this Interlocal Agreement.

	4/28/13 – 6/30/13	7/1/13 – 12/31/14	2015	2016	2017	2018	2019
Treatment (per CCF)	\$1.9436	\$2.1187	\$1.7334	\$1.9036	\$2.0247	\$2.0441	\$2.1498
Conveyance & Collection (per CCF)	\$0.370	\$0.3698	\$0.2980	\$0.3050	\$0.3283	\$0.3238	\$0.3601
Total Metered Rate (per CCF)	\$2.3136	\$2.4885	\$2.0314	\$2.2086	\$2.3530	\$2.3679	\$2.5099
Monthly Service Charge	\$7.10	\$7.73	\$7,886.24	\$8,222.43	\$8,604.58	\$9,662.63	\$10,056.90

**(G) Pre-January Agreement Charges:** The City acknowledges payment of all fees and charges from the Town from April 28, 2013 to the date of this Interlocal Agreement, and shall waive any claim to additional collection from April 28, 2013 to the date of this Interlocal Agreement. Nothing in this Section 2(G) shall be interpreted as waiving any charges after the date of this Interlocal Agreement.

**(H) Quality:**

**a. Excess Strength:** In the event the Town conveys sewage which has a strength in excess of domestic waste, as defined in the City of Fort Wayne’s Code of Ordinances (“City’s Ordinances”), the sewage will be accepted and treated subject to the City’s Ordinances and a surcharge will be applied accordingly.

**b. Prohibited Discharges:**

**i.** The Town shall not convey prohibited discharges to the City.

**ii.** Upon discovery that a prohibited discharge is being conveyed by the Town’s sewage system to the City’s Water Pollution Control Utility:

**1.** The Town shall immediately cease delivery of the prohibited discharge upon oral notification, and provide confirmation thereof in writing, within twenty-four (24) hours.

**2.** If the Town shall fail to cease said conveyance immediately, the City may, at its option, without liability and at the Town’s cost;

**a.** Cut off the particular user (if such user is ascertainable) who is found to be delivering prohibited discharges to the Town’s sewage system;

- b. If the particular user is not reasonably ascertainable or able to be cut off, the Town shall be solely responsible for using its best efforts to identify the particular user and otherwise remedying the situation.
- c. The Town shall bear all liabilities and costs which the City or the Town may incur or be liable for, caused either by the further conveyance and/or treatment of said prohibited discharge and the City's exercise of its rights to take action to remedy the situation.

(I) Sampling and Monitoring Quality:

- a. **Sampling Facilities:** The Town shall have proper and adequate facilities for the purpose of sampling and monitoring by the City of the sewage conveyed to the Connection Points. The City shall be able to access all three Connection Points for purposes of sampling and monitoring at any time, and the Town shall provide any necessary keys to the City so that the City may access such Connection Points. The City shall have the right, at its cost and expense, to install facilities including, but not limited to, an electronic data system which monitors the sewage conveyed to the City for treatment as well as physical locations where sewage may be sampled and monitored. The Town shall provide facilities at the Town's Equalization Basin including a source of electrical power, shelter, and security, and provide the City with reasonable access to said facilities for the City to install such equipment. The sampling and monitoring facilities shall be approved by the City prior to any modification.
- b. **Access:** The City shall have full and complete access to the Town's sampling and monitoring facilities at all times. The Town shall be required to maintain access to physical facilities, including snow removal. The Town does not have the technology, equipment, and/or hardware for remote read only access. The City may add, alter, or modify its final read out equipment at the City's cost and may maintain the added, altered or modified equipment with a lock, which key will be held by the City.
- c. **Cost:** The cost of planning, designing, installing, daily operation, and replacement, as necessary, of sampling and monitoring devices, including the acquisition of real estate, shall be the responsibility of the Town.
- d. **Testing, Calibration, Maintenance and Repair:** The City may test, calibrate, maintain, and repair as necessary sampling and monitoring devices, the costs of which shall be paid by Town in accordance with the City's Rate and Use Ordinances.
- e. **Samples and Testing Data:** Material samples as received from the sampling devices shall be available to both parties to this Interlocal Agreement. In the event the City provides testing for samples, the cost of such testing shall be

paid by the Town in accordance with the schedule of flat rate charges set forth in the City's Code of Ordinances. The Town may request sampling and analysis in addition to City's regular sampling as provided hereunder. The City shall conduct any such additional sampling and the Town shall pay for the costs associated with any such additional services. Sampling and testing shall follow approved protocol and procedures in accordance with EPA criteria. The Town may request split samples, and in the event of a disparity in results of whether a compliance violation has occurred, the Town shall have the right to a re-test of samples.

- f. **Town Sampling Adjustments:** In the event the Town requests sampling and/or analysis as provided in Section 2(I)e. of this Interlocal Agreement, the additional sampling and/or analysis will apply to the billing cycle in which the Town requested the sampling and/or analysis.

(J) Inspection and Enforcement:

- a. **Industrial Waste Survey List:** The Town shall maintain a current Industrial Waste Survey list in accordance with the following:

- i. The Industrial Waste Survey list shall include the facility name and address of all commercial and industrial users in the Town's Service Area, the nature of each user's business and the name and contact information of a responsible person to be contacted at each user.
- ii. An updated list shall be provided to the City within thirty (30) days of the execution of this Interlocal Agreement.
- iii. Updated lists shall be provided to the City annually by January 15 of each year.

- b. **Industrial Customer:** The Town affirms that it does not currently have any industrial customers. In the event that the Town adds an industrial customer, the Town shall maintain an Industrial Waste Survey List and will provide the City the same by January 30 of each year. The town further hereby authorizes the City, and the City hereby agrees to:

- i. Apply the City's pretreatment limits to users of the Town's sewage system.
- ii. Establish industrial wastewater permits required under the City's Industrial Pretreatment and Sewer Ordinances to dischargers into the Town's system.
- iii. Require and receive all industrial pretreatment reports required by 40 CFR 403 and the City's Industrial Pretreatment and Sewer Ordinance. Reports will be maintained by the City's Industrial Pretreatment department.

- iv. Inspect all facilities of permitted industries discharging into the Town's sewage system.
- v. Collect and analyze samples of waste sewage from permitted industries discharging into the Town's sewage system.
- vi. Carry out all inspections, surveillance and monitoring procedures necessary to determine, independent of information supplied by permitted dischargers to the Town's system, their compliance statuses pertaining to pretreatment limits, reporting requirements, and the industry's wastewater permit.
- vii. Enter the premises of any permitted industrial facility or industrial user which has a discharge source or pretreatment system, in order to inspect same or view records, relevant to the user's operation, treatment, monitoring, or discharge.
- viii. Immediately and effectively make all reasonable attempts to prevent any discharge of pollutants into the Town's sewage system which would present an imminent endangerment to the health or welfare of the public, the environment or which threatens the operation of the Town's sewage system or the City's Water Pollution Control Utility.
- ix. Undertake a full range of enforcement when pretreatment violations occur, as provided in the City Ordinances and the Rules and Regulations of the City Sewer Utility, and as set out in the City's Enforcement Response Guide.
- x. Charge fees consistent with those assessed against industrial and commercial users discharging directly to the City for sampling.
- xi. Undertake any other action necessary to ensure compliance with 40 CFR 403 or with the City's National Pollutant Discharge Elimination System permit.

**c. City Board of Public Works As Agent:** The Town hereby appoints City Board of Public Works as its agent with full authority and license to enforce through the City's Attorney, the provisions of the City Ordinances and Rules and Regulations and all applicable State and Federal regulations upon industrial customers of the Town which have a pretreatment program at Town's reasonable expense.

**(K) Compliance with all Applicable Laws:** The Town shall comply with all relevant and lawful federal, state, and local laws, regulations, and codes pertaining to sewage collection, conveyance, and treatment services (including, but not limited to, City municipal codes and regulations which are not inconsistent with this Interlocal Agreement).

(L) Volumetric Limit and Exceedance: In the event that sewage flows exceed 650,000 gpd for any 90 consecutive day period, the Town shall pay a capital surcharge rate to the flows billed during the exceedance period (“Capital Surcharge Rate”). The Capital Surcharge Rate will be calculated based upon the Town’s proportionate share (using the same methodology used in the City’s cost of service study that was submitted to the IURC in Cause No. 44519 as Fort Wayne’s Exhibit 11 (“Summary Cost of Service Study”)) of current “Common to All Conveyance Debt Service” costs divided by consumption of flow of the Town.

(M) Volumetric Maximum: The Town’s flow volume shall not exceed 975,000 gpd for any 90 consecutive day period. If it does, the City shall be entitled to charge the Town \$5.5226 per ccf for each ccf (or portion thereof) over the 975,000 gpd from the date of this Agreement until December 31, 2015. After that date, the \$5.5226 per ccf shall be adjusted annually in direct proportion to the Town’s wholesale rate increase as provided in Section 2(F) of this Interlocal Agreement.

(N) Peak Flow: The Town shall have a maximum peak flow rate of 1500 gpm. If the average peak flow exceeds 1550 gpm as averaged over a fifteen (15) minute period for all points of connection combined, then a peak flow charge shall be assessed (a “Peak Flow Charge”). The Peak Flow Charge shall be calculated based upon updating the capacity allocation for conveyance at the new peak flow rate (*i.e.*, the rate observed during the exceedance) and then new conveyance rates will be calculated using the same methodology as the Summary Cost of Service Study and then multiplied by either (1) a factor of 5 for peak flow exceedances of 0-10% and/or (2) a factor of 10 for peak flow exceedances over 10%. The recalculated conveyance rate and conveyance base charge will be charged for the next twelve (12) months, unless the new peak flow rate is exceeded, in which case the process described in this Section 2(N) of this Interlocal Agreement herein for an exceedance shall be calculated for the new exceedance. After twelve (12) months, the conveyance rate and conveyance base charge will return to the original Summary Cost of Service Study established level if another peak flow exceedance has not occurred.

(O) Default:

a. **Event of Default**: For the purposes of this Section 2 of this Interlocal Agreement, the term “Event of Default” shall mean the failure to observe or comply with a provision or covenant in this Section 2 of this Interlocal Agreement, and such default is not cured to the reasonable satisfaction of the non-defaulting party within fifteen (15) days of the date Notice of such default is given, which Notice shall specify with reasonable particularity the basis for the default claimed.

b. **Notice**: If either party discovers a violation of Section 2(E) Metering or Section 2(I) Sampling and Monitoring, then the non-defaulting party shall notify (in accordance with Section 2(U)) the defaulting party of the violation. The defaulting party shall have thirty (30) days to cure the violation or to notify the non-defaulting party of its plan to cure the violation. Failure to

cure or submit a plan to cure shall be considered a minor breach and the non-defaulting party shall have the right to cure the violation itself and the defaulting party shall be responsible for the costs to cure.

- c. **No Termination without Disconnection:** Consistent with Section 2(Q) below, the Town shall not terminate this Section 2 of this Interlocal Agreement without also disconnecting from the City's system. In the event the Town provides notice of termination but does not disconnect, then this Section 2 of this Interlocal Agreement shall not be terminated until the Town provides another sixty (60) day notice and disconnects and/or the Term expires under Section 2(R).

**(P) Compliance with Rules, Regulations, Standards and Laws:**

- a. **Compliance with Law:** Each of the parties to this Interlocal Agreement shall comply with all local, state, and federal regulations, standards, and laws of general applicability currently in effect and as lawfully amended, adopted, or enacted regarding the collection and treatment of sewage, the operation of their respective systems, and any additional services provided according to the terms and provisions of this Interlocal Agreement.
- b. **Town Ordinances:** The Town shall adopt and enforce ordinances providing for rates, rules, and regulations, and use of its sewage system which are in conformity with the reasonable requirements lawfully adopted and enforced by the City for the purpose of permitting the City on continuing basis, to be awarded grants and loans from the State of Indiana and from the EPA and other agencies which may now or in the future have such opportunities offered.

**(Q) Termination:** The Town shall have the right to terminate this Section 2 of this Interlocal Agreement provided that it (1) first gives the City sixty-day's (60) written notice of its intent to terminate; and (2) immediately upon the effective date of the termination disconnects from the City's system.

**(R) Term:** The rates in Section 2(F) of this Interlocal Agreement under the terms and conditions of this Section 2 of this Interlocal Agreement shall remain in effect until: (1) January 1, 2020; (2) termination of this Section 2 as provided in Section 2(Q) above; or (3) as provided in Section 2(S) below.

