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3 **BILL NO. S-14-06-41**

4 SPECIAL ORDINANCE NO. S- 6574

5 AN ORDINANCE approving SANITARY SEWER  
6 SERVICE AGREEMENT - GENERAL MOTORS  
7 between GENERAL MOTORS and the City of Fort  
8 Wayne, Indiana, in connection with the Board of  
9 Public Works.

10 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
11 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

12 **SECTION 1.** That the SANITARY SEWER SERVICE  
13 AGREEMENT - GENERAL MOTORS by and between GENERAL MOTORS  
14 and the City of Fort Wayne, Indiana, in connection with the Board of Public  
15 Works, is hereby ratified, and affirmed and approved in all respects,  
16 respectfully for:

17 Twenty (20) year Sanitary Service Agreement - General  
18 Motors see Exhibit "A" attached hereto and made a part  
19 hereof:

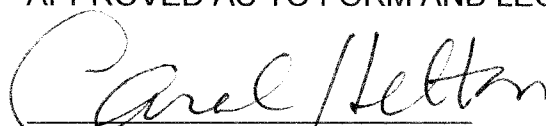
20 A copy of said Sanitary Sewer Service Agreement – General Motors is on file  
21 with the Office of the City Clerk and made available for public inspection,  
22 according to law.  
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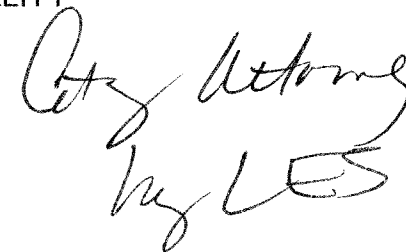
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**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

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

APPROVED AS TO FORM AND LEGALITY

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

  
City Attorney  
by LES

# Interoffice Memo

Date: **June 6, 2014**  
To: Common Council Members  
From: Matthew Wirtz, City Utilities Engineering  
RE: **Sanitary Sewer Service Agreement – General Motors**

Vendor: General Motors LLC

Description:

General Motors (GM) is one of the key employers in the Fort Wayne area and one of City Utilities (CU) largest customers for both water and wastewater. CU believes it is important for CU to partner with GM to help ensure their local plant has a long term presence in Allen County and continues to provide the significant economic impact to our area and the businesses and families that they support.

CU products and services are important to GM's operations and CU has been providing them water and wastewater services since 1998. GM attests to the quality of water and wastewater services we provide. GM was a contract customer until 2008, at which time the contract was cancelled, by mutual agreement, in response to GM's financial difficulties. GM is now again seeking to commit to and benefit from being a long term contractual customer of CU for its wastewater services.

Contract customers are beneficial to CU as they improve our ability to assemble more realistic long term plans; financially as well as for engineering and capacity purposes. GM has always done an excellent job of pre-treatment to make sure it's process discharge flow meets CU and regulatory quality standards. And, with this contract, GM commits to control its discharge flow rates. GM's commitment to control the quantity and rate of its discharge, especially during wet weather events, will help CU manage and maximize sewer system capacity in the GM area and allow for continued growth and economic development in that area for many years.

This contract is for 20 years and includes automatic 5 year renewals, unless the parties agree to renegotiation.

CC: BOW  
Matthew Wirtz  
Diane Brown  
Chrono  
File



SANITARY SEWER SERVICE AGREEMENT

THE CITY OF FORT WAYNE, INDIANA  
AND  
GENERAL MOTORS LLC

May 4, 2014

**SANITARY SEWER SERVICE AGREEMENT**

**THE CITY OF FORT WAYNE, INDIANA  
AND  
GENERAL MOTORS LLC**

**THIS CONTRACT** (hereinafter referred to as "Contract") entered into this \_\_\_\_\_ day of May, 2014, by and between the **CITY OF FORT WAYNE, INDIANA**, a municipal corporation, of the State of Indiana (hereinafter referred to as "City"), and **General Motors LLC**, a company established under the laws of the State of Delaware (hereinafter referred to as "GM").

**WITNESSETH THAT:**

**WHEREAS**, City owns and operates a Water Pollution Control Plant to treat sewage; and

**WHEREAS**, GM owns and operates an assembly plant located at 12200 Lafayette Center Road, Roanoke, Indiana ("GM Plant") that needs potable water and sanitary sewer service; and

**WHEREAS**, the City has issued GM an Industrial Discharge Permit No. 03701, which covers the GM Plant's wastewater discharge; and

**WHEREAS**, pursuant to Indiana Code 36-1-4-7, the parties desire to enter into a contract under which GM will convey its sewage from its sewage system into City's Water Pollution Control Utility and City will accept and treat GM's sewage pursuant to the terms, provisions and limitations of this Contract;

**NOW THEREFORE**, in consideration of the above and foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**II. EFFECTIVE DATE.**

- A. It is understood and agreed between the parties that this Contract shall become effective (hereinafter referred to as the "Effective Date") following approval by the Fort Wayne Common Council and signature by the Mayor of Fort Wayne.

- B. It is understood and agreed that this Contract may also be subject to the approval of other local, state and federal agencies as may be legally required.
- C. All previous agreements, contracts and amendments to such for sewer service are declared void on the Effective Date of this Contract.

