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BILL NO. S-15-11-08

SPECIAL ORDINANCE NO. S- 90-15

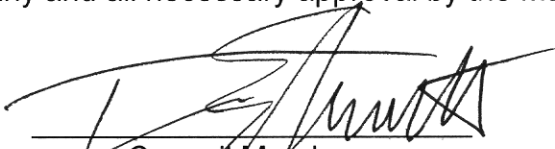
AN ORDINANCE approving WATER POLLUTION TREATMENT CONTRACT between THE ALLEN COUNTY REGIONAL WATER AND SEWER DISTRICT BERNEWAY SERVICE AREA and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

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

SECTION 1. That the WATER POLLUTION TREATMENT CONTRACT (attached hereto and marked Exhibit A) by and between THE ALLEN COUNTY REGIONAL WATER AND SEWER DISTRICT BERNEWAY SERVICE AREA and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects.


A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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

DIGEST SHEET

Department: City Utilities, Utility Administration & Development Services

Title of Ordinance: Water Pollution Treatment Contract Between the City of Fort Wayne, Indiana and The Allen County Regional Water and Sewer District: Berneway Service Area

Contractee: Allen County Regional Water & Sewer District ("District")

Amount of Contract: N/A Number of Bidders: N/A

Description of Project (Be Specific):

The City of Fort Wayne has sanitary sewer wholesale treatment contracts with a number of surrounding communities and sewer districts within the Allen County area; 14 areas in total - 10 are with the ACRWSD. These contracts are long term contracts that allow for both parties to reasonably and knowledgeably plan for the provision of sewer service which is necessary based on technical/planning considerations and costs that come along with the provision sanitary sewer service (sharing of growth projections, master plans, development patterns, etc.).

In areas served by the District the planning centers around the elimination of failed or failing septic systems. . This contract identifies a specific service area, specific connection points to the CU sewer system and includes capacity limitations and thresholds.

What Are The Implications If Not Approved:

- Properties in this area with failed/failing septic systems will not have access to public sanitary sewer system; public health and safety and quality of life impacts will not be mitigated.

If Prior Approval Is Being Requested, Justify:

Not Applicable.

Additional Comments:

Nancy Townsend, 427-2691

Nov 4, 2015

Date

BILL NO. S-15-11-08

SPECIAL ORDINANCE NO. S-_____

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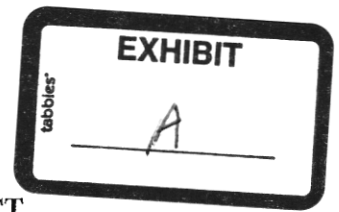
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Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney



WATER POLLUTION TREATMENT CONTRACT
BETWEEN
THE CITY OF FORT WAYNE, INDIANA
AND
THE ALLEN COUNTY REGIONAL SEWER DISTRICT
BERNEWAY SERVICE AREA

WATER POLLUTION TREATMENT CONTRACT
BETWEEN
THE CITY OF FORT WAYNE, INDIANA
AND
THE ALLEN COUNTY REGIONAL WATER AND SEWER DISTRICT
BERNEWAY SERVICE AREA

THIS CONTRACT (hereinafter referred to as "Contract") entered into this 9 day of September, 2015 by and between the **CITY OF FORT WAYNE, INDIANA**, a municipal corporation, of the State of Indiana (hereinafter referred to as "City"), and **THE ALLEN COUNTY REGIONAL WATER AND SEWER DISTRICT**, a regional sewer district established under the laws of the State of Indiana (hereinafter referred to as "District") for the Berneway Service Area.