**(S) Renewal of Interlocal Agreement:** If, on January 1, 2020, the Town has not disconnected its wastewater utility from the City, this Section 2 of the Interlocal Agreement shall renew under one of the following scenarios:

- a. **Interim Renewal - Substantial Commencement:** Assuming that the Town has achieved substantial commencement of its WWTP on or before July 1, 2019, and the Town is not disconnected by December 31, 2019, Section 2 of this Interlocal Agreement shall renew for up to an additional two (2) year term and the applicable monthly rates shall be as established by ordinance, not to

exceed a 4% annual increase for each year of the renewal term over the monthly rates for 2019. For the purposes of this Section 2(S)a., substantial commencement in the initial five (5) year term shall be defined as acceptance of bids and commencement of construction of the wastewater treatment plant. If the Town has not achieved substantial commencement by July 1, 2019, and the Town is not disconnected by December 31, 2019, then the WWTP shall be deemed “not substantially commenced” and the parties shall follow subdivision 2(S)b. below.

- b. No Substantial Commencement:** In the event the Town has not achieved substantial commencement under Section 2(S)a. for reasons that are not caused by the City’s actions or inactions, and the Town has not otherwise disconnected from the City by December 31, 2021, the Town shall have the option to: (1) enter a Water Pollution Control Agreement for a twenty (20) year term; (2) remain connected to the City’s system under the then-applicable rate for Outside-city Governmental Users; or (3) disconnect from the City’s system.

**(T) Capacity:** During the term of this Interlocal Agreement, the parties agree that the Town shall have available to it 1150 ERUs of capacity on the City’s system. These 1150 ERUs shall be divided as follows:

- a. Preapproved Capacity:** Of the 1150 ERUs of available capacity to the Town, 240 of those ERUs have been preapproved by the City and shall be considered “Preapproved Capacity”.
- b. Reallocation of Capacity:** The Town may utilize any unused Preapproved Capacity that is available to serve new developments. No area connection fees apply to the use of the 240 ERUs of Preapproved Capacity.
- c. Additional Capacity:** In addition to the 240 ERUs of Preapproved Capacity, the City also agrees to give the Town an additional 910 ERUs of capacity (each an “Additional Capacity”) for use in the Town’s system.
- d. Area Connection Fees and Capital Surcharges:** The City shall waive the area connection fee (currently \$2,000 per ERU for the Upper Ely Interceptor) but not the capital surcharge (currently \$20/month/ERU) for the Preapproved Capacity (i.e. up to \$480,000 of area connection fees may be waived) certified after the execution of this Interlocal Agreement (each an “ACF Waiver”). The Parties shall track these available 240 ERUs of ACF Waivers using the spreadsheet that is attached hereto as Exhibit B. The Town is solely responsible for determining what allocations receive any ACF Waiver(s). Each of the 910 ERUs of additional capacity shall be subject to the City’s then applicable area connection fee (currently \$2,000/ERU) and capital surcharge (currently \$20/month/ERU). The then applicable area connection fee shall be collected as an upfront cost paid by the Town (or its designee) to the City prior to the City certifying the capacity to IDEM. In the event of a direct-connect where a capacity certification is not applicable, the Town shall notify the City prior to the connection and pay any applicable upfront ACF at time of

notification. The Town shall ensure that the applicable monthly capital surcharge is paid as part of the City's regular invoices.

(U) Miscellaneous:

**a. Notices and Invoice:**

- i. Any notices required under this Section 2 of this Interlocal Agreement shall be served by certified mailing, return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party.
- ii. Invoicing by the City under this Section 2 of this Interlocal Agreement shall be served by first class mail addressed to the Town at the last address filed by the Town.
- iii. At the execution date of this Interlocal Agreement, the City's address is:

Fort Wayne City Utilities, Attention of the Director  
200 E. Berry Street  
Fort Wayne, Indiana 46802

- iv. At the execution date of this Interlocal Agreement, the Town's address is:

Town of Huntertown, Indiana  
15617 Lima Road  
PO Box 95  
Huntertown, Indiana 46748

- b. Survival:** The obligations set forth in the following sections of this Interlocal Agreement shall survive termination of this Section 2 of this Interlocal Agreement:

- i. Section 2(D)b. shall survive until City no longer provides treatment services to the Town.
- ii. Section 2(U)c., shall survive termination of Section 2 of this Interlocal Agreement.

**c. Indemnities:**

- i. **Environmental - Town:** The Town shall comply with all applicable laws, regulations, orders, and requirements of all governmental entities having jurisdiction over its sewage system, whether federal, state, or local. The Town agrees to defend, indemnify and hold the City (and its officers, directors, employees, contractors, representatives and duly authorized agents) harmless from any cost, damage (including indirect, special and consequential damage), award, action, or liability, including but not

limited to the recovery of reasonable attorney fees and costs, arising out of the Town's violation of law.

- ii. **Environmental - City:** The City shall comply with all applicable laws, regulations, orders, and requirements of all governmental entities having jurisdiction over its sewage system, whether federal, state, or local. The City agrees to defend, indemnify and hold the Town (and its officers, directors, employees, contractors, representatives and duly authorized agents) harmless from any cost, damage (including indirect, special and consequential damage), award, action, or liability, including but not limited to the recovery of reasonable attorney fees and costs, arising out of the City's violation of law.
- iii. **Personal Injury, Death, and Property Damage - Town:** The Town agrees to defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages (including, damages for personal injury, death or property damage), liabilities, costs and expenses (including reasonable attorney's fees), judgments, settlements, and penalties arising out of the Town's negligent, intentional, or willful non-performance under this Section 2 of this Interlocal Agreement and/or arising out of the Town's negligent, intentional, or willful failure to maintain or operate its sewage system.
- iv. **Personal Injury, Death, and Property Damage - City:** The City agrees to defend, indemnify, and hold harmless the Town (including its officers, employees, and agents) from all demands, damages (including, damages for personal injury, death or property damage), liabilities, costs and expenses (including reasonable attorney's fees), judgments, settlements, and penalties arising out of the City's negligent, intentional, or willful non-performance under this Section 2 of this Interlocal Agreement and/or arising out of the City's negligent, intentional, or willful failure to maintain or operate its sewage system.

**Section 3.** Non-Enforcement. The Town hereby waives any and all fees it may have been due under Ordinance 15-001 or Ordinance 15-002 (including any enforcement provisions in the precursor Ordinances 13-004, 13-008, and 13-006), including, but not limited to, the \$2,000 per day penalty for providing utility service inside the Town's territory. The Town also hereby waives any and all fees, charges, or claims it may have had against the City, including, but not limited to, City Utilities, which predate(s) the date of this Interlocal Agreement.

**Section 4.** Intermediate Service Areas. The City shall be permitted to serve water and sewer service in the area identified as "Fort Wayne's Permitted Area" on Exhibit C and Exhibit D hereto without any oversight of the Town. Within one (1) business day after execution of this Interlocal Agreement by the Town Council for the Town, the Town shall provide the City with a letter, signed by the Town Council President certifying that the City has the rights provided for in this Section 4. This Section 4 of this Interlocal Agreement shall not terminate, expire, or otherwise lapse except as expressly provided in Section 12 of this Interlocal Agreement.

**Section 5. Permanent Service Areas.** The Town and the City agree that the Town's water and sewer service areas as set forth in Ordinances 15-001 and Ordinance 15-002 (including the precursor Ordinances 13-004, 13-008, and 13-006) and otherwise previously authorized by the IURC shall be modified consistent with this Section 5 of the Interlocal Agreement.

- (A) Modified Regulatory Ordinances:** If the IURC approves the Joint Stipulation and Settlement Agreement as discussed in Section 7 of this Interlocal Agreement, then within seven (7) days of the IURC's approval, the Town shall adopt modified regulatory ordinances modifying its exclusive water and sewer service territory consistent with the diagrams attached hereto as Exhibit C and Exhibit D, which ordinances shall be effective upon approval by the IURC as set forth herein. At least two (2) days prior to adoption, the Town shall share the draft Ordinances with the City for the City's comment on the same.
- (B) Allen County Fair Grounds:** The City will coordinate with the Town for the transfer of sanitary sewer service at the Allen County Fairgrounds, Inc. owned site located at the Allen County Fairgrounds to the Town. The City recognizes that no area connection fee or capital surcharge will be assessed regarding this transfer. No Reallocated Capacity or Additional Capacity will be required for this transfer. In the event that the Town does not seek transfer of this area before expiration or termination of Section 2 of this Interlocal Agreement, then the Town shall waive its right to so seek such transfer.
- (C) Irene Byron Campus:** The City will coordinate with the Town for the transfer of sanitary sewer service of the Allen County Commissioners' owned site located at the Allen County's Irene Byron Campus (limited to the campus areas north of Carroll Road) to the Town. The City recognizes that no area connection fee or capital surcharge will be assessed regarding this transfer. No Reallocated Capacity or Additional Capacity will be required for this transfer. In the event that the Town does not seek transfer of this area before expiration or termination of Section 2 of this Interlocal Agreement, then the Town shall waive its right to so seek such transfer.
- (D) Annexation Waiver:** From the date of this Agreement until December 31, 2019, the City agrees not to annex territory within the boundaries identified in the attached Exhibit E. The City further agrees that it will not remonstrate or otherwise object to the Town's annexation within the boundaries identified in the attached Exhibit E.
- (E) Utility Service Consent Area, Town and City:** From the date of this Agreement to and including December 31, 2022, unless otherwise agreed to by the Town in a writing signed by the Town Council President, the City shall not provide water and/or sewer service in the area identified as the "Utility Service Consent Area, Town and City" on the attached Exhibit F.

**Section 6.** Settlement of Remaining Lawsuits. After execution of this agreement, but prior to petitioning the IURC for approval of the Joint Stipulation and Settlement Agreement as discussed in Section 7 of this Interlocal Agreement the following events shall occur:

- (A) **Twin Eagles/Timber Ridge Annexation:** Twin Eagles Development II, LLC and Timber Ridge Group, LLC shall agree to dismiss, with prejudice, Cause No. 02D09-1409-PL-341 in the Allen Superior Court; and
- (B) **Court of Appeals Case:** The City, Huntertown, and Twin Eagles Development II, LLC, shall request that the Court of Appeals remand the pending appeal in the Indiana Court of Appeals, Cause No. 93A02-1505-EX-444; and
- (C) **Allen Circuit Court Case(s):** The City, Town, Twin Eagles Development II, LLC, Timber Ridge Group, LLC, and IRM Partnership, LLC, shall dismiss, with prejudice, Cause No. 02C01-1306-MI-1194 (including all claims in the consolidated cause docketed as Cause No 012D01-1036-MI-10288) in the Allen Circuit Court.

**Section 7.** IURC Joint Stipulation and Settlement Agreement. The parties agree that Sections 2-5 of this Interlocal Agreement shall be memorialized in a joint stipulation and settlement agreement (“Joint Stipulation and Settlement Agreement”). The Town and the City shall jointly petition the IURC to adopt the Joint Stipulation and Settlement Agreement as a final order. The Town and the City shall also seek the joinder of the OUCC, Allen County Regional Water and Sewer District, and/or Twin Eagles Development II, LLC in that joint petition and in executing the Joint Stipulation and Settlement Agreement.

**Section 8.** OEA Dismissal. Within one (1) business day of execution of this Interlocal Agreement by the Town Council for the Town, the City shall dismiss, with prejudice, the petition for administrative review and stay filed by the City currently pending in the OEA Cause No. 15-W-J-4783. Additionally, it is a condition subsequent to this Interlocal Agreement that within one (1) business day of execution of this Interlocal Agreement by the Town Council for the Town, (i) the City shall instruct Thomas “Ted” Nitza, Jr. and The Secant Group, LLC, that they shall not provide any assistance to any individual or entity in OEA Cause No. 15-W-J-4783, or in any legal cause or legislative challenge to the Town’s 1.5 MGD WWTP as it is currently permitted except in connection with an action by the City consistent with this Interlocal Agreement for the duration of Section 2 of this Interlocal Agreement or until the Town has completed phase 1 (i.e., completion of 1.5 MGD facility) of its WWTP, whichever is first; and (ii) Mr. Nitza and the Secant Group, LLC shall agree that they will not provide any such assistance. In exchange, the Town, its agents, employees, and consultants shall agree not to bring any legal proceedings, claims, or causes of action of any kind against Thomas “Ted” Nitza, Jr. and/or The Secant Group, LLC, unless the Town can first prove that Mr. Nitza has not complied with the instructions in this Section 8.