**III. SERVICE AREA.**

- A. NOT USED

**IV. CONNECTION OF SEWER FACILITIES.**

- A. The location of the interconnection of the sanitary sewer facilities of GM to the City ("Sewer Interconnection Point") is generally shown in **Exhibit A**.
- B. Each party shall be responsible for the maintenance and operation of its portion of Sewer Interconnection Point. The City may inspect GM's portion of the Connection Point. If a City inspection finds the Connection Point is not being properly maintained or operated, the City may notify GM in writing of the improper maintenance or operation. Upon its receipt of a written notification from the City, GM shall, within ten (10) days, provide the City with a written plan to complete all reasonably necessary maintenance, repairs or modifications. In the event GM fails to timely provide such a written plan or to promptly implement the actions described in the written plan to City's reasonable satisfaction, the City may complete the maintenance, repairs or modifications and GM shall, within 30 days of City's submittal of an invoice, reimburse the City for any costs incurred by City for the maintenance, repairs or modifications.
- C. Should it become necessary or desirable for the parties hereto to change or modify the Sewer Interconnection Point or to connect at different or additional interconnection points, the party requesting the different or additional interconnection points shall notify the other party of its request in writing and the change shall be subject to negotiations and/or approval by the non-requesting party. If no approval is given or if negotiations become necessary and no agreement is reached, then there shall be no change in the Sewer Interconnection Point.

**V. CONVEYANCE AND TREATMENT OF SEWAGE.**

- A. **Responsibility for Conveyance.** GM shall be solely responsible for delivery of the sewage to its Sewer Interconnection Point in a form compliant with GM's Industrial Wastewater Discharge Permit ("Discharge Permit") and in a form compliant with Section VIII. Thereafter, City shall be responsible for conveyance of the sewage through its sewage system to its Water Pollution Control Plant.
- B. **Responsibility for Treatment.** City shall be solely responsible for the proper treatment at City's Water Pollution Control Plant of the sewage received from GM in accordance with the laws, regulations, requirements and standards of Indiana Department of Environmental Management, the Indiana State Board of Health and United States Environmental Protection Agency Region 5, currently in effect and as may be amended from time to time.
- C. **Exclusivity of Treatment.** City shall be the sole provider of sanitary sewer service for GM during the term of this Contract.

**VI. CAPACITY.**

- A. **No Modifications or Alterations.** In order to assure that adequate sewer capacity is available in the City's Water Pollution Control Utility, GM agrees that no changes, modifications or alterations will be made that may increase the rate of sewage flow at the Sewer Interconnection Point, without the approval of the City, which approval shall not be unreasonably denied.
- B. **Volume Limit.** If, during any billing period, GM delivers to the Sewer Interconnection Point an amount of sewage flow in excess of the limits described in **Exhibit B**, City may apply a volumetric exceedance fee, as described in **Exhibit C**, to the total amount of excess flow measured at the Connection Point or other agreed upon metering location.
- C. **Peak Limit.** As part of the monthly billing, City shall analyze sewage flow for peak condition characteristics. If peak flow exceeds peak flow limits specified in **Exhibit B**, a Peak Flow Charge shall be applied to

GM's rate in accordance with **Exhibit C**. In the event a Peak Flow Charge is assessed again within twelve (12) consecutive months of a prior Peak Flow Charge, City may send notice to GM. Upon receipt of notice by City, GM shall submit a plan within sixty (60) days describing improvements or operational changes that will be implemented to assure City that flow will remain within the peak limits described in **Exhibit B**. Failure to submit a plan within sixty (60) days shall be considered a default of this Contract pursuant to Section XIII.

#### **VII. METERING.**

- A. City will calculate GM's monthly sewer bill based on eighty percent (80%) of the monthly water meter readings for the GM facility.
- B. City will provide and maintain two (2) water meters with contact pulse signals for the GM facility and verify the calibration of both water meters annually. City will provide output signals from the water meters for use in GM's GM2100 electronic data collection and storage system. GM will be responsible for necessary work and expenses to connect the water meter output signals to its electronic data collection and storage systems.-
- C. GM has installed, and will operate and maintain proper and adequate sewer metering equipment for the purpose of measuring the instantaneous peak flow rate of sewage delivered to the Sewer Interconnection Point for treatment and shall be responsible for the cost of real estate acquisition, planning, designing, installing, daily operation, maintenance, updating and replacement, as necessary, of sewer metering devices. The metering equipment, location and manner of metering shall be approved by City prior to installation or modification of such equipment. If GM fails to obtain City's approval prior to installation or modification of metering equipment and City reasonably determines that the equipment, location or manner does not comply with City's requirements, City may re-install or modify the metering equipment at a location approved by the City at GM's expense.
- D. The water and sewer metering equipment shall continue to include an electronic data collection and data storage system which monitors and transmits to the City GM's water use and sewage flow data in no less

than fifteen (15) minute time increments GM shall be required to maintain and provide to City, at a minimum, remote read-only access to both current and backup electronic data and shall not edit, change or delete any data without written approval from City, which approval shall not be unreasonably denied. An intentional edit, change or deletion of the data (which does not include data outages) without written approval from the City shall be considered a breach of this Contract.