WITNESSETH THAT

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

WHEREAS, the District does not own or operate a Water Pollution Control Plant to treat the sewage generated from the Berneway Service Area; and

WHEREAS, City has capacity available in its Water Pollution Control Plant to treat the District's sewage, pursuant to the terms, provisions and limitations of this Contract; and

WHEREAS, pursuant to I.C. § 36-9-23-16/13-26-5-7, the parties desire to enter into a contract under which the District will convey its Berneway Service Area sewage from its sewage system into City's Water Pollution Control Utility and City will accept and treat the District'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:

I. DEFINITIONS. These words and phrases shall have the following meaning:

- A. Connection Point.** A structure which provides for the conveyance of District's sewage to the City for further transportation and treatment. The facilities comprising the Connection Points are generally described as a District-owned sewer force main pipe

discharging through a District-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 City 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, e-coli and total suspended solids.
- E. **Serviceable Area.** The area in which a municipality may provide sewage treatment pursuant to I.C. § 36-9-23-36.
- F. **Sewage.** The water-carried wastes from residences, business, buildings, institutions and industrial establishments, singularly or in any combination.
- G. **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.
- H. **User.** Any domestic or non-domestic discharger of sewage which introduces pollutants into the Water Pollution Control Utility.
- I. **Water Pollution Control Plant.** The arrangement of devices, structures and equipment used for treating and disposing of sewage and sludge.
- J. **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.

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") on the later date the following:
 - 1. Approval by the Fort Wayne Common Council; and
 - 2. Approval by the Board of the District

- 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 to the Berneway Service Area are declared void on the Effective Date of this Contract.

III. SERVICE AREA.

- A. The Berneway Service Area is the geographic area in which the District may exclusively provide sewer service within the provisions and during the term of the Contract. The Berneway Service Area is shown on Exhibit 1 and described in detail by the legal description provided as Exhibit 2.
- C. Exceptions to the District's Berneway Service Area include any properties, if any, receiving sewer services from City at the Effective Date within the Berneway Service Area.
- D. Notwithstanding Section III (B), City may place sewer pipes and appurtenances in the District's Berneway Service Area as long as no properties within the District's Berneway Service Area are directly served by City.
- E. During the term of this Contract, the District shall not expand its Berneway Service Area sewage system outside the Berneway Service Area as described in Exhibit 2 for the purpose of directly serving customers without the express written approval of City. City approval shall not be arbitrarily or unreasonably be withheld or denied. It is agreed that both parties will collaboratively determine if and how best to furnish sewer service in response to inquiries from property owners located outside of the Berneway Service Area and that such planning will take into consideration the cost and economic feasibility to all parties under the circumstances that exist at the time. Modifications to the Berneway Service Area may require amendment of the Contract.

IV. CONNECTION OF SEWER FACILITIES.

- A. The location of the current Connection Point is generally shown on Exhibit 3, hereby incorporated by reference. The major components and further details of the Connection Points are shown on Exhibit 4.

- B. Each party shall be responsible for the maintenance and operation of its own sewage system and its portion of the Connection Point. The City may inspect the District's portion of the Connection Point at any time. If a City inspection finds the Connection Point is not being properly maintained or operated, the City may notify District in writing in accordance with Section XV. Upon its receipt of a written notification from the City, District shall, within ten (10) days, provide the City with a written plan to complete all reasonably necessary maintenance, repairs or modifications. In the event the District 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 and the District shall, within thirty (30) days, reimburse the City for all maintenance costs incurred by City.
- C. Should it become necessary or desirable for the parties hereto to change or modify the Connection Point or to connect at different or additional Connection Points, then such may be mutually agreed upon by the parties and amended in accordance with Section XV.

V. CONVEYANCE AND TREATMENT OF SEWAGE.

- A. **Responsibility for Conveyance.** The District shall be solely responsible for delivery of the sewage to its Connection Point in a form compliant with Section IX. 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 the District in accordance with the laws, regulations, requirements and standards of Indiana Department of Environmental Management, the Indiana State Board of Health and United State Environmental Protection Agency, currently in effect and as may be amended from time to time.
- C. **Exclusivity of Treatment.** City shall be the exclusive provider of wholesale sewage treatment for the District for the Berneway Service Area.