**Section 9.** No Further Prosecution of OEA Cause No. 15-W-J-4783.

- (A) **No Further Prosecution:** As long as the Town adopts its amended ordinances consistent with Section 5 of the Interlocal Agreement, then the

City shall not further prosecute and/or renew the claims or actions asserted in its Petition for Administrative Review and Stay of Effectiveness and/or its Amended Petition for Administrative Review and Stay of Effectiveness in OEA Cause No. 15-W-J-4783, for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). Further, the City, its agents, employees, experts, and consultants shall not provide any technical, financial, or other similar support to any party other than the City concerning any such party's claims or actions in OEA Cause No. 15-W-J-4783, for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). The City, its agents, employees, experts, and consultants shall not raise any legal challenge, opposition, or objection in any administrative, judicial, or legislative proceeding to the construction of the Town's WWTP as it is permitted at the time of this Interlocal Agreement.

**(B) Conflict of Interest:** Because this Interlocal Agreement is in the best interests of both the City and the Town, the City agrees that future engagements by the counsel, experts, employees, consultants, witnesses, and agents for the City directed at any action which, if taken by the City would violate this Section 9 of the Interlocal Agreement would be materially adverse to the City and substantially related to the subject matter of the dispute that this Interlocal Agreement resolves, and, hence, a conflict of interest. The City agrees that it will not consent to or waive any such conflict of interest. The City shall inform its witnesses, attorneys, experts, consultants, officers, employees, and other similar agents, of the existence and terms of this Section 9 of this Interlocal Agreement, the conflict of interest, and the City's unwillingness to waive the conflict. In the event of any inconsistency between this Section 9 and Section 8 of this Interlocal Agreement concerning Thomas "Ted" Nitza, Jr. and/or The Secant Group, LLC, Section 8 shall control.

**Section 10. No Challenge to City's Right to Serve and/or its Rates and Charges.**

**(A) No Challenge:** The Town, its agents, employees, experts, and consultants shall not raise any challenge to the City's right to serve any area or intervene in any case involving the City's right to serve any area other than the Town's water and sewer service areas as set forth in Section 4 and/or Section 5 of this Interlocal Agreement for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). The Town, its agents, employees, experts, and consultants shall also not challenge the City's sewage rates and charges, including, without limitation, any wholesale sewage petition, legal proceeding, public hearing, or intervening in any action against the City for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). Further, the Town, its agents, employees, experts, and consultants shall not provide any technical, financial, or other similar support to any party concerning such party's claims, which, if brought by the Town would violate this Section 10 of this Interlocal Agreement. Other than to enforce this Interlocal Agreement, the Town its

agents, employees, experts, and consultants shall not raise any legal challenge, opposition, or objection in any administrative, judicial, or legislative proceeding to the City's sewage rates and charges and/or the City's right to provide sewer and water service.

**(B) Conflict of Interest:** Because this Interlocal Agreement is in the best interests of both the City and the Town, the Town agrees that future engagements by the counsel, experts, employees, consultants, witnesses, and agents for the Town directed at any action which, if taken by the Town would violate this Section 10 of the Interlocal Agreement would be materially adverse to the Town and substantially related to the subject matter of the dispute that this Interlocal Agreement resolves, and, hence, a conflict of interest. The Town agrees that it will not consent to or waive any such conflict of interest. The Town shall inform its witnesses, attorneys, experts, consultants, officers, employees, and other similar agents, of the existence and terms of this Section 10 of this Interlocal Agreement, the conflict of interest, and the Town's unwillingness to waive the conflict.

**Section 11. Remand.** Unless otherwise dismissed by the City, the City and the Town shall, by December 4, 2015, file a joint motion to remand Court of Appeals Cause No. 93A02-1505-EX-444 to the IURC (IURC Cause No. 44519), and the parties shall, pursuant to Section 7 of this Interlocal Agreement, petition the IURC to adopt the Joint Stipulation and Settlement Agreement.

**Section 12. Interlocal Expiration.** If the IURC approves the Joint Stipulation and Settlement Agreement in its entirety and adopts the parties' joint proposed order in its entirety, then Section 4 of this Interlocal Agreement between the parties shall expire, and the terms of the Joint Stipulation and Settlement Agreement and the IURC Order shall remain in full force and effect.

**Section 13. Severability.** If any term or provision of this Interlocal Agreement is declared to be invalid, null, void, or unenforceable, the remaining provisions shall not be affected and shall remain in full force and effect. Neither the City nor the Town shall contend in any judicial proceeding that any provision of this Interlocal Agreement is invalid, null, void, or unenforceable.

**Section 14. Counterparts.** This Interlocal Agreement may be executed in counterparts.

**Section 15. Successors, Heirs and Assigns.** Consent is not required for an assignment of this Interlocal Agreement. Any successor, heir, or assign of the parties hereto shall be bound by all terms and conditions of this Interlocal Agreement.

**Section 16. Merger.** This Interlocal Agreement sets forth the entire agreement between the parties regarding the subject matter hereof and fully supersedes any and all prior agreements or understandings, whether written or oral, express, constructive, or implied between the parties with respect to the matters that are the subject of this Interlocal Agreement. The City disputes that the parties ever had an implied contract covering any of the matters discussed in this

Interlocal Agreement, but to the extent any such implied contract existed, it is now superseded by this express Interlocal Agreement.

**Section 17. No Unilateral Termination.** The Town and the City mutually acknowledge and expressly agree that this Interlocal Agreement may not be terminated by either party except as expressly set forth in this Section 17, in Section 2 of this Interlocal Agreement, or upon a writing approved and executed by each of the parties hereto setting forth the specific provisions for such termination. The Town expressly acknowledges that the City has until December 2, 2015 to formally adopt this Agreement. In consideration of the City's dismissal of OEA Cause 15-W-J-4783 within one (1) business day of execution of this Interlocal Agreement by the Town, for the period between the formal adoption of this Interlocal Agreement by the Town and the formal adoption of this Interlocal Agreement by the City, the Town agrees to be bound by the terms of this Interlocal Agreement, and agrees that it shall not terminate, modify, alter, or amend in anyway this Interlocal Agreement (except where expressly permitted by the terms hereof), without the written agreement of the City, provided that the Town may only unilaterally terminate this Interlocal Agreement by written notice to the City if the City fails to formally adopt this Interlocal Agreement on or before December 2, 2015.

**Section 18. Amendments.** This Interlocal Agreement may only be modified and/or amended by a writing executed and approved by the parties.

**Section 19. Waiver.** Except as expressly stated herein, the failure of either party to exercise any right or power given hereunder or insist upon strict compliance with any obligation specified herein shall not constitute waiver of such party's rights to demand exact compliance with the terms hereof.

**Section 20. Headings.** Except for the headings in Section 2(A) of this Interlocal Agreement, the headings to the paragraphs of this Interlocal Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Interlocal Agreement.

**Section 21. Applicable Law.** This Interlocal Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Indiana.

**Section 22. Remedies.** In addition to any remedies that may be available at law, temporary, preliminary and permanent injunctive relief may be granted to enforce any provision of this Interlocal Agreement in the event of an actual breach or violation, or a threatened breach or violation, of any restriction or covenant under this Interlocal Agreement.

**Section 23. Mutual Drafting.** Each party has cooperated in the drafting, negotiation, and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such language.

**Section 24. Conflicting Ordinances.** Except where otherwise stated, in the event there are any Ordinances or Resolutions of the City or the Town that conflict with this Interlocal Agreement, this Interlocal Agreement shall control to the fullest extent permitted by law.

**Section 25. Survival.** In addition to Section 2(U)b and except as otherwise specifically stated, Sections 3-25 of this Interlocal Agreement shall survive the termination of Section 2 of this Interlocal Agreement.

This Agreement, having been approved by the Common Council of the City of Fort Wayne, the Mayor of the City of Fort Wayne, and the Town Council for the Town of Huntertown shall constitute the entire Agreement between the parties, and there are no other terms, statements, obligations, representations, oral or otherwise, of any nature whatsoever.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**TOWN COUNCIL OF THE TOWN OF  
HUNTERTOWN, INDIANA**

*Patricia Freck*

Patricia Freck, President

*Dave Garman*

Dave Garman, Council Member

*Gary Grant*

Gary Grant, Council Member

Brandon Seifert, Council Member

*Mike Stamets*

Mike Stamets, Council Member

Attest:

*Cathy Mittendorf*

Cathy Mittendorf, Clerk-Treasurer

RECOMMENDED FOR APPROVAL BY THE  
CITY OF FORT WAYNE , INDIANA  
BOARD OF PUBLIC WORKS

By Absent  
Robert P. Kennedy, Chair

By Mike Avila  
Mike Avila, Member

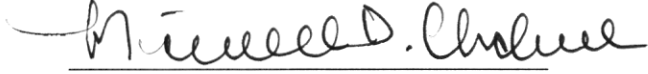
By Kumar Menon  
Kumar Menon

ATTEST: Lyndsey Richards  
Lyndsey Richards, Clerk

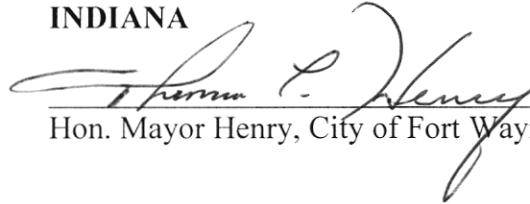
**COMMON COUNCIL OF THE CITY OF  
FORT WAYNE, INDIANA**

  
\_\_\_\_\_  
Presiding Officer

Attest:

  
\_\_\_\_\_  
City Clerk

**MAYOR OF THE CITY OF FORT WAYNE,  
INDIANA**

  
\_\_\_\_\_  
Hon. Mayor Henry, City of Fort Wayne, Indiana

Attest:

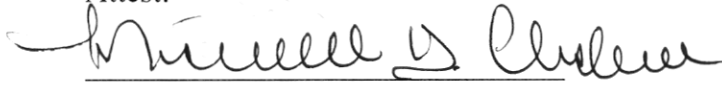
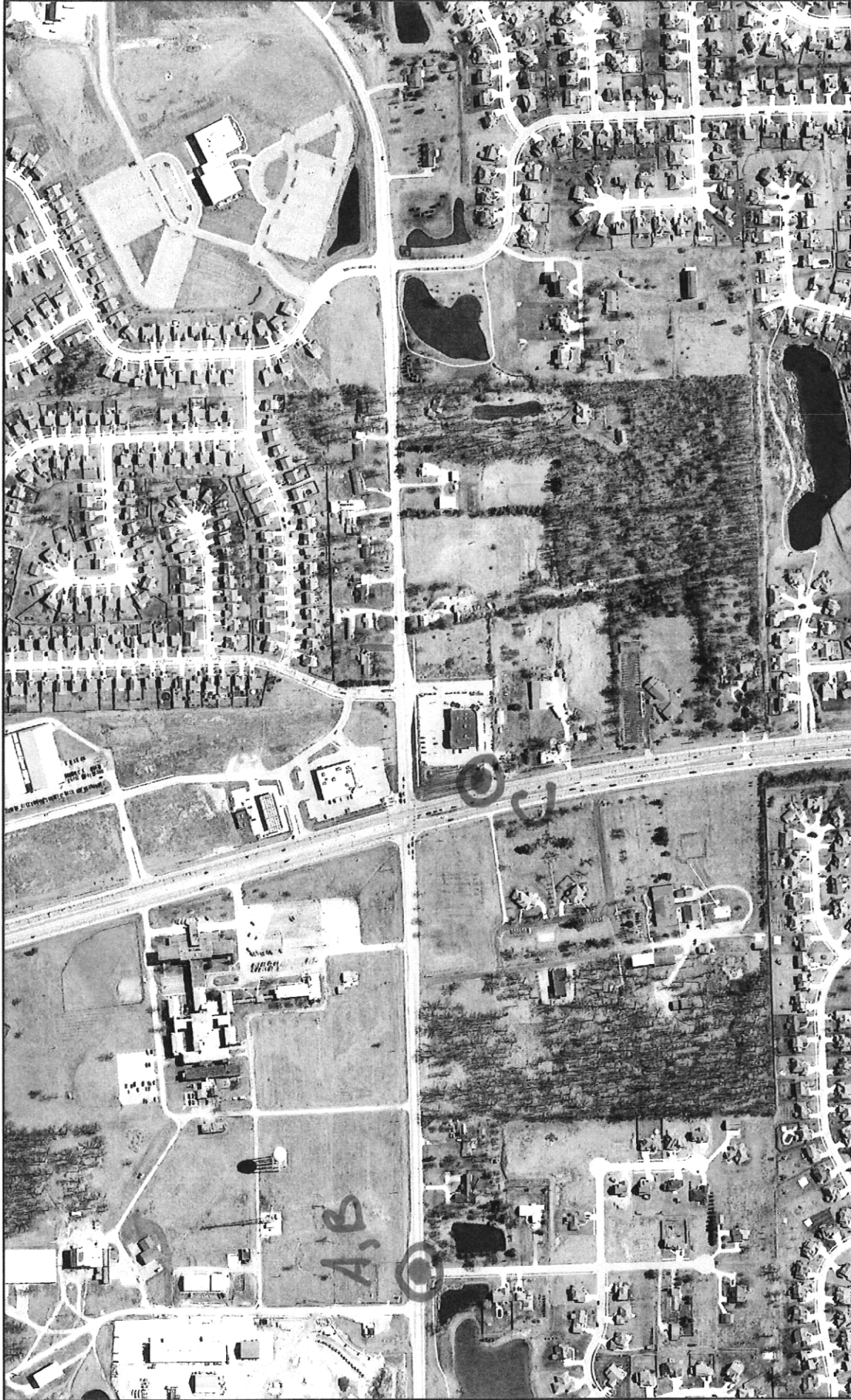
  