- E. Any bypass valves shall be maintained in locked boxes and the key to each locked box shall be kept by the City. GM may request access to locked boxes; said access shall not be unreasonably denied by City. If emergency access to the locked boxes is needed, GM shall immediately notify City and access shall not be unreasonably prohibited by the City.
- F. City shall have complete and free access to the metering equipment for inspection, testing and approval at all reasonable times. GM shall provide reasonable access to the metering equipment.
- G. Sewer metering equipment and remote readouts may be tested, calibrated, maintained and repaired as necessary by the City and GM shall bear the reasonable costs of such activities. In addition, the following testing and calibration may be performed by the City and the reasonable cost shall be the responsibility of GM:
  - 1. Testing and calibration of the sewer metering equipment while remaining in place at GM's facilities may be conducted annually.

#### VIII. **QUALITY.**

- A. **Excess Strength.** In the event GM conveys sewage which has strength in excess of domestic waste, as defined in the City of Fort Wayne's Code of Ordinances ("City Ordinances"), the sewage will be accepted and treated subject to GM's Discharge Permit and the City's Ordinances and a surcharge will be applied accordingly.
- B. **Prohibited Discharges.**
  - 1. Conditions per GM's Discharge Permit.

#### IX. **SAMPLING AND MONITORING OF QUALITY.**

- A. Conditions per GM's Discharge Permit.

**X. INSPECTION AND ENFORCEMENT.**

- A. Conditions per GM's Discharge Permit.

**XI. CHARGES FOR AVAILABILITY, CONVEYANCE, TREATMENT AND ADDITIONAL SERVICES.**

A. **Area Connection Fees.**

1. NOT USED

B. **Cost of Conveyance and Treatment.**

1. **Billing.** City shall be responsible for reading the metering devices and billing GM in accordance with rates schedules in effect and this Contract.
2. **Rate.** GM agrees to pay to City for the conveyance, treatment, billing and other charges applicable to the sewage flow received at the Sewer Interconnection Point both in respect of the volume and the composition of such flow as set out in **Exhibit D** and as approved by the City Ordinances for Contract Customers and as further specified in this Contract. As provided in said rate schedule and this Contract, GM agrees to pay, when applicable, any charge so provided.
3. **Rate Adjustment.** Parties understand and agree that the rates are set by the City's Board of Public Works and Common Council and may be subject to change from time to time, but changes shall be per methodology as reflected on **Exhibit D**.
4. **Notice of Rate Change.** City shall give notice of its intent to adjust rates charged GM at least one year prior to an adjustment becoming effective.

C. **Additional Services.**

1. This Contract may include services and rates not set by City Ordinance, City Rules and Regulations of Sewer Utility or City Board of Public Works Resolutions. In addition, the parties may agree for additional services from the City and such rates may not be set by City Ordinance, City Rules and Regulations of the Sewer Utility or City Board of Public Works Resolutions. The

charge of such services shall be the City's actual expense (both in-house and contracted assistance).

2. The City shall invoice GM for these services. Payment of said invoices by GM shall be in accordance with and be subject to the City Ordinance.
- D. **Other Rates, Fees, Penalties and Charges.** City shall be responsible for invoicing GM for any other rates, costs, fees, penalties and charges assessed pursuant to the Contract.

**XII. ANNEXATION.**

- A. NOT USED

**XIII. DEFAULT.**

- A. Default shall mean any violation of the Contract which is not or cannot be cured by the terms of the Contract. In the event a party defaults hereunder, the other party may send written notice to the defaulting party within 30 days of discovery of the default setting forth the default and how the default may be cured to the other party's reasonable satisfaction. Upon receipt of such notice, the defaulting party shall have 30 days to cure the default or ten (10) days to submit to the other party a written plan to cure the default. If the default is not cured within 30 days or if the defaulting party does not timely cure the default pursuant to its written plan, the other party may, at its sole discretion, terminate the Contract.
- B. Upon a termination of the Contract under this Section XIII and subject to Section XV(E), City shall continue to provide treatment services for GM. In the event of a contract termination due to GM's default, the applicable rate for conveyance, treatment and other charges for Contract Customers as set forth in Section XI(B)(2) shall terminate and GM shall pay all fees and charges applicable to Outside City Industrial customers until an updated cost of service study ("COSS") can be completed and any necessary rates can be updated in City Ordinances. Upon the City's decision to claim a default under Section XIII(A), the City agrees to perform an updated COSS to update the cost of providing sewer service

to the City's different classes of customers. As part of the updated COSS, the City will establish a Large Industrial Customer class. The City will utilize acceptable industry cost allocation principles in the updated COSS for sewer service and will provide GM the opportunity to comment prior to completion of the updated COSS. The COSS and City Ordinance updates will be completed within two years of City's decision to claim default and upon completion GM will switch to an appropriate Large Industrial Customer class. In the event of a City default, GM's rate and charges shall remain the Contract Customer rate and charges as set forth in the City Ordinances.

**XIV. COMPLIANCE WITH RULES, REGULATIONS, STANDARDS AND LAWS.**

- A. Each of the parties to this Contract shall comply with all local, state and federal regulations, standards and laws currently in effect and as 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 Contract.

**XV. MISCELLANEOUS.**

- A. **Notices and Invoices.**
  - 1. Any notices required under this Contract, except for those under Exhibit B which shall follow Paragraph (5) below, shall be in writing 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, or by electronic transmission to the address set forth in Paragraphs 3 and 4 below. Each party can update the notice contacts provided in Paragraphs 3 to 5 below by providing such update to the other party under Paragraphs 3 and 4 below.
  - 2. Invoicing by the City under this Contract shall be served by first class mail addressed to GM at the last address filed by GM.