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, the District agrees that no changes, modifications or alterations will be made that may increase the rate of sewage flow at the Sewer Connection Point, without the approval of the City, which approval shall not be unreasonably withheld or delayed. The inability of the District to consistently remain below Peak Limits shall be considered a reason for City to withhold or delay approval.
- B. **Volume Limit.** If, during any billing period, the District delivers to the Sewer Interconnection Point an amount of sewage flow in excess of the limits described in **Exhibit 5**, City may apply a volumetric exceedance fee, as described in **Exhibit 5**, to the total amount of excess flow measured at the Connection Point.
- 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 5**, a peak flow charge shall be applied to District's rate in accordance with **Exhibit 5**. 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 of such an event to the District. Upon receipt of notice by City, the District 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 5**. Failure to submit a plan within sixty (60) days shall be considered a default of this Contract pursuant to Section XIII.
- D. The District has received a contribution from Joseph A. Christoff and Catherine Sue Christoff ("Contributors") for certain real estate within the Berneway Service Area. The maximum number of connections or extensions allowed to be added within the Berneway Service Area due to this contribution shall not exceed fifty (50) ERUs. In the event the Contributor's ultimate intended uses exceeds fifty (50) ERUS, an amendment to this Agreement shall be necessary and the City agrees not to unreasonably withhold approval of such additional ERUs subject to their available capacity.

VII. CAPACITY ALLOCATION APPROVALS AND CONNECTIONS

- A. For new connections within the Berneway Service Area, the district shall complete an Application for Sanitary Sewer Construction Permit per 327 IAC 3 as required by Indiana Administrative Code.
- B. The District shall provide City a completed Capacity Certification/Allocation Letter signed by the District, a completed Sanitary Sewer Design Summary, a completed Certification of Registered Professional Engineer, one set of approved sanitary sewer plans and all other required information necessary for the City to process the Capacity Allocation Approval request.
- C. City shall review all capacity allocation requests in a timely manner. City approval of such requests shall not be arbitrarily or unreasonably withheld or denied.
- D. The District shall provide to City a report of all new connections made to the District Berneway Service Area sanitary sewer system. The sanitary sewer connection report shall be provided twice yearly during each year of this Contract; one for the period January 1 through June 30 which shall be submitted no later than July 15, the second for the period July 1 through December 31, which shall be submitted to City no later than January 15. Information to be included on said report shall include the property address, subdivision, lot number, date of connection, land use of property/building, number of equivalent residential units and such additional information as may be reasonably requested by City.

VIII. METERING

- A. City will calculate the District's monthly sewer bill based on the equivalent residential units (ERUs) of active customers of the District as reported by the District on a monthly basis. The City may conduct temporary flow metering from time to time to insure the appropriateness of the calculations. The District shall have the right to request the charges be converted to be based on actual flow at any time during the term of this Agreement, which approval shall not be unreasonably withheld by the City. In the event the District so requests and City approves, the District shall pay the cost of installation of a permanent meter and all of the terms and conditions of the City's then

Rate and Use Ordinances shall apply appertaining to metered wholesale contract customers.

IX. QUALITY.

- A. **Excess Strength.** In the event the District conveys sewage which has a 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 the City's Ordinances and a surcharge will be applied accordingly.
- B. **Prohibited Discharges.**
 - 1. The District shall not convey prohibited discharges to City and City shall be under no obligation whatsoever to accept any type of prohibited discharge.
 - 2. Upon discovery that a prohibited discharge is being conveyed by the District's sewage system to the City's Water Pollution Control Utility:
 - a. District shall immediately cease delivery of the prohibited discharge upon oral notification, and provide confirmation thereof in writing, within twenty-four (24) hours.
 - b. If the District shall fail to cease said conveyance immediately, City may, at its option, without liability and at the District's cost:
 - i. Cut off the particular user, if such is ascertainable, which is found to be delivering prohibited discharges to the District's sewage system;
 - ii. If the particular user is not reasonably ascertainable or able to be cut off, cease servicing the entire District system and cease accepting all sewage conveyed from the District until the cause for such action is remedied to the satisfaction of City, Indiana Department of Environmental Management and/or the United States Environmental Protection Agency.
 - iii. The District shall bear all liabilities and costs which City or the District may incur or be liable for, caused either by the further conveyance and/or treatment of said prohibited discharge by City

and City's exercise of its rights to take action to remedy the situation.