\_\_\_\_\_  
City Clerk  
2850049\_4



Exhibit A: Tap in Points for Hometown



Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims all liability for any error or omission in this map.  
© 2004 Board of Commissioners of the County of Allen, Indiana  
State Plane Coordinate System, Indiana East



Date: 8/12/2015 1" = 500'

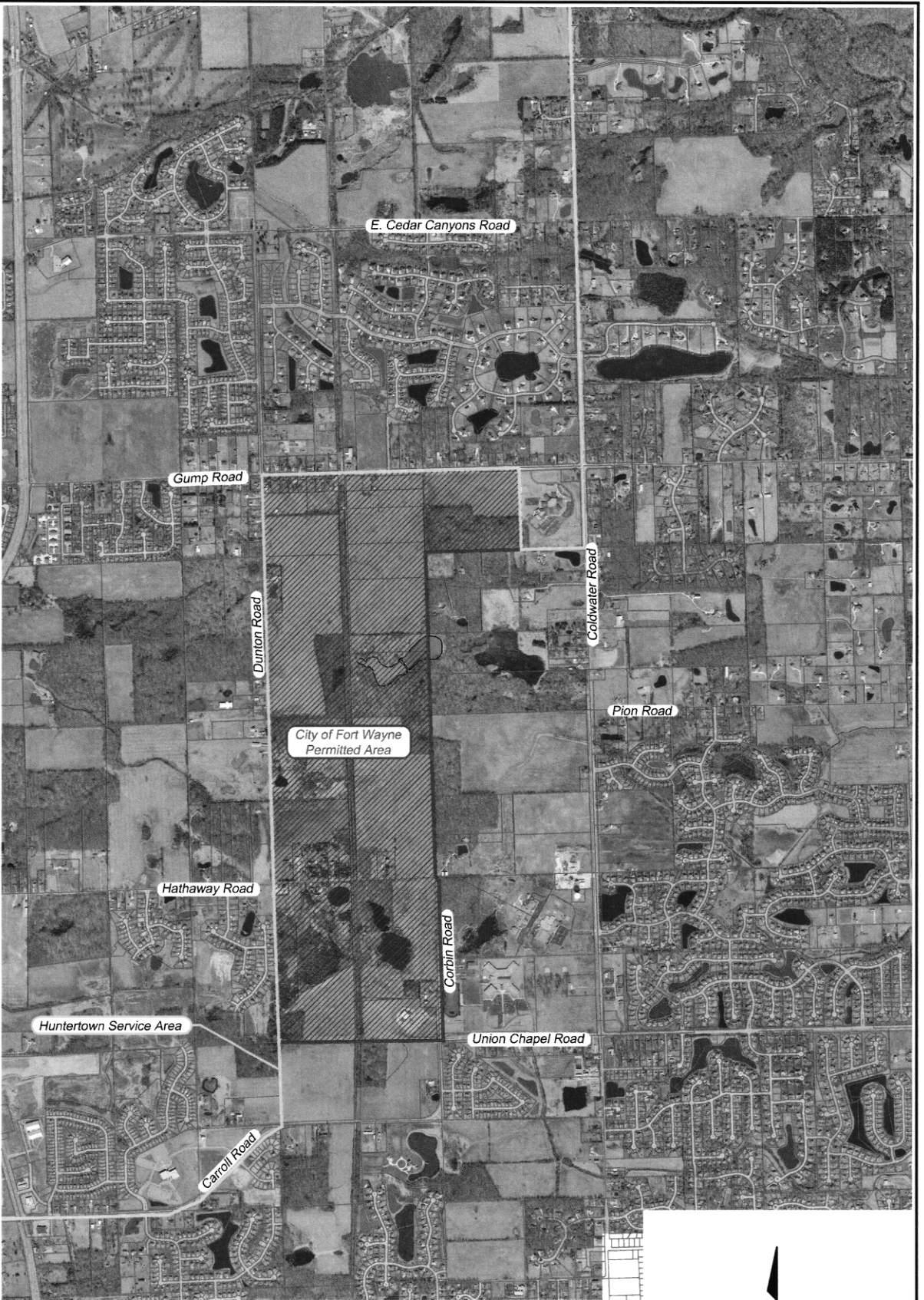
# EXHIBIT B- REMAINING CAPACITY TOWN OF HUNTERTOWN

No.	Project Name	Initial Allocation	Date of Allocation
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**Running Total of Remaining  
ERUS (Starting Total = 904)**

**ACF Waiver Applied? - Number  
of Waivers in ERUs**

K:\2014\1404-031\404-03b - Upper Ely Phase V\Plat DWG\Exhibits\1404-03b - Exhibit C - CFW - Service Area 081315.dwg - Saved by: keithp. 8/14/2015 2:57:40 PM, 1:1



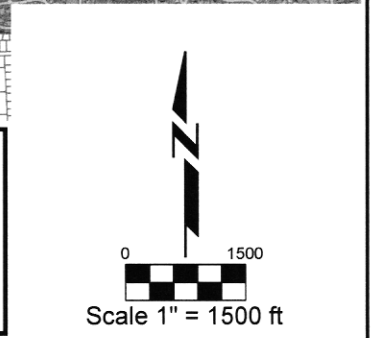
REVISIONS	
DATE	DESCRIPTION
10/07/2015	AS NOTED
1404-03B	CHECKED BY:
1 OF 1	SHEET NO.

**Exhibit "C"**

Allen County      Indiana

**DABEC**

D.A. Brown Engineering Consultants  
 5419 County Road 427, Suite C, Auburn, IN 46706  
 Phone: (260) 925 - 2020      Fax: (260) 925 - 1212  
 www.dabrownengineering.com





DATE	DESCRIPTION

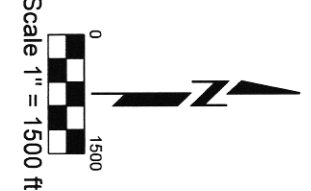
DATE	08/14/2015	DRAWN BY	
SCALE	AS NOTED	CHECKED BY	
JOB NO.	1404-03B	SHEET NO.	1 OF 1

**Exhibit "D"**

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Allen County      Indiana

**DABEC**  
 D.A. Brown Engineering Consultants  
 3419 County Road 477, Suite C, Auburn, IN 46706  
 Phone: (260) 925 - 2020      Fax: (260) 925 - 1212  
 www.dabrownengineering.com







**SETTLEMENT AND INTERLOCAL COOPERATION AGREEMENT BETWEEN AND AMONG FORT WAYNE, INDIANA AND THE TOWN OF HUNTERTOWN, INDIANA CONCERNING WASTEWATER AND POTABLE WATER UTILITY SERVICE**

**WHEREAS**, the City of Fort Wayne (“City”) is a second class city established and operating pursuant to IC 36-4-1 *et seq.*; and

**WHEREAS**, the City owns and operates a municipal water utility and a municipal wastewater collection and treatment utility; and

**WHEREAS**, the Town of Huntertown, Indiana (“Town”), is a town established and operating pursuant to IC 36-3-1 *et seq.*; and

**WHEREAS**, the Town owns and operates a municipal water utility and a municipal wastewater collection utility, but does not currently own or operate a wastewater treatment plant; and

**WHEREAS**, in 1985, the Town and City entered into a “Water Pollution Control Treatment Agreement Between the City of Fort Wayne, Indiana and the Town of Huntertown Indiana,” which agreement was subsequently amended in 1998 and 2005 (collectively, the “Wholesale Sewage Agreement”); and

**WHEREAS**, pursuant to the Wholesale Sewage Agreement, from 1988 until 2013, the Town sent all of the sewage emanating from the Town’s wastewater collection system to the City, and the City accepted all of the sewage emanating from the Town’s wastewater collection system; and

**WHEREAS**, the Town desires to construct its own Wastewater Treatment Plant (“WWTP”); and

**WHEREAS**, in furtherance of its desire to construct its WWTP, on January 5, 2010, the Town gave the City notice of its intent to terminate the Wholesale Sewage Agreement effective April 27, 2013; and

**WHEREAS**, after termination of the Wholesale Sewage Agreement, the Town continued to send all of the sewage emanating from the Town’s wastewater collection system to the City, and a dispute arose between the City and the Town concerning the terms, conditions, rates, and charges under and pursuant to which the City would accept the sewage emanating from the Town’s wastewater collection system; and

**WHEREAS**, the Town subsequently adopted regulatory ordinances (as such term is defined in IC 8-1.5-6, *et seq.*) establishing certain exclusive water and sewer service territory, which the City disputed; and

**WHEREAS**, the City and Town subsequently became involved in and remain involved in the following legal causes: (1) Allen County Circuit Court Cause No. 02C01-1306-MI-1194 (which includes the consolidated case of Allen County Superior Court Cause No. 02D01-1305-MI-10288); (2) Indiana Utility Regulatory Commission (“IURC”) Cause No. 44519; (3) Indiana Court of Appeals Cause No. 93A02-1505-EX-444; and, (4) Office of Environmental Adjudication (“OEA”) Cause No. 15-W-J-4783; and

**WHEREAS**, the Town received a construction permit for its WWTP from the Indiana Department of Environmental Management (“IDEM”) (Approval L-0446) on August 19, 2014, and an NPDES permit from IDEM (Permit No. IN0064289) on February 19, 2015; and

**WHEREAS**, on May 20, 2015, the IURC issued an order in IURC Cause No. 44519 permitting the Town to modify its regulatory ordinances (as such term is defined in IC 8-1.5-6, *et seq.*) establishing exclusive water and sewer service territories for the Town (the “IURC Order”);

**WHEREAS**, after the IURC’s order, the Town adopted Ordinance No. 15-002, to amend Ordinance No. 13-004, (which was previously amended by Ordinance No. 13-008) which regulatory ordinances collectively establish an exclusive water service territory (the “Water Service Area”); and

**WHEREAS**, the Town adopted Ordinance No. 15-001, to amend Ordinance No. 13-006, which regulatory ordinances collectively establish an exclusive sewer service territory (the “Sewer Service Area”); and

**WHEREAS**, the IURC Order determined that the City’s retail outside-city rates and charges for sewage treatment to the Town were unjust and unreasonable and required the City to set wholesale sewer service rates and charges for the Town in accordance with the provisions of the IURC Order; and

**WHEREAS**, the City has appealed the IURC Order in Indiana Court of Appeals Cause No. 93A02-1505-EX-444; and

**WHEREAS**, the Town represents that it has received notice from the Indiana State Revolving Fund (“SRF”) that its WWTP project has been ranked for funding on the project priority list for 2015 and time is of the essence for the Town to seek to close on that loan as soon as possible; and

**WHEREAS**, the parties acknowledge that the pending legal causes are an impediment to the Town securing funding for the WWTP through the SRF, and to the City from providing water and sewer service to certain customers and areas; and

**WHEREAS**, the Town and the City both stipulate and agree that the terms and conditions of this Interlocal Agreement, including the dismissal of all pending litigation so that the Town can have a period of time to pursue construction of its WWTP which is one of the purposes the Town is entering this Interlocal Agreement, are in the best interests of the City and the Town; and

**WHEREAS**, both parties recognize that the Town will need interim wastewater treatment service from the City; and

**WHEREAS**, both parties desire to give the Town a period of time, as defined in this Interlocal Agreement, to complete financing, permitting, and construction of its own WWTP; and

**WHEREAS**, the Town and City now desire to resolve the disputes between them, to resolve the above referenced legal causes, provide the Town with a period of time within which

it can seek to complete its WWTP, and to provide the terms and conditions for interim service between the City and the Town.