3. Notices to the City:  
Fort Wayne City Utilities, Attention of the Director  
200 E. Berry St.  
Fort Wayne, Indiana 46802.  
[Kumar.menon@cityoffortwayne.org](mailto:Kumar.menon@cityoffortwayne.org)

4. Notices to GM:  
General Motors LLC, Attention of David A. Shenefield  
12200 Lafayette Center Road  
Roanoke, Indiana 46783  
[dave.a.shenefield@gm.com](mailto:dave.a.shenefield@gm.com)

and

Dean E. Putman  
General Motors, Global Facilities  
Commodity, Regulatory & Supply Manager  
30200 Mound Rd., Bldg. 1-11  
MC 480-111-3N, Cube 314A  
Warren, MI 48090-9010

5. Any notice required under Exhibit B of this Contract shall be given both by calling the cell phone number provided below as well as by sending an electronic mail transmission. These notices are to be provided as follows:

i. Notices to the City:  
Brian Robinson  
Superintendent WPCP  
260-427-6053 OFFICE  
260-452-9873 CELL  
[Brian.robinson@cityoffortwayne.org](mailto:Brian.robinson@cityoffortwayne.org)

ii. Notices to GM:

GM Site Utility Manager:  
David Shenefield:  
[dave.a.shenefield@gm.com](mailto:dave.a.shenefield@gm.com)  
260-410-6732 (cell)

and

GM WWTP Contractor:  
Veolia Water North America  
Lonnie Saunders – GM Ft Wayne Wastewater Site  
Superintendent  
260-906-6456  
[Lonnie.saunders@gm.com](mailto:Lonnie.saunders@gm.com)

**B. Term of Contract, Renewals.**

1. **Original Term.** This Contract shall continue in full force and effect for twenty (20) consecutive years from the effective date.
2. **Automatic Term Renewals.** This Contract shall automatically renew for an indeterminate number of five (5) year terms unless a party notifies the other of its desire to terminate the Contract or to terminate services at least thirty-six (36) months prior to the expiration of the then current term. Failure of either party to notify the other at least thirty-six (36) months prior to the expiration of the then current term automatically renews this Contract for a five (5) year term. The notice shall be in accordance with Section XV(A) and state the desire of the party not to continue the Contract or service after the conclusion of the then current term and shall cite one of the following two bases:
  - a. **Termination of Contract.** Upon notice of termination of Contract by either party, with the intent to enter into a new Contract with new terms, the terms of the Contract shall remain in force and effect until the termination date.
  - b. **Termination of Services.** Upon notice of termination of this Contract by either party with no intent to enter into a new Contract under current or new terms, under Section

XV(B)(2), the City agrees to perform an updated COSS to update the cost of providing sewer service to the City's different classes of customers. As part of the updated COSS, the City will establish a Large Industrial Customer class. The City will utilize acceptable industry cost allocation principles in the updated COSS for sewer service and will provide GM the opportunity to comment prior to completion of the updated COSS. The COSS and City Ordinance updates will be completed within two years of notice to terminate being provided and upon completion GM will switch from the applicable Contract rates set forth in Section XI(B)(2) to an appropriate Large Industrial Customer class rates.

C. **Amendments.**

1. **Written Mutual Consent.** Written amendments to the Contract executed and approved by authorized representatives of the parties shall be the only recognized changes to the Contract.
2. **Notice.** In the event a party wishes to amend the Contract, that party shall send notice to the other party and include the following:
  - a. Desire of party to discuss and amend;
  - b. List of subject portions of the Contract; and
  - c. Description of relief or change desired.
3. The parties shall have six months in which to negotiate in good faith the proposed amendments to the Contract. In the event that the parties do not reach agreement on the proposed amendments, the Contract provisions herein will remain in force.
4. **Change of Conditions or Legal Environment.** If a party believes there has been a change in conditions applicable to the Contract, the Contract terms and conditions may be renegotiated in good faith to reflect the effect of such change. Such a request must be initiated by a notice provided from a party to the other in accordance with Section XV(A) that includes the following:

- a. Desire of party to discuss and renegotiate;
- b. Description of substantial change in conditions; and
- c. Description of conceptual relief or change desired.

D. **Termination.**

1. **By Both Parties.** This Contract may be terminated by mutual agreement in writing by both parties.

2. **By Either Party.** This Contract may be terminated by either party immediately if:

- a. Either party becomes insolvent/files for bankruptcy;
- b. The GM Plant is scheduled for closure, or has been idled for longer than one year; or
- c. Pursuant to default provisions in Section XIII.

3. **Rates.**

a. Upon termination under Section XV(D)(1), the City agrees to perform an updated COSS to update the cost of providing sewer service to the City's different classes of customers. As part of the updated COSS, the City will establish a Large Industrial Customer class. The City will utilize acceptable industry cost allocation principles in the updated COSS for sewer service and will provide GM the opportunity to comment prior to completion of the updated COSS. The COSS and City Ordinance updates will be completed within two years of notice to terminate being provided and upon completion GM will switch from the applicable Contract rates set forth in Section XI(B)(2) to an appropriate Large Industrial Customer class rates.

b. Upon termination under Section XV(D)(2)(a), the Contract rates shall continue to apply if the City becomes insolvent or files for bankruptcy. If GM becomes insolvent or files for bankruptcy the provisions of Section XIII for rates under a GM default shall apply.

c. Upon termination under Section XV(D)(2)(b) and where the plant continues to need service, the Contract rates shall continue to apply unless the City chooses to utilize the default provisions of Section XIII for rates under a GM default.