X. SAMPLING AND MONITORING OF QUALITY.

- A. District shall install proper and adequate facilities for the purpose of temporary flow metering and for the sampling and monitoring by the City of the sewage conveyed to the Connection Point. Facilities shall include but are not limited to temporary flow metering, an electronic data system which monitors the sewage conveyed to City for treatment as well as physical locations where sewage may be sampled and monitored. If District's facilities include a source of electrical power, shelter and security, then reasonable access to same shall be provided to City at the same location. The sampling and monitoring facilities shall be approved by the City prior to installation or modification.
- B. The temporary flow metering, sampling and monitoring facilities and any permanent meter if elected to be installed by the District shall be approved by City prior to installation or modification. If the District fails to obtain City's approval and City reasonably determines that the facilities do not comply with City's requirements, City may re-install or modify the temporary or permanent flow metering, sampling and monitoring devices at a location approved by the City at the District's expense.
- C. City shall have full and complete access to the temporary or permanent flow metering, sampling and monitoring facilities at all times. The District shall be required to maintain access to physical facilities, including snow removal. For any permanent metering equipment, the District shall be required to maintain, at a minimum, remote read-only access to both current and backup electronic data and shall not edit, change or delete any data without approval from City. City may add, alter or modify its final read out equipment at City's cost and may maintain the added, altered or modified equipment with a lock, which key will be held by the City.
- D. The cost of planning, designing, installing, daily operation and replacement as necessary of temporary or permanent flow metering, sampling and monitoring devices, including the acquisition of real estate, shall be the responsibility of the District.

- E. City may test, calibrate, maintain and repair as necessary temporary or permanent flow metering, sampling and monitoring devices, the costs of which shall be paid by the District in accordance with the City Rate and Use Ordinances.
- F. Material samples as received from the sampling devices shall be available to both parties to this Contract. In the event City provides testing for samples, the cost of such testing shall be paid by the District in accordance with the schedule of flat rate charges set forth in the City's Code of Ordinances. District may request sampling and analysis in addition to the City's sampling. The cost of such additional services shall be in accordance with Section XI(C) of the Contract.

XI. INSPECTION AND ENFORCEMENT.

- A. The District shall maintain a current Industrial Waste Survey list in accordance with the following:
 - 1. The Industrial Waste Survey list shall include the facility name and address of all commercial and industrial users in the District'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.
 - 2. An updated list shall be provided to the City within thirty (30) days of the effective date of the Contract.
 - 3. Updated lists shall be provided to the City annually by January 15 of each year.
- B. The District hereby authorizes City, and City hereby agrees to:
 - 1. Maintain an Industrial Waste Survey list of industrial dischargers to the District's sewage system.
 - 2. Apply City's pretreatment limits to users of District's sewage system.
 - 3. Establish industrial wastewater permits required under City's Industrial Pretreatment and Sewer Ordinances to dischargers into District's system.
 - 4. Require and receive all industrial pretreatment reports required by 40 CFR 403 and City's Industrial Pretreatment and Sewer Ordinance. Reports will be maintained by City's Industrial Pretreatment department.
 - 5. Inspect all facilities of permitted industries discharging into the District's sewage system.