**NOW THEREFORE**, in consideration of the mutual terms, covenants and conditions set forth herein, the aforementioned parties hereby jointly agree as follows:

**Section 1. Purpose.** The purpose of this Settlement and Interlocal Cooperation Agreement (the “Interlocal Agreement”) is to: (1) resolve the disputes between the parties in the above-referenced legal causes which would allow the Town to seek to close on the SRF loan as soon as possible; (2) establish the terms and conditions under which the City provides interim wastewater collection and treatment services to the Town; and (3) modify the Town’s Sewer and Water Service areas so as to permit the City to provide water and sewer service to customers who were previously within the Town’s Water and Sewer Service Areas.

**Section 2. Wholesale Sewage Rates and Charges.** Pursuant and subject to the terms of this Interlocal Agreement, the City shall, for the term of this Section 2 of the Interlocal Agreement, be the sole provider of treatment services for any and all of the sewage emanating from the Town’s wastewater collection utility subject to the following terms and conditions:

(A) **Definitions.** The following words and phrases in this Section 2 of this Interlocal Agreement shall have the following meaning:

- a. **“Connection Point.”** A structure which provides for the conveyance of the Town’s sewage to the City for further transportation and treatment. The facilities comprising the Connection Points are generally described as a Town-owned sewer force main pipe discharging through a Town-owned structure, manhole, junction box, etc., into a City-owned sewer structure, manhole, junction box, etc.
- b. **“Monitoring.”** The analysis of sewage without taking a portion of the sewage. Examples include but are not limited to pH, conductivity, temperature, and flow rates.
- c. **“Prohibited Discharge.”** Waste or a pollutant which is prohibited to be discharged into the Water Pollution Control Utility under the Ordinances, Rules and Regulations of the City of Fort Wayne Sewer Utility, state or federal laws, or rules of any regulatory agency having jurisdiction.
- d. **“Sampling.”** The taking of an actual portion of the sewage for analysis. Examples include but are not limited to BOD, COD, metals, and total suspended solids.
- e. **“Sewage.”** The water-carried wastes from residences, businesses, buildings, institutions, and industrial establishments, singularly or in any combination.
- f. **“Sewage System.”** The network of sewers and appurtenances used for the possible collecting, transporting, or pumping of sewage to the Connection Point or to the Water Pollution Control Plant.

- g. **“User.”** Any domestic or non-domestic discharger of sewage which introduces pollutants into the Water Pollution Control Utility.
- h. **“Water Pollution Control Plant.”** The arrangement of devices, structures, and equipment used for treating and disposing of sewage and sludge.
- i. **“Water Pollution Control Utility.”** All facilities and systems, collectively, for collecting, transporting, pumping, treating, or disposing of sewage and sludge, including the Water Pollution Control Plant and sewage system.

(B) Effective April 28, 2013: The Town expressly consents to treatment as a wholesale contract customer of Fort Wayne subject to the then-applicable wholesale contract rates dating back to April 28, 2013, and subject to the terms and conditions of this Interlocal Agreement.

(C) Connection of Sewer Facilities:

- a. **Connection Points:** The locations of the current three Connection Points are generally identified as “Tap in Point A”; “Tap in Point B”; and “Tap in Point C” on the attached Exhibit A, hereby incorporated by reference.
- b. **Maintenance of Connection Points:** Each party shall be responsible for the maintenance and operation of its own sewage system and its portion of the Connection Points. The Town owns the force main piping on the Town’s side of the meter, the meter, and the force main piping that extends from the meter to the manhole where the Town’s sewage is ultimately discharged in to the City’s system at each of the Connection Points. The City may inspect the Town’s portion of the Connection Points at any time. If City inspection finds that The Town’s portion of the Connection Points are not being properly maintained or operated, the City may notify the Town in writing in accordance with Section 2(U) of this Interlocal Agreement. Upon its receipt of a written notification from the City, the Town shall, within ten (10) days, provide City with a written plan to complete all reasonably necessary maintenance, repairs or modifications. In the event Town fails to timely provide such a written plan or to promptly implement the actions described in the written plan to City’s reasonable satisfaction (which satisfaction shall not be unreasonably withheld), the City may complete the maintenance and the Town shall, within thirty (30) days, reimburse the City for all maintenance costs incurred by the City.

(D) Conveyance and Treatment of Sewage.

- a. **Responsibility for Conveyance:** The Town shall be solely responsible for delivery of the sewage to its Connection Points in a form compliant with Section 2(H) of this Interlocal Agreement. Thereafter, the City shall be responsible for conveyance of the sewage through its sewage system to its Water Pollution Control Plant.

- b. Responsibility for Treatment:** The City shall be solely responsible for the proper treatment at the City's Water Pollution Control Plant of the sewage received from the Town in accordance with the laws, regulations, requirements, and standards of IDEM, the Indiana State Board of Health, and the United States Environmental Protection Agency ("EPA"), currently in effect and as may be amended from time to time. If, during any billing period, the Town delivers to the City sewage which does not comply with Section 2(H) of this Interlocal Agreement, then the Town shall be responsible for the fees and charges for such non-compliant material and shall indemnify the City pursuant to Section 2(U) of this Interlocal Agreement.

(E) Metering:

- a. Fort Wayne to Read Meters:** The City shall continue to be responsible for reading the meters that it relies on for billing the Town. The City will calculate the Town's monthly sewer bill based on monthly meter readings of the meters at the Connection Points.
- b. Telemetry Equipment:** The City shall provide and bear the cost of providing and maintaining all telemetry for transferring volume and peak flow data from the Town's meter to the City's telemetry system and website. Access to the Town's flow data on the website shall also be provided to the Town. The Town does not have its own electronic data on its collection system.
- c. Bypass Valves:** The City shall have reasonable access at all times to any and all bypass valves.
- d. Access to Metering Equipment:** The City shall have complete and free access to the metering equipment for inspection, testing and approval at all reasonable times. The Town shall provide reasonable access to the metering equipment.
- e. Meter Testing:** Sewer metering equipment and remote readouts shall be annually tested, calibrated, maintained, and repaired by the Town at the Town's cost and expense. The Town shall provide the City with all information concerning the testing, calibration, maintenance and repair of the facilities. In addition, the City may annually test the sewer metering equipment while remaining in place at the Town's facilities. The City may require the Town to conduct additional calibration in the event that the meter does not test accurately.

- (F) Monthly Flow and Service Rates: For the initial term of the Agreement, as defined in Section 2(S) of this Interlocal Agreement, the monthly rates and charges the City shall charge the Town shall be as provided in the following chart. In addition to the rates and charges identified in the following chart, other rates and charges may apply as identified in this Interlocal Agreement including, but not limited to, Sections 2(L), 2(M), and 2(N) of this Interlocal Agreement.

	4/28/13 – 6/30/13	7/1/13 – 12/31/14	2015	2016	2017	2018	2019
Treatment (per CCF)	\$1.9436	\$2.1187	\$1.7334	\$1.9036	\$2.0247	\$2.0441	\$2.1498
Conveyance & Collection (per CCF)	\$0.370	\$0.3698	\$0.2980	\$0.3050	\$0.3283	\$0.3238	\$0.3601
Total Metered Rate (per CCF)	\$2.3136	\$2.4885	\$2.0314	\$2.2086	\$2.3530	\$2.3679	\$2.5099
Monthly Service Charge	\$7.10	\$7.73	\$7,886.24	\$8,222.43	\$8,604.58	\$9,662.63	\$10,056.90

**(G) Pre-January Agreement Charges:** The City acknowledges payment of all fees and charges from the Town from April 28, 2013 to the date of this Interlocal Agreement, and shall waive any claim to additional collection from April 28, 2013 to the date of this Interlocal Agreement. Nothing in this Section 2(G) shall be interpreted as waiving any charges after the date of this Interlocal Agreement.

**(H) Quality:**

**a. Excess Strength:** In the event the Town conveys sewage which has a strength in excess of domestic waste, as defined in the City of Fort Wayne’s Code of Ordinances (“City’s Ordinances”), the sewage will be accepted and treated subject to the City’s Ordinances and a surcharge will be applied accordingly.

**b. Prohibited Discharges:**

**i.** The Town shall not convey prohibited discharges to the City.

**ii.** Upon discovery that a prohibited discharge is being conveyed by the Town’s sewage system to the City’s Water Pollution Control Utility:

**1.** The Town shall immediately cease delivery of the prohibited discharge upon oral notification, and provide confirmation thereof in writing, within twenty-four (24) hours.

**2.** If the Town shall fail to cease said conveyance immediately, the City may, at its option, without liability and at the Town’s cost;

**a.** Cut off the particular user (if such user is ascertainable) who is found to be delivering prohibited discharges to the Town’s sewage system;

- b. If the particular user is not reasonably ascertainable or able to be cut off, the Town shall be solely responsible for using its best efforts to identify the particular user and otherwise remedying the situation.
- c. The Town shall bear all liabilities and costs which the City or the Town may incur or be liable for, caused either by the further conveyance and/or treatment of said prohibited discharge and the City's exercise of its rights to take action to remedy the situation.

(I) Sampling and Monitoring Quality:

- a. **Sampling Facilities:** The Town shall have proper and adequate facilities for the purpose of sampling and monitoring by the City of the sewage conveyed to the Connection Points. The City shall be able to access all three Connection Points for purposes of sampling and monitoring at any time, and the Town shall provide any necessary keys to the City so that the City may access such Connection Points. The City shall have the right, at its cost and expense, to install facilities including, but not limited to, an electronic data system which monitors the sewage conveyed to the City for treatment as well as physical locations where sewage may be sampled and monitored. The Town shall provide facilities at the Town's Equalization Basin including a source of electrical power, shelter, and security, and provide the City with reasonable access to said facilities for the City to install such equipment. The sampling and monitoring facilities shall be approved by the City prior to any modification.
- b. **Access:** The City shall have full and complete access to the Town's sampling and monitoring facilities at all times. The Town shall be required to maintain access to physical facilities, including snow removal. The Town does not have the technology, equipment, and/or hardware for remote read only access. The City may add, alter, or modify its final read out equipment at the City's cost and may maintain the added, altered or modified equipment with a lock, which key will be held by the City.
- c. **Cost:** The cost of planning, designing, installing, daily operation, and replacement, as necessary, of sampling and monitoring devices, including the acquisition of real estate, shall be the responsibility of the Town.
- d. **Testing, Calibration, Maintenance and Repair:** The City may test, calibrate, maintain, and repair as necessary sampling and monitoring devices, the costs of which shall be paid by Town in accordance with the City's Rate and Use Ordinances.
- e. **Samples and Testing Data:** Material samples as received from the sampling devices shall be available to both parties to this Interlocal Agreement. In the event the City provides testing for samples, the cost of such testing shall be

paid by the Town in accordance with the schedule of flat rate charges set forth in the City's Code of Ordinances. The Town may request sampling and analysis in addition to City's regular sampling as provided hereunder. The City shall conduct any such additional sampling and the Town shall pay for the costs associated with any such additional services. Sampling and testing shall follow approved protocol and procedures in accordance with EPA criteria. The Town may request split samples, and in the event of a disparity in results of whether a compliance violation has occurred, the Town shall have the right to a re-test of samples.

- f. Town Sampling Adjustments:** In the event the Town requests sampling and/or analysis as provided in Section 2(I)e. of this Interlocal Agreement, the additional sampling and/or analysis will apply to the billing cycle in which the Town requested the sampling and/or analysis.

**(J) Inspection and Enforcement:**

- a. Industrial Waste Survey List:** The Town shall maintain a current Industrial Waste Survey list in accordance with the following:

- i.** The Industrial Waste Survey list shall include the facility name and address of all commercial and industrial users in the Town's Service Area, the nature of each user's business and the name and contact information of a responsible person to be contacted at each user.
- ii.** An updated list shall be provided to the City within thirty (30) days of the execution of this Interlocal Agreement.
- iii.** Updated lists shall be provided to the City annually by January 15 of each year.