- E. **Survival.** The obligations set forth in the following sections shall survive termination or expiration of this Contract until City no longer provides treatment services to GM:
1. Section IV;
  2. Section V(A), (B);
  3. Section VI(A), (B);
  4. Section VII;
  5. Section VIII;
  6. Section IX;
  7. Section X;
  8. Section XI(B)(1), (3) and (4), (C), (D);
  9. Section XIII;
  10. Section XIV; and
  11. Section XV (A), (E), (M).
- F. **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 Contract in the event of an actual breach or violation, or a threatened breach or violation, of any restriction or covenant under this Contract. Neither party shall under any circumstances be subject to incidental, consequential, indirect, punitive, or special damages, or to lost profits.
- G. **Severability.** Invalidity or unenforceability of any covenant, condition, term or provision in this Contract shall not affect the validity and enforceability of any other covenant, condition, term or provision in this Contract.
- H. **Waiver.** 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.
- I. **Headings.** The headings to the paragraphs of this Contract 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 Contract.

- J. **Applicable Law.** This Contract shall be governed by, construed and interpreted in accordance with the laws of the State of Indiana.
- K. **Force Majeure.** No party shall be liable for any breach, nonobservance, or nonperformance of any term or condition of this Contract resulting from or caused by any circumstance beyond its reasonable control, including, but not limited to, strikes, wars, fires, lockouts of workers, riots or civil commotion, compliance with law or any administrative actions, rules, or regulations of any governmental department, acts of God, or any unavoidable accident. In the event of any such cause intervening, the affected Sections herein shall be suspended until such time as the cause giving rise to said suspension shall no longer prevail. The party claiming Force Majeure shall provide the other party with Notice within five (5) calendar days of the Force Majeure event. In the event of a Force Majeure event, the Discharge Permit and Fort Wayne Code of Ordinances shall continue to apply to both parties.
- L. **Dispute Resolution.** The parties in good faith shall endeavor to resolve amicably and by mutual agreement any dispute regarding this Contract. The party claiming the dispute will send in writing notice to the other party of the dispute and provide detailed information regarding the claimed dispute. The parties will attempt to resolve such dispute within sixty (60) days of the other party receiving notice. If such discussions fail to resolve the dispute, the parties may elect to engage in further discussions, or may decide to submit the issue(s) to arbitration. If the parties are unable to resolve the dispute informally within 120 days of the notice of dispute, the parties shall submit the issue(s) to binding arbitration pursuant to the American Arbitration Association's Rules.
- M. **Nondisclosure to Third Parties.** The parties agree to keep this Contract confidential, other than the need for the City Council or other City officials to review for purposes of setting or implementing rates, or as otherwise required by applicable law or regulation. Pursuant to the finding by the Indiana Utility Regulatory Commission in Cause No. 44162, dated October 17, 2012 and reaffirmed on December 27, 2012, that GM's specific usage data is a trade secret pursuant to I.C. 24-2-3-2, that

information is exempt from public disclosure pursuant to I.C. 5-14-3-4(a)2 and 4(a)4.

If at any time a third party requests GM's usage data pursuant to Indiana's Access to Public Records Act:

1. City will notify GM of that request in the manner required by the situation.
2. City will respond to the request by providing the third party the "Form Access to Public Records Request Response – Third Party", attached as Exhibit E.
3. If a third party challenges the denial under Indiana's Access to Public Records Act, City will notify GM and GM will be responsible for defending, including the cost of defending, the applicability of the exemption, and City agrees not to take a position adverse to GM's defense.
4. If GM fails to successfully prevent the release of GM's usage data through an administrative or legal proceeding through no fault of the City, GM will not hold the City liable for the required release of the specific GM usage data.

N. **2014 Rate.** The parties acknowledge that GM's ability to manage its flow control as set out in Exhibit B is fully operational. Based on the flow control being operational, the City agrees to reduce GM's current 2014 sewer rates by \$350,000. Said reduction shall be applied evenly each month for the remaining months of 2014 after the parties execute this Contract.

O. **Counterparts.** This Contract may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Contract.

END.

IN WITNESS WHEREOF, City and GM hereto have caused this Contract to be executed by their duly authorized representatives.

**CITY OF FORT WAYNE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**GENERAL MOTORS LLC**

By: Michael J. Demsky

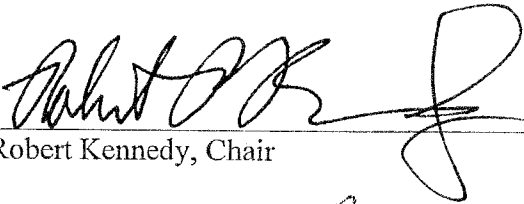
Name: Michael J. Demsky

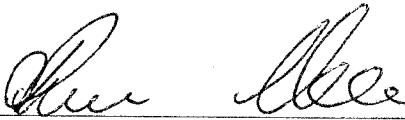
Title: Senior Manager, Global Facilities –  
Facility Procurement & Contracts