6. Collect and analyze samples of waste sewage from permitted industries discharging into District's sewage system.
 7. Carry out all inspections, surveillance and monitoring procedures necessary to determine, independent of information supplied by permitted dischargers to District's system, their compliance statuses pertaining to pretreatment limits, reporting requirements, and the industry's wastewater permit.
 8. Enter the premises of any permitted facility or any commercial 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.
 9. Immediately and effectively make all reasonable attempts to prevent any discharge or pollutants into the District'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 District's sewage system or City's Water Pollution Control Utility.
 10. Undertake a full range of enforcement when pretreatment violations occur, as provided in City Ordinances and the Rules and Regulations of the Fort Wayne Sewer Utility, and as set out in City's Enforcement Response Guide.
 11. Charge fees consistent with those assessed against industrial and commercial users discharging directly to City for sampling.
 12. Undertake any other action necessary to ensure compliance with 40 CFR 403 or with City's National Pollutant Discharge Elimination System permit.
- C. The District hereby appoints City's 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 customers of the District's Berneway Service Area at the District's reasonable expense.

XII. CHARGES FOR AVAILABILITY, CONVEYANCE, TREATMENT AND ADDITIONAL SERVICES

A. Area Connection Fees.

1. District agrees to pay Area Connection Fees for new connections within the Berneway Service Area in an amount and manner in accordance with Resolutions and Ordinances on file with the City associated with the City sewer service area (area connection fee) to which the Connection Point discharges. Area Connection Fees shall be applicable in the following circumstances:
 - a. Properties within the District's service area to be served by any sewer line extension or other project for which a Capacity Certification/Allocation is granted by the City after the effective date of the contract.
 - b. All new and/or first time connections within unplatted or platted areas receiving sewer service from the District after the effective date of this Contract.
 - c. Any building or site improvements or additions to an existing facility/structure/building that connects to the District's sewer system as of the effective date of this Contract.
 - d. Any building or site improvements or additions to existing building(s) that are connected to the District's sewer system that results in an increase in the flow volume (number of Equivalent Residential Units) being discharged from the building/facility.
2. The District shall collect Area Connection Fees from its customers and remit to the City. The City shall not accept payment of Area Connection Fees from the District's customers. Area Connection Fees shall be paid to City no later than the date the customer is connected to the District's sewage system.
3. If the District does not forward payment to City by the date the customer is connected to the District's sewage system, the fee will be attached to District's monthly bill at the rate in effect at the time of City's discovery of the connection.

B. Cost of Conveyance and Treatment.

1. **Billing.** City shall be responsible for billing the District in accordance with rate schedules in effect.
2. **Rate.** The District and the City agree that continuous flow metering of the Berneway Service Area is not presently cost-effective due to the low number of customers in this specific District area and the gravity flow characteristics of the sewage flow reaching the Connection Point. In lieu of continuous flow metering, the District and the City agree to the following:
 - a. District agrees to pay to City the Flat Rate Monthly Charge as set out in the City Ordinances for Outside City, Retail customers for each ERU of active District customer in the Berneway Service Area.
 - b. In addition to the payment directed in a. above, the District agrees to pay to City any other charges applicable (such as but not limited to: Monthly Waste Evaluation Charge, Waste Evaluation Charge, Excess Strength of Waste Surcharges, Food Service Establishment Surcharge) to the sewage flow received at the Connection Point both in respect of the volume and the composition of such flow as set out in the City Ordinances for Outside City, Retail customers and as further specified in this Agreement.
 - c. As provided in said rate schedule and this Contract, District 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.
4. **Notice of Rate Change.** City shall give notice of its intent to adjust rates charged the District at least sixty (60) days 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 to 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 basis of the charges of such services shall be the City's expense (both in-house and contracted assistance) plus an additional ten (10) percent.

2. The City shall invoice the District for these services. Payment of said invoices by the District shall be in accordance with and be subject to the City Ordinance.