- b. Industrial Customer:** The Town affirms that it does not currently have any industrial customers. In the event that the Town adds an industrial customer, the Town shall maintain an Industrial Waste Survey List and will provide the City the same by January 30 of each year. The town further hereby authorizes the City, and the City hereby agrees to:

- i.** Apply the City's pretreatment limits to users of the Town's sewage system.
- ii.** Establish industrial wastewater permits required under the City's Industrial Pretreatment and Sewer Ordinances to dischargers into the Town's system.
- iii.** Require and receive all industrial pretreatment reports required by 40 CFR 403 and the City's Industrial Pretreatment and Sewer Ordinance. Reports will be maintained by the City's Industrial Pretreatment department.

- iv. Inspect all facilities of permitted industries discharging into the Town's sewage system.
- v. Collect and analyze samples of waste sewage from permitted industries discharging into the Town's sewage system.
- vi. Carry out all inspections, surveillance and monitoring procedures necessary to determine, independent of information supplied by permitted dischargers to the Town's system, their compliance statuses pertaining to pretreatment limits, reporting requirements, and the industry's wastewater permit.
- vii. Enter the premises of any permitted industrial facility or industrial user which has a discharge source or pretreatment system, in order to inspect same or view records, relevant to the user's operation, treatment, monitoring, or discharge.
- viii. Immediately and effectively make all reasonable attempts to prevent any discharge of pollutants into the Town's sewage system which would present an imminent endangerment to the health or welfare of the public, the environment or which threatens the operation of the Town's sewage system or the City's Water Pollution Control Utility.
- ix. Undertake a full range of enforcement when pretreatment violations occur, as provided in the City Ordinances and the Rules and Regulations of the City Sewer Utility, and as set out in the City's Enforcement Response Guide.
- x. Charge fees consistent with those assessed against industrial and commercial users discharging directly to the City for sampling.
- xi. Undertake any other action necessary to ensure compliance with 40 CFR 403 or with the City's National Pollutant Discharge Elimination System permit.

**c. City Board of Public Works As Agent:** The Town hereby appoints City Board of Public Works as its agent with full authority and license to enforce through the City's Attorney, the provisions of the City Ordinances and Rules and Regulations and all applicable State and Federal regulations upon industrial customers of the Town which have a pretreatment program at Town's reasonable expense.

**(K) Compliance with all Applicable Laws:** The Town shall comply with all relevant and lawful federal, state, and local laws, regulations, and codes pertaining to sewage collection, conveyance, and treatment services (including, but not limited to, City municipal codes and regulations which are not inconsistent with this Interlocal Agreement).

(L) Volumetric Limit and Exceedance: In the event that sewage flows exceed 650,000 gpd for any 90 consecutive day period, the Town shall pay a capital surcharge rate to the flows billed during the exceedance period (“Capital Surcharge Rate”). The Capital Surcharge Rate will be calculated based upon the Town’s proportionate share (using the same methodology used in the City’s cost of service study that was submitted to the IURC in Cause No. 44519 as Fort Wayne’s Exhibit 11 (“Summary Cost of Service Study”)) of current “Common to All Conveyance Debt Service” costs divided by consumption of flow of the Town.

(M) Volumetric Maximum: The Town’s flow volume shall not exceed 975,000 gpd for any 90 consecutive day period. If it does, the City shall be entitled to charge the Town \$5.5226 per ccf for each ccf (or portion thereof) over the 975,000 gpd from the date of this Agreement until December 31, 2015. After that date, the \$5.5226 per ccf shall be adjusted annually in direct proportion to the Town’s wholesale rate increase as provided in Section 2(F) of this Interlocal Agreement.

(N) Peak Flow: The Town shall have a maximum peak flow rate of 1500 gpm. If the average peak flow exceeds 1550 gpm as averaged over a fifteen (15) minute period for all points of connection combined, then a peak flow charge shall be assessed (a “Peak Flow Charge”). The Peak Flow Charge shall be calculated based upon updating the capacity allocation for conveyance at the new peak flow rate (*i.e.*, the rate observed during the exceedance) and then new conveyance rates will be calculated using the same methodology as the Summary Cost of Service Study and then multiplied by either (1) a factor of 5 for peak flow exceedances of 0-10% and/or (2) a factor of 10 for peak flow exceedances over 10%. The recalculated conveyance rate and conveyance base charge will be charged for the next twelve (12) months, unless the new peak flow rate is exceeded, in which case the process described in this Section 2(N) of this Interlocal Agreement herein for an exceedance shall be calculated for the new exceedance. After twelve (12) months, the conveyance rate and conveyance base charge will return to the original Summary Cost of Service Study established level if another peak flow exceedance has not occurred.

(O) Default:

**a. Event of Default:** For the purposes of this Section 2 of this Interlocal Agreement, the term “Event of Default” shall mean the failure to observe or comply with a provision or covenant in this Section 2 of this Interlocal Agreement, and such default is not cured to the reasonable satisfaction of the non-defaulting party within fifteen (15) days of the date Notice of such default is given, which Notice shall specify with reasonable particularity the basis for the default claimed.

**b. Notice:** If either party discovers a violation of Section 2(E) Metering or Section 2(I) Sampling and Monitoring, then the non-defaulting party shall notify (in accordance with Section 2(U)) the defaulting party of the violation. The defaulting party shall have thirty (30) days to cure the violation or to notify the non-defaulting party of its plan to cure the violation. Failure to

cure or submit a plan to cure shall be considered a minor breach and the non-defaulting party shall have the right to cure the violation itself and the defaulting party shall be responsible for the costs to cure.

- c. **No Termination without Disconnection:** Consistent with Section 2(Q) below, the Town shall not terminate this Section 2 of this Interlocal Agreement without also disconnecting from the City's system. In the event the Town provides notice of termination but does not disconnect, then this Section 2 of this Interlocal Agreement shall not be terminated until the Town provides another sixty (60) day notice and disconnects and/or the Term expires under Section 2(R).

(P) Compliance with Rules, Regulations, Standards and Laws:

- a. **Compliance with Law:** Each of the parties to this Interlocal Agreement shall comply with all local, state, and federal regulations, standards, and laws of general applicability currently in effect and as lawfully amended, adopted, or enacted regarding the collection and treatment of sewage, the operation of their respective systems, and any additional services provided according to the terms and provisions of this Interlocal Agreement.
- b. **Town Ordinances:** The Town shall adopt and enforce ordinances providing for rates, rules, and regulations, and use of its sewage system which are in conformity with the reasonable requirements lawfully adopted and enforced by the City for the purpose of permitting the City on continuing basis, to be awarded grants and loans from the State of Indiana and from the EPA and other agencies which may now or in the future have such opportunities offered.

(Q) Termination: The Town shall have the right to terminate this Section 2 of this Interlocal Agreement provided that it (1) first gives the City sixty-day's (60) written notice of its intent to terminate; and (2) immediately upon the effective date of the termination disconnects from the City's system.

(R) Term: The rates in Section 2(F) of this Interlocal Agreement under the terms and conditions of this Section 2 of this Interlocal Agreement shall remain in effect until: (1) January 1, 2020; (2) termination of this Section 2 as provided in Section 2(Q) above; or (3) as provided in Section 2(S) below.

(S) Renewal of Interlocal Agreement: If, on January 1, 2020, the Town has not disconnected its wastewater utility from the City, this Section 2 of the Interlocal Agreement shall renew under one of the following scenarios:

- a. **Interim Renewal - Substantial Commencement:** Assuming that the Town has achieved substantial commencement of its WWTP on or before July 1, 2019, and the Town is not disconnected by December 31, 2019, Section 2 of this Interlocal Agreement shall renew for up to an additional two (2) year term and the applicable monthly rates shall be as established by ordinance, not to

exceed a 4% annual increase for each year of the renewal term over the monthly rates for 2019. For the purposes of this Section 2(S)a., substantial commencement in the initial five (5) year term shall be defined as acceptance of bids and commencement of construction of the wastewater treatment plant. If the Town has not achieved substantial commencement by July 1, 2019, and the Town is not disconnected by December 31, 2019, then the WWTP shall be deemed “not substantially commenced” and the parties shall follow subdivision 2(S)b. below.

**b. No Substantial Commencement:** In the event the Town has not achieved substantial commencement under Section 2(S)a. for reasons that are not caused by the City’s actions or inactions, and the Town has not otherwise disconnected from the City by December 31, 2021, the Town shall have the option to: (1) enter a Water Pollution Control Agreement for a twenty (20) year term; (2) remain connected to the City’s system under the then-applicable rate for Outside-city Governmental Users; or (3) disconnect from the City’s system.

**(T) Capacity:** During the term of this Interlocal Agreement, the parties agree that the Town shall have available to it 1150 ERUs of capacity on the City’s system. These 1150 ERUs shall be divided as follows:

**a. Preapproved Capacity:** Of the 1150 ERUs of available capacity to the Town, 240 of those ERUs have been preapproved by the City and shall be considered “Preapproved Capacity”.

**b. Reallocation of Capacity:** The Town may utilize any unused Preapproved Capacity that is available to serve new developments. No area connection fees apply to the use of the 240 ERUs of Preapproved Capacity.

**c. Additional Capacity:** In addition to the 240 ERUs of Preapproved Capacity, the City also agrees to give the Town an additional 910 ERUs of capacity (each an “Additional Capacity”) for use in the Town’s system.

**d. Area Connection Fees and Capital Surcharges:** The City shall waive the area connection fee (currently \$2,000 per ERU for the Upper Ely Interceptor) but not the capital surcharge (currently \$20/month/ERU) for the Preapproved Capacity (i.e. up to \$480,000 of area connection fees may be waived) certified after the execution of this Interlocal Agreement (each an “ACF Waiver”). The Parties shall track these available 240 ERUs of ACF Waivers using the spreadsheet that is attached hereto as Exhibit B. The Town is solely responsible for determining what allocations receive any ACF Waiver(s). Each of the 910 ERUs of additional capacity shall be subject to the City’s then applicable area connection fee (currently \$2,000/ERU) and capital surcharge (currently \$20/month/ERU). The then applicable area connection fee shall be collected as an upfront cost paid by the Town (or its designee) to the City prior to the City certifying the capacity to IDEM. In the event of a direct-connect where a capacity certification is not applicable, the Town shall notify the City prior to the connection and pay any applicable upfront ACF at time of

notification. The Town shall ensure that the applicable monthly capital surcharge is paid as part of the City's regular invoices.

**(U) Miscellaneous:**

**a. Notices and Invoice:**

- i.** Any notices required under this Section 2 of this Interlocal Agreement shall be served by certified mailing, return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party.
- ii.** Invoicing by the City under this Section 2 of this Interlocal Agreement shall be served by first class mail addressed to the Town at the last address filed by the Town.
- iii.** At the execution date of this Interlocal Agreement, the City's address is:

Fort Wayne City Utilities, Attention of the Director  
200 E. Berry Street  
Fort Wayne, Indiana 46802

- iv.** At the execution date of this Interlocal Agreement, the Town's address is:

Town of Huntertown, Indiana  
15617 Lima Road  
PO Box 95  
Huntertown, Indiana 46748

- b. Survival:** The obligations set forth in the following sections of this Interlocal Agreement shall survive termination of this Section 2 of this Interlocal Agreement:

- i.** Section 2(D)b. shall survive until City no longer provides treatment services to the Town.
- ii.** Section 2(U)c., shall survive termination of Section 2 of this Interlocal Agreement.

**c. Indemnities:**

- i. Environmental - Town:** The Town shall comply with all applicable laws, regulations, orders, and requirements of all governmental entities having jurisdiction over its sewage system, whether federal, state, or local. The Town agrees to defend, indemnify and hold the City (and its officers, directors, employees, contractors, representatives and duly authorized agents) harmless from any cost, damage (including indirect, special and consequential damage), award, action, or liability, including but not

limited to the recovery of reasonable attorney fees and costs, arising out of the Town's violation of law.