Date: 5-19-14


**APPROVED** this 4th day of June, 2014.

**BOARD OF PUBLIC WORKS**

By:   
Robert Kennedy, Chair

By:   
Kumar Menon, Member

By:   
Mike Avila, Member

Attest:   
Victoria Edwards, Clerk



## EXHIBIT B

### Flow Limits and GM Wastewater Discharge Control Plan

#### Normal Control Mode –

- GM not operating in Wet Weather Control Mode at request of City Utilities.
- Base sanitary flows are uncontrolled and continue to remain uncontrolled.
- GM controls its process discharges at a more consistent flow rate and controls them depending on the time of day.
  - Process discharges are described as process flow from the GM Wastewater Treatment Plant (GM WWTP).
  - GM will investigate the installation of a flow meter specific to process discharge as a monitoring mechanism, and will provide its recommendation to CU. The meter will be installed if the parties mutually agree.
- Daily Volume Limit (average for Billing Period): 1,500,000 gallons/day.
- Peak Flow Limit:
  - Peak flow is calculated as the average of combined sanitary and process waste flows in a 30 minute period.
  - Peak Flow Limit is a not to exceed 1,200 gpm, which is a combined total of both sanitary and process waste flow from GM.
    - Daytime Period (6am to 10pm): GM to generally control process flows in the 600-800 gpm range with remaining flow to be sanitary.
    - Nighttime Period (10:01pm to 5:59am): GM to generally control process flows in the 600-1,000 gpm range with remaining flow to be sanitary.

#### Wet Weather Control Mode -

- GM requested by City Utilities to implement Wet Weather Control Mode and temporarily stop discharging its process flows.
- Base sanitary flows are uncontrolled and continue to remain uncontrolled.
- CU staff will provide GM a minimum of twenty-four (24) hours advance notice if there is a prediction of greater than one (1) inch rain event, or other sewer system condition that may require GM to hold its process flows.
  - This CU advance notice will include, when available, supporting written materials prepared by a reliable third party national weather source, such as the National Weather Service, for advance notices associated with rainfall or high river level predictions.

- CU staff will confirm the advance notice at least six (6) hours before the rain event is predicted to begin by issuing a formal “hold order” for GM to temporarily stop its discharge of process flows (Hold Order).
  - A typical Hold Order will result in GM holding all process flows for twenty-four (24) hours. No Hold Order can exceed thirty-six (36) hours.
  - The written Hold Order will provide detailed start time and stop time.
- After the requested holding time period has expired, GM may discharge at up to a maximum peak flow rate of 1,200 gpm in order to empty all stored flows before resuming Normal Control Mode.
- CU Staff will provide the twenty-four (24) hour and six (6) hour notices by contacting the GM Site Utility Manager (David Shenefield) and the GM contractor Veolia Site Superintendent (Lonnie Saunders) via telephone and written email as provided for in the Contract, Section XV(A)(5).
- If the CU does not provide the advanced notifications as described above, GM will use reasonable efforts to follow any issued Hold Order; however, no charges can be assessed for GM’s inability to satisfy the issued Hold Order.
- Both the CU staff and GM personnel will monitor these Wet Weather conditions through email, log entries and database gathering information.
- CU estimates it may issue a Hold Order covering twenty-four (24) hours up to a maximum number of fifteen (15) times per calendar year. After the maximum number is reached, while GM will use reasonable efforts to meet any additional Hold Orders received, GM is no longer required to meet any additional Hold Orders and no charges can be assessed for GM’s inability to satisfy these additional Hold Orders.
  - In severe wet-weather or sewer system conditions, a CU Hold Order may request GM to hold process flows for greater than twenty-four (24) hours and up to a maximum of thirty-six (36) hours (Extended Hold Order). CU may issue up to two (2) Extended Hold Orders per calendar year. After the maximum number is reached, while GM will use reasonable efforts to meet any additional Extended Hold Orders received, GM is no longer required to meet any such additional Extended Hold Orders and no charges can be assessed for GM’s inability to satisfy these additional Extended Hold Orders.
- CU Staff and GM will follow operational procedures to control GM flows under this agreement, including:
  - Review of process flow data on a weekly basis between CU Staff and GM Staff during weeks where Hold Order has been issued
  - GM Staff will provide written and phone notification to CU Staff on the result of the Hold Order and approximate amount of water needing to be discharged.
  - GM Staff will provide written and phone notification to CU Staff once discharge of stored process flows is completed and are returning to “Normal Control Mode”

## EXHIBIT C

### Volume Exceedance Fee and Peak Flow Charge

- ❖ **Contract Customer Fee for Exceeding Volume Limit (Volumetric Exceedance Fee)**
  - Due to GM's ability to hold and store flows in larger wet weather events, as described in Exhibit B, there will be no Volumetric Exceedance Fee for flow that exceeds the daily volume limit.

- ❖ **Contract Customer Charge for Exceeding Peak Flow (Peak Flow Charge Rate)**

#### Normal Control Mode:

After satisfying the operating procedures and other provisions in Exhibit B, if GM's combined sanitary and process waste flow exceeds the Normal Control Mode peak flow limits more than twice in a month for three or more consecutive months, then a peak flow charge will be assessed as described below.

#### Wet Weather Control Mode:

Peak flow charges will not be assessed when GM is in Wet Weather Control Mode as a result of a Hold Order from CU staff.

- The capacity allocation for conveyance will be recalculated at a new peak flow rate using same methodology as the 2013/2014 cost of service study and then multiplied by:
  - ◆ Factor of 5 for peak exceedances of 0-10%
  - ◆ Factor of 10 for peak exceedances over 10%
  - The recalculated conveyance rate and conveyance base charge will be for the next 12 months, unless the new peak flow rate is exceeded
  - After 12 months, the conveyance rate and the conveyance base charge will return to the original cost of service established level if another peak exceedance has not occurred

## EXHIBIT D

### Cost of Service Rate Setting Methodology – Summary of Principles

#### ❖ Three Cost of Service Rate Categories

- Retail - Inside City
- Retail - Outside City
- Contract Customer

#### ❖ Contract Customer Characteristics

- Signed long term (20 year+) contract committing to send sewer flows to Fort Wayne, Subject to right to terminate services with at least thirty-six (36) months prior notice.
- Provide growth projections, estimated average day flows, agree to peak flow limits and seek capacity reservations for those flows which allows Fort Wayne to long term plan for accommodating those capacities
- Commit to controlling their peak flows and managing capacities or pay penalties for exceedences
- Customers for whom Fort Wayne provides less than all of administrative, customer collection, conveyance and treatment services needed by the customers  
or
- Customers that receive all the needed administrative, customer collection, conveyance and treatment services from Fort Wayne, but by the terms of the contract commit themselves to restrictions not applicable to retail customers

#### ❖ Rate Methodology

- Sewage Works costs are separated into three categories
  1. Treatment costs (includes Operations & Maintenance (O&M), Payment in Lieu of Taxes (PILOT), Debt Service (DS) and capital additions / components)
    - Treatment O&M costs are allocated to flow, extra-strength (Total Suspended Solids (TSS), Biochemical Oxygen Demand/Carbonaceous Biochemical Oxygen Demand (BOD/CBOD), Phosphorous and Ammonia) and inflow and infiltration
      - ◆ Inflow and infiltration is allocated to retail customer classes based on adjusted test year flows
      - ◆ Inflow and infiltration (I/I) is allocated to Contract Customers based on system allowances for leakage per design standards and estimated wet weather inflows along interceptors
        - Current breakdown (to be updated with each COSS) of I/I for Flow is:
          - Retail – Inside City – 85.4%
          - Retail – Outside City – 11.3%
          - Contract Customers – 3.3%

- Current breakdown (to be updated with each COSS) of I/I for TSS, BOD, Phosphorus, and Ammonia is:
        - Retail – Inside City – 83.4%
        - Retail – Outside City – 11.0%
        - Contract Customers – 5.6%
    - Treatment PILOT, DS and capital costs are allocated to flow
  - 2. Conveyance costs (includes O&M, PILOT, DS and capital components)
    - Conveyance O&M, PILOT and capital costs are allocated to customer classes based on their capacity miles in proportion to the total conveyance system peak capacity miles
      - ◆ Contract Customer O&M, PILOT and capital costs are directly allocated to customer based on capacity miles
        - Capacity calculation is based on contract specified peak flow capacity (in gpm) and distance from Contract Customer connection point to the wastewater treatment plant
      - ◆ Conveyance O&M, PILOT and capital costs are recovered via a flow based conveyance rate
    - Conveyance DS costs are categorized as Common to All or Retail Only
      - ◆ Common to All Conveyance DS costs consist of all debt issued prior to 2014 for conveyance system improvements and debt issued after 2013 and after that is related to conveyance system projects that will benefit Contract Customers
      - ◆ Retail Only Conveyance DS costs are the debt service issued for conveyance system improvements not allocated to Common to All
      - ◆ Conveyance DS costs are recovered via:
        - Retail – 50% via flow rate / 50% via base charge
        - Contract Customer – 100% via a fixed monthly base charge that would only change due to changes in a customer's capacity requirements or debt service requirements
  - 3. Billing costs (includes O&M, PILOT, DS and capital components)
    - Billing costs are recovered via a monthly billing charge calculated in relation to the cost of preparing, issuing, collecting and accounting for a sewer bill

#### ❖ Rate Adjustments

- 2013/2014 cost of service study includes rate schedule for years 2015, 2016, 2017, 2018 and 2019 with rates to be implemented January 1 of each year.
  1. If City Ordinance approves overall rate increases for years 2015, 2016, 2017, 2018 and 2019 that are different than the % increases in the proposed COSS, GM's annual increases shall be adjusted accordingly in the same methodology as the 2013/2014 cost of service study and proportioned to the City's retail customers.
- Beyond 2019 City is committed to extension of 2013/2014 cost of service study methodology framework updated for primary features, which consist of:

1. Treatment costs will continue to be allocated to function and customer class using same methodology set in Rate Methodology (1) of the 2013/2014 cost of service study.
2. Inflow and infiltration allocated to Contract Customers will continue to be based on system allowances for leakage per design standards and estimated wet weather inflows along interceptors and using the same methodology as described in Rate Methodology (1).
3. Conveyance DS costs will continue to be split between Common to All and Retail Only.
4. Contract Customers will pay their proportionate share (based on capacity) of Common to All Conveyance DS costs in the manner described above in Rate Methodology (2).
5. Contract Customers will not share in Retail Only conveyance DS costs.
6. Billing costs will continue to be recovered using a monthly charge and as described in Rate Methodology (3).
7. CU Staff will provide GM its projected cost of service (revenue requirements) in sufficient detail to populate the cost of service study methodology described above for any proposed rate adjustments after 2019. One year prior to when new rates are proposed to go in effect, the parties will agree to a review, comment and negotiation period to resolve all issues related to a rate adjustment.