- ii. **Environmental - City:** The City shall comply with all applicable laws, regulations, orders, and requirements of all governmental entities having jurisdiction over its sewage system, whether federal, state, or local. The City agrees to defend, indemnify and hold the Town (and its officers, directors, employees, contractors, representatives and duly authorized agents) harmless from any cost, damage (including indirect, special and consequential damage), award, action, or liability, including but not limited to the recovery of reasonable attorney fees and costs, arising out of the City's violation of law.
- iii. **Personal Injury, Death, and Property Damage - Town:** The Town agrees to defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages (including, damages for personal injury, death or property damage), liabilities, costs and expenses (including reasonable attorney's fees), judgments, settlements, and penalties arising out of the Town's negligent, intentional, or willful non-performance under this Section 2 of this Interlocal Agreement and/or arising out of the Town's negligent, intentional, or willful failure to maintain or operate its sewage system.
- iv. **Personal Injury, Death, and Property Damage - City:** The City agrees to defend, indemnify, and hold harmless the Town (including its officers, employees, and agents) from all demands, damages (including, damages for personal injury, death or property damage), liabilities, costs and expenses (including reasonable attorney's fees), judgments, settlements, and penalties arising out of the City's negligent, intentional, or willful non-performance under this Section 2 of this Interlocal Agreement and/or arising out of the City's negligent, intentional, or willful failure to maintain or operate its sewage system.

**Section 3.** Non-Enforcement. The Town hereby waives any and all fees it may have been due under Ordinance 15-001 or Ordinance 15-002 (including any enforcement provisions in the precursor Ordinances 13-004, 13-008, and 13-006), including, but not limited to, the \$2,000 per day penalty for providing utility service inside the Town's territory. The Town also hereby waives any and all fees, charges, or claims it may have had against the City, including, but not limited to, City Utilities, which predate(s) the date of this Interlocal Agreement.

**Section 4.** Intermediate Service Areas. The City shall be permitted to serve water and sewer service in the area identified as "Fort Wayne's Permitted Area" on Exhibit C and Exhibit D hereto without any oversight of the Town. Within one (1) business day after execution of this Interlocal Agreement by the Town Council for the Town, the Town shall provide the City with a letter, signed by the Town Council President certifying that the City has the rights provided for in this Section 4. This Section 4 of this Interlocal Agreement shall not terminate, expire, or otherwise lapse except as expressly provided in Section 12 of this Interlocal Agreement.

**Section 5. Permanent Service Areas.** The Town and the City agree that the Town's water and sewer service areas as set forth in Ordinances 15-001 and Ordinance 15-002 (including the precursor Ordinances 13-004, 13-008, and 13-006) and otherwise previously authorized by the IURC shall be modified consistent with this Section 5 of the Interlocal Agreement.

**(A) Modified Regulatory Ordinances:** If the IURC approves the Joint Stipulation and Settlement Agreement as discussed in Section 7 of this Interlocal Agreement, then within seven (7) days of the IURC's approval, the Town shall adopt modified regulatory ordinances modifying its exclusive water and sewer service territory consistent with the diagrams attached hereto as Exhibit C and Exhibit D, which ordinances shall be effective upon approval by the IURC as set forth herein. At least two (2) days prior to adoption, the Town shall share the draft Ordinances with the City for the City's comment on the same.

**(B) Allen County Fair Grounds:** The City will coordinate with the Town for the transfer of sanitary sewer service at the Allen County Fairgrounds, Inc. owned site located at the Allen County Fairgrounds to the Town. The City recognizes that no area connection fee or capital surcharge will be assessed regarding this transfer. No Reallocated Capacity or Additional Capacity will be required for this transfer. In the event that the Town does not seek transfer of this area before expiration or termination of Section 2 of this Interlocal Agreement, then the Town shall waive its right to so seek such transfer.

**(C) Irene Byron Campus:** The City will coordinate with the Town for the transfer of sanitary sewer service of the Allen County Commissioners' owned site located at the Allen County's Irene Byron Campus (limited to the campus areas north of Carroll Road) to the Town. The City recognizes that no area connection fee or capital surcharge will be assessed regarding this transfer. No Reallocated Capacity or Additional Capacity will be required for this transfer. In the event that the Town does not seek transfer of this area before expiration or termination of Section 2 of this Interlocal Agreement, then the Town shall waive its right to so seek such transfer.

**(D) Annexation Waiver:** From the date of this Agreement until December 31, 2019, the City agrees not to annex territory within the boundaries identified in the attached Exhibit E. The City further agrees that it will not remonstrate or otherwise object to the Town's annexation within the boundaries identified in the attached Exhibit E.

**(E) Utility Service Consent Area, Town and City:** From the date of this Agreement to and including December 31, 2022, unless otherwise agreed to by the Town in a writing signed by the Town Council President, the City shall not provide water and/or sewer service in the area identified as the "Utility Service Consent Area, Town and City" on the attached Exhibit F.

**Section 6.** Settlement of Remaining Lawsuits. After execution of this agreement, but prior to petitioning the IURC for approval of the Joint Stipulation and Settlement Agreement as discussed in Section 7 of this Interlocal Agreement the following events shall occur:

- (A) **Twin Eagles/Timber Ridge Annexation:** Twin Eagles Development II, LLC and Timber Ridge Group, LLC shall agree to dismiss, with prejudice, Cause No. 02D09-1409-PL-341 in the Allen Superior Court; and
- (B) **Court of Appeals Case:** The City, Huntertown, and Twin Eagles Development II, LLC, shall request that the Court of Appeals remand the pending appeal in the Indiana Court of Appeals, Cause No. 93A02-1505-EX-444; and
- (C) **Allen Circuit Court Case(s):** The City, Town, Twin Eagles Development II, LLC, Timber Ridge Group, LLC, and IRM Partnership, LLC, shall dismiss, with prejudice, Cause No. 02C01-1306-MI-1194 (including all claims in the consolidated cause docketed as Cause No 012D01-1036-MI-10288) in the Allen Circuit Court.

**Section 7.** IURC Joint Stipulation and Settlement Agreement. The parties agree that Sections 2-5 of this Interlocal Agreement shall be memorialized in a joint stipulation and settlement agreement (“Joint Stipulation and Settlement Agreement”). The Town and the City shall jointly petition the IURC to adopt the Joint Stipulation and Settlement Agreement as a final order. The Town and the City shall also seek the joinder of the OUCC, Allen County Regional Water and Sewer District, and/or Twin Eagles Development II, LLC in that joint petition and in executing the Joint Stipulation and Settlement Agreement.

**Section 8.** OEA Dismissal. Within one (1) business day of execution of this Interlocal Agreement by the Town Council for the Town, the City shall dismiss, with prejudice, the petition for administrative review and stay filed by the City currently pending in the OEA Cause No. 15-W-J-4783. Additionally, it is a condition subsequent to this Interlocal Agreement that within one (1) business day of execution of this Interlocal Agreement by the Town Council for the Town, (i) the City shall instruct Thomas “Ted” Nitza, Jr. and The Secant Group, LLC, that they shall not provide any assistance to any individual or entity in OEA Cause No. 15-W-J-4783, or in any legal cause or legislative challenge to the Town’s 1.5 MGD WWTP as it is currently permitted except in connection with an action by the City consistent with this Interlocal Agreement for the duration of Section 2 of this Interlocal Agreement or until the Town has completed phase 1 (i.e., completion of 1.5 MGD facility) of its WWTP, whichever is first; and (ii) Mr. Nitza and the Secant Group, LLC shall agree that they will not provide any such assistance. In exchange, the Town, its agents, employees, and consultants shall agree not to bring any legal proceedings, claims, or causes of action of any kind against Thomas “Ted” Nitza, Jr. and/or The Secant Group, LLC, unless the Town can first prove that Mr. Nitza has not complied with the instructions in this Section 8.

**Section 9.** No Further Prosecution of OEA Cause No. 15-W-J-4783.

- (A) **No Further Prosecution:** As long as the Town adopts its amended ordinances consistent with Section 5 of the Interlocal Agreement, then the

City shall not further prosecute and/or renew the claims or actions asserted in its Petition for Administrative Review and Stay of Effectiveness and/or its Amended Petition for Administrative Review and Stay of Effectiveness in OEA Cause No. 15-W-J-4783, for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). Further, the City, its agents, employees, experts, and consultants shall not provide any technical, financial, or other similar support to any party other than the City concerning any such party's claims or actions in OEA Cause No. 15-W-J-4783, for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). The City, its agents, employees, experts, and consultants shall not raise any legal challenge, opposition, or objection in any administrative, judicial, or legislative proceeding to the construction of the Town's WWTP as it is permitted at the time of this Interlocal Agreement.

**(B) Conflict of Interest:** Because this Interlocal Agreement is in the best interests of both the City and the Town, the City agrees that future engagements by the counsel, experts, employees, consultants, witnesses, and agents for the City directed at any action which, if taken by the City would violate this Section 9 of the Interlocal Agreement would be materially adverse to the City and substantially related to the subject matter of the dispute that this Interlocal Agreement resolves, and, hence, a conflict of interest. The City agrees that it will not consent to or waive any such conflict of interest. The City shall inform its witnesses, attorneys, experts, consultants, officers, employees, and other similar agents, of the existence and terms of this Section 9 of this Interlocal Agreement, the conflict of interest, and the City's unwillingness to waive the conflict. In the event of any inconsistency between this Section 9 and Section 8 of this Interlocal Agreement concerning Thomas "Ted" Nitza, Jr. and/or The Secant Group, LLC, Section 8 shall control.

**Section 10. No Challenge to City's Right to Serve and/or its Rates and Charges.**

**(A) No Challenge:** The Town, its agents, employees, experts, and consultants shall not raise any challenge to the City's right to serve any area or intervene in any case involving the City's right to serve any area other than the Town's water and sewer service areas as set forth in Section 4 and/or Section 5 of this Interlocal Agreement for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). The Town, its agents, employees, experts, and consultants shall also not challenge the City's sewage rates and charges, including, without limitation, any wholesale sewage petition, legal proceeding, public hearing, or intervening in any action against the City for the duration of Section 2 of this Interlocal Agreement (including under Section 2(S)a. but excluding the provisions of Section 2(S)b.). Further, the Town, its agents, employees, experts, and consultants shall not provide any technical, financial, or other similar support to any party concerning such party's claims, which, if brought by the Town would violate this Section 10 of this Interlocal Agreement. Other than to enforce this Interlocal Agreement, the Town its

agents, employees, experts, and consultants shall not raise any legal challenge, opposition, or objection in any administrative, judicial, or legislative proceeding to the City's sewage rates and charges and/or the City's right to provide sewer and water service.

**(B) Conflict of Interest:** Because this Interlocal Agreement is in the best interests of both the City and the Town, the Town agrees that future engagements by the counsel, experts, employees, consultants, witnesses, and agents for the Town directed at any action which, if taken by the Town would violate this Section 10 of the Interlocal Agreement would be materially adverse to the Town and substantially related to the subject matter of the dispute that this Interlocal Agreement resolves, and, hence, a conflict of interest. The Town agrees that it will not consent to or waive any such conflict of interest. The Town shall inform its witnesses, attorneys, experts, consultants, officers, employees, and other similar agents, of the existence and terms of this Section 10 of this Interlocal Agreement, the conflict of interest, and the Town's unwillingness to waive the conflict.

**Section 11. Remand.** Unless otherwise dismissed by the City, the City and the Town shall, by December 4, 2015, file a joint motion to remand Court of Appeals Cause No. 93A02-1505-EX-444 to the IURC (IURC Cause No. 44519), and the parties shall, pursuant to Section 7 of this Interlocal Agreement, petition the IURC to adopt the Joint Stipulation and Settlement Agreement.

**Section 12. Interlocal Expiration.** If the IURC approves the Joint Stipulation and Settlement Agreement in its entirety and adopts the parties' joint proposed order in its entirety, then Section 4 of this Interlocal Agreement between the parties shall expire, and the terms of the Joint Stipulation and Settlement Agreement and the IURC Order shall remain in full force and effect.

**Section 13. Severability.** If any term or provision of this Interlocal Agreement is declared to be invalid, null, void, or unenforceable, the remaining provisions shall not be affected and shall remain in full force and effect. Neither the City nor the Town shall contend in any judicial proceeding that any provision of this Interlocal Agreement is invalid, null, void, or unenforceable.

**Section 14. Counterparts.** This Interlocal Agreement may be executed in counterparts.

**Section 15. Successors, Heirs and Assigns.** Consent is not required for an assignment of this Interlocal Agreement. Any successor, heir, or assign of the parties hereto shall be bound by all terms and conditions of this Interlocal Agreement.

**Section 16. Merger.** This Interlocal Agreement sets forth the entire agreement between the parties regarding the subject matter hereof and fully supersedes any and all prior agreements or understandings, whether written or oral, express, constructive, or implied between the parties with respect to the matters that are the subject of this Interlocal Agreement. The City disputes that the parties ever had an implied contract covering any of the matters discussed in this

Interlocal Agreement, but to the extent any such implied contract existed, it is now superseded by this express Interlocal Agreement.