**EXHIBIT E**

**[FORM ACCESS TO PUBLIC RECORDS RESPONSE – THIRD PARTY]**

Dear \_\_\_\_\_:

As required by Indiana Code §5-14-3-9, this letter is in response to your request for access to public records, which was received by this office on \_\_\_\_\_. Included within your request were records that comprise and/or include customer specific billing and consumption information ("Data") for the General Motors, LLC plant in Fort Wayne, Indiana.

[ With respect to the rest of your request, this office is compiling and reviewing the records and anticipates having any non-exempt records you have requested available for you on \_\_\_\_\_. A copy fee of \_\_\_\_ per page will be charged for the records, which may be paid upon delivery of the public records.]

This letter notifies you that to the extent your request seeks Data regarding the General Motors, LLC plant, your request to receive such information has been denied for the following reasons.

General Motors, LLC, has advised Fort Wayne that it considers the Data you have requested propriety, confidential, and a trade secret. General Motors has informed the City that it has in place restrictions on the disclosure of such information to third-parties, that it takes steps to protect information such as the Data, and that the Data is competitively sensitive and provides economic value to General Motors competitors. General Motors has supported these assertions with sworn affidavits filed with the Indiana Utility Regulatory Commission in Cause Number 44162, and.

On October 17, 2012, the Indiana Utility Regulatory Commission issued an Order in Cause Number 44162 specifically finding that "*General Motors usage information is determined to be confidential and exempt from public access and disclosure pursuant to Ind[iana] Code §24-2-3-2 and §5-14-3-4.*" On December 27, 2012, the Indiana Utility Regulatory Commission issued an "Order on Reconsideration" in Cause Number 44162, affirming its decision that General Motors Data constitutes a trade secret and is exempt from disclosure under Indiana law. As a public agency, the City is therefore prohibited from disclosing the Data you have requested, and

Indiana Code §5-14-3-4 states that certain public records "may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery." Among the records which are exempt from disclosure are those "declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute", and those records "containing trade secrets." Indiana Code §5-14-3-4(a)(2) & (4).

In accordance with the bases outlined above, the City cannot disclose the General Motors Data you request.

[Please be advised that to the extent the records you request concern information related to usage and billing related to other customers of the City's utilities,

the records are being compiled, and will be provided to you in a manner that does not disclose General Motors Data at the same time as any other non-exempt records responsive to your request.]

[CITY TO INSERT ITS STANDARD LANGUAGE CONTAINING CONTACT INFORMATION FOR PUBLIC RECORDS OFFICIAL]

Public Hearing Date, if applicable \_\_\_\_\_

Read the first time in full and on motion by Councilman Paddock

Read the second time by title and referred to the City Utilities

Committee. Read the third time in full and on motion by Councilman Paddock, placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____
BENDER	<u>✓</u>	_____	_____	_____
CRAWFORD	<u>✓</u>	_____	_____	_____
DIDIER	<u>✓</u>	_____	_____	_____
HARPER	<u>✓</u>	_____	_____	_____
HINES	<u>✓</u>	_____	_____	_____
JEHL	<u>✓</u>	_____	_____	_____
PADDOCK	<u>✓</u>	_____	_____	_____
SHOAFF	<u>✓</u>	_____	_____	_____
SMITH	<u>✓</u>	_____	_____	_____

DATED: 6-24-14 Sandra E. Kennedy  
SANDRA E. KENNEDY, 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. 5-65-14 on the 24th day of June, 2014

ATTEST:  
Sandra E. Kennedy  
SANDRA E. KENNEDY,  
CITY CLERK

Jeffrey A. Bender  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 26th day of June, 2014, at the hour of 2 o'clock PM E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 30th day of June

2014, at the hour of 11:00 o'clock AM E.S.T.

Thomas C. Henry  
THOMAS C. HENRY, MAYOR

**BILL NO. S-14-06-41**

**REPORT OF COMMITTEE ON CITY UTILITIES**

**JUNE 17, 2014**

*Geoff Paddock, Chair  
John Shoaff, Co, Chair  
All Council Members*

**AN ORDINANCE** approving Sanitary Sewer Service Agreement - General Motors between General Motors and the City of Fort Wayne, Indiana, in connection with the Board of Public Works. Twenty (20) year Sanitary Service Agreement. **COMMITTEE ON CITY UTILITIES HAVE HAD SAID** Ordinance under consideration and beg leave to report back to the Common Council that said ordinance

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
<i>Geoff Paddock</i>	_____	_____	_____
<i>John Shoaff</i>	_____	_____	_____
<i>John Shoaff</i>	_____	_____	_____
<i>Martin A. Bunker</i>	_____	_____	_____
<i>John W. Crayton</i>	_____	_____	_____
<i>Mark</i>	_____	_____	_____
<i>Thomas Redick</i>	_____	_____	_____
<i>SM</i>	_____	_____	_____
_____	_____	_____	_____

**SANDRA E. KENNEDY  
CITY CLERK**