**Section 17. No Unilateral Termination.** The Town and the City mutually acknowledge and expressly agree that this Interlocal Agreement may not be terminated by either party except as expressly set forth in this Section 17, in Section 2 of this Interlocal Agreement, or upon a writing approved and executed by each of the parties hereto setting forth the specific provisions for such termination. The Town expressly acknowledges that the City has until December 2, 2015 to formally adopt this Agreement. In consideration of the City's dismissal of OEA Cause 15-W-J-4783 within one (1) business day of execution of this Interlocal Agreement by the Town, for the period between the formal adoption of this Interlocal Agreement by the Town and the formal adoption of this Interlocal Agreement by the City, the Town agrees to be bound by the terms of this Interlocal Agreement, and agrees that it shall not terminate, modify, alter, or amend in anyway this Interlocal Agreement (except where expressly permitted by the terms hereof), without the written agreement of the City, provided that the Town may only unilaterally terminate this Interlocal Agreement by written notice to the City if the City fails to formally adopt this Interlocal Agreement on or before December 2, 2015.

**Section 18. Amendments.** This Interlocal Agreement may only be modified and/or amended by a writing executed and approved by the parties.

**Section 19. Waiver.** Except as expressly stated herein, the failure of either party to exercise any right or power given hereunder or insist upon strict compliance with any obligation specified herein shall not constitute waiver of such party's rights to demand exact compliance with the terms hereof.

**Section 20. Headings.** Except for the headings in Section 2(A) of this Interlocal Agreement, the headings to the paragraphs of this Interlocal Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Interlocal Agreement.

**Section 21. Applicable Law.** This Interlocal Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Indiana.

**Section 22. Remedies.** In addition to any remedies that may be available at law, temporary, preliminary and permanent injunctive relief may be granted to enforce any provision of this Interlocal Agreement in the event of an actual breach or violation, or a threatened breach or violation, of any restriction or covenant under this Interlocal Agreement.

**Section 23. Mutual Drafting.** Each party has cooperated in the drafting, negotiation, and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such language.

**Section 24. Conflicting Ordinances.** Except where otherwise stated, in the event there are any Ordinances or Resolutions of the City or the Town that conflict with this Interlocal Agreement, this Interlocal Agreement shall control to the fullest extent permitted by law.

**Section 25. Survival.** In addition to Section 2(U)b and except as otherwise specifically stated, Sections 3-25 of this Interlocal Agreement shall survive the termination of Section 2 of this Interlocal Agreement.

This Agreement, having been approved by the Common Council of the City of Fort Wayne, the Mayor of the City of Fort Wayne, and the Town Council for the Town of Huntertown shall constitute the entire Agreement between the parties, and there are no other terms, statements, obligations, representations, oral or otherwise, of any nature whatsoever.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

TOWN COUNCIL OF THE TOWN OF  
HUNTERTOWN, INDIANA

*Patricia Freck*

Patricia Freck, President

*Dave Garman*

Dave Garman, Council Member

*Gary Grant*

Gary Grant, Council Member

Brandon Seifert, Council Member

*Mike Stamets*

Mike Stamets, Council Member

Attest:

*Cathy Mittendorf*

Cathy Mittendorf, Clerk-Treasurer

RECOMMENDED FOR APPROVAL BY THE  
CITY OF FORT WAYNE , INDIANA  
BOARD OF PUBLIC WORKS

By           Absent            
Robert P. Kennedy, Chair

By           Mike Avila            
Mike Avila, Member


By           Kumar Menon            
Kumar Menon

ATTEST:           Lyndsey Richards            
Lyndsey Richards, Clerk

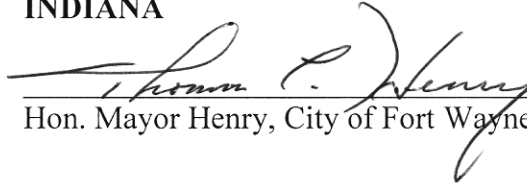
**COMMON COUNCIL OF THE CITY OF  
FORT WAYNE, INDIANA**

  
\_\_\_\_\_  
Presiding Officer


Attest:

  
\_\_\_\_\_  
City Clerk

**MAYOR OF THE CITY OF FORT WAYNE,  
INDIANA**

  
\_\_\_\_\_  
Hon. Mayor Henry, City of Fort Wayne, Indiana

Attest:

  
\_\_\_\_\_  
City Clerk  
2850049\_4



# Exhibit A: Tap in Points for Huntertown



Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen  
North American Datum 1983  
State Plane Coordinate System, Indiana East



Date: 8/12/2015 1" = 500'

# EXHIBIT B- REMAINING CAPACITY TOWN OF HUNTERTOWN

No.	Project Name	Initial Allocation	Date of Allocation
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**Running Total of Remaining  
ERUS (Starting Total = 904)**

**ACF Waiver Applied? - Number  
of Waivers in ERUs**

K:\2014\1404-031\404-03b - Upper Ely Phase V\Plot DWGs\Exhibits\1404-03b Exhibit C CFW Service Area 081315.dwg - Saved by: kettrp, 8/14/2015 2:57:40 PM, 1:1

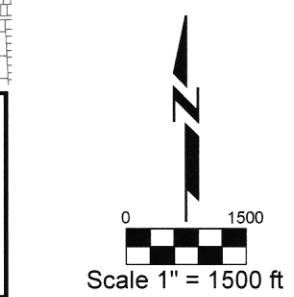


REVISIONS	
DATE	DESCRIPTION
10/07/2015	DATE
AS NOTED	SCALE
1404-03B	CHECKED BY
1 OF 1	SHEET NO.

**Exhibit "C"**

Allen County      Indiana

**DABEC**  
D.A. Brown Engineering Consultants  
5419 County Road 427, Suite C, Auburn, IN 46705  
Phone: (260) 925-2000    Fax: (260) 925-1212  
www.dabrownengineering.com



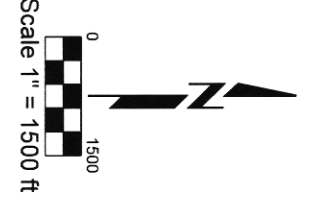


REVISIONS	
DATE	DESCRIPTION

**Exhibit "D"**

Allen County      Indiana

**DABEC**  
 D.A. Brown Engineering Consultants  
 5419 County Road 427, Suite C, Auburn, IN 46706  
 Phone: (260) 925-2020      Fax: (260) 925-1212  
 www.dabrownengineering.com



DATE: 08/14/2015  
 SCALE: AS NOTED  
 JOB NO: 1404-03B  
 SHEET NO: 1 OF 1



REVISIONS	
DATE	DESCRIPTION
08/25/2015	
AS NOTED	
1404-03B	1 OF 1

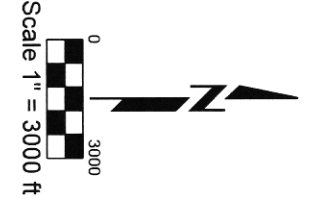
**Exhibit "E"**

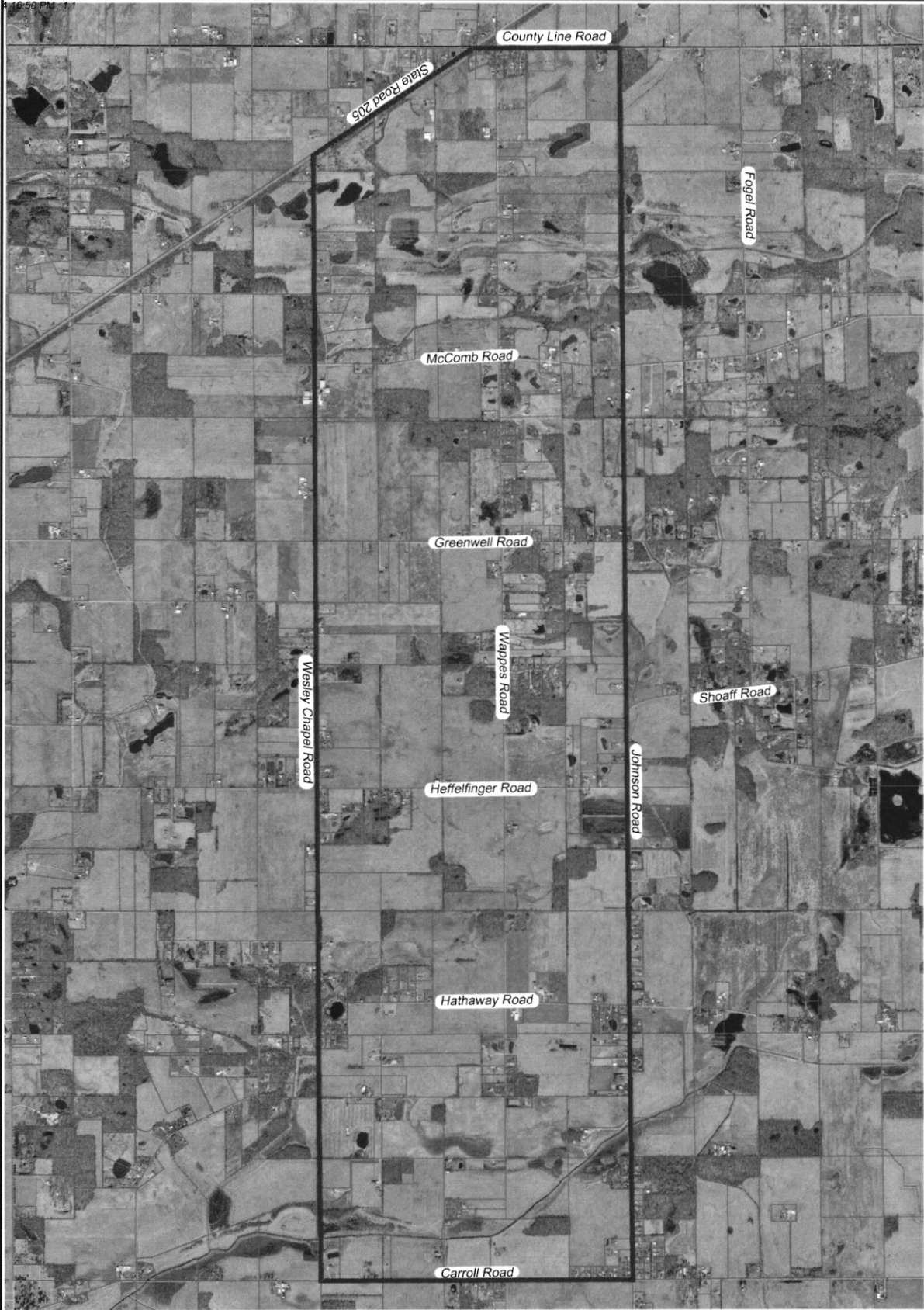
Annexation Area

Allen County Indiana

**DABEC**

D.A. Brown Engineering Consultants  
 5419 County Road 427, Suite C, Auburn, IN 46706  
 Phone: (260) 925 - 2020 Fax: (260) 925 - 1212  
[www.dabrownengineering.com](http://www.dabrownengineering.com)





REVISIONS	
DATE	DESCRIPTION

DATE	DESIGN BY
10/06/2015	
SCALE	CHECKED BY
AS NOTED	
JOB NO.	SHEET NO.
1404-03B	1 OF 1

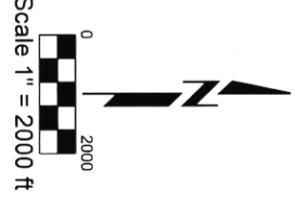
**Exhibit "F"**

Utility Service Consent Area  
Town and City

Allen County      Indiana

**DABEC**

D.A. Brown Engineering Consultants  
 5419 County Road 427, Suite C, Auburn, IN 46706  
 Phone: (260) 925 - 2020      Fax: (260) 925 - 1212  
[www.dabrowneengineering.com](http://www.dabrowneengineering.com)



**TOWN OF HUNTERTOWN**  
**AGENDA**  
Special Town Council Meeting  
October 8, 2015  
3:00 p.m.  
Town Hall

- Call to Order with the Pledge of Allegiance

**NEW BUSINESS**

Inter-local Agreement with the City of Ft Wayne

**ADJOURNMENT**

**Reminders:** Next Town Council Meeting October 19, 2015, 6:00 pm  
Next Utility Service Board Meeting November 2, 2015, 5:00 pm

**Please Note:** Please keep all cell phones off or on silent