XIII. DEFAULT

- A. For the purposes of this Contract, the term "Event of Default" shall mean the failure to observe or comply with a provision or covenant in this Contract, 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. If either party discovers a violation of Section VII Metering, Section X Sampling and Monitoring, then the non-defaulting party shall notify (in accordance with Section XV) 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. If either party discovers a violation of Section III Service Area the non-defaulting party shall notify (in accordance with Section XV) 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. The parties shall have two (2) months in which to negotiate a resolution to the service area violation. In the event that the default is not cured within thirty (30) days or a resolution is not negotiated and approved within two (2) months, the non-defaulting party may, at its sole discretion, terminate the Contract.
- D. If an Event of Default occurs which results in the cancellation of the Contract and services provided hereunder prior to the date the Contract was to terminate, the defaulting party shall compensate the non-defaulting party in an amount equal to the

revenue non-defaulting party was to gain if the default had not occurred, reduced by the reasonable value of the services the non-defaulting party is no longer required to provide as a result of the Contract termination, if any. Such revenue will be equal to the District's administrative cost and debt service cost which is paid by the District's customers and is included in the District's sewer bills, if the City defaults, or equal to the amount due and owing to the City by the District, if the District defaults. Such revenue shall be calculated as a monthly amount taking an average of the preceding twelve months.

- E. Upon a termination of the Contract under this Section XIII and subject to Section XV, City shall continue to provide treatment services for the District's sewage at the then current rate for Outside City Government Users as set forth in the City Ordinances. In the event City provides treatment services for the District's sewage under this Section XIII, either party may terminate City's treatment services by giving thirty-six (36) months' notice of its intention to terminate City's treatment services to the other party prior to termination.

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.
- B. The District 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 adopted and enforced by City for the purpose of permitting the Contractor on continuing basis, to be awarded grants and loans from the State of Indiana and from United State Environmental Protection Agency and other agencies which may now or in the future have such opportunities offered.

XV. MISCELLANEOUS.

A. Notices and Invoices.

1. Any notices required under this Contract 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.
2. Invoicing by the City under this Contract shall be served by first class mail addressed to the District at the last address filed by the District.
3. At the Effective date of this Contract, Contractor's address is:
Fort Wayne City Utilities, Attention of the Director
200 E. Berry Street
Fort Wayne, Indiana 46802
4. At the Effective date of this Contract, the District's address is:
Allen County Regional Sewer District
200 E. Berry Street
Fort Wayne, Indiana 46802

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 (hereinafter referred to as the "Original Term").
2. **Automatic Term Renewals.** This Contract shall automatically renew for an indeterminate number of five (5) year terms (hereinafter referred to as the "Renewal Term") unless a party notifies the other of its desire to terminate services or to terminate the Contract at least thirty-six (36) months prior to the expiration of the then current term. Failure of either party to notify at least thirty-six (36) months prior automatically renews this Contract for a five (5) year term. The notice shall be in accordance with Section XV and state the intent of the party not to continue the Contract 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 this Contract shall remain in force and effect until the termination date; or

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, the following provisions of this Contract shall become null and void, effective the date of the notice not to terminate:

- i. Section III. Service Area.
- ii. Section VI. Capacity.
- ii. The applicable rate for conveyance, treatment and other charges for Wholesale Contract Customers as set forth in Section XI(B)(2) shall terminate and the District shall pay all fees and charges applicable to Outside City Government customers as established in City Ordinances.

C. **Amendments.**

1. **Written Mutual Consent.** Written amendments to the Contract executed and approved by 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 in accordance with Section XV 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 original 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 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 by Both Parties.** This contract may be terminated in writing by both parties.

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 the District:

- 1. Section IV
- 2. Section V (A) (B)
- 3. Section VI
- 4. Section VIII
- 5. Section IX
- 6. Section X
- 7. Section XI
- 8. Section XII (C)
- 9. Section XIII
- 10. Section XIV
- 11. Section XV (A)(E)(F)

F. **Indemnities.**

- 1. **Environmental/District.** The District 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 District 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 District's violation of law.
- 2. **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 District (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.

3. **Personal Injury, Death and Property Damage/District.** The District 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 District's performance or responsibilities under this Contract and/or arising out of the District's maintenance or operation of its sewage system.
4. **Personal Injury, Death and Property Damage/City.** The City agrees to defend, indemnify, and hold harmless the District (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 performance or responsibilities under this Contract and/or arising out of the City's maintenance or operation of its sewage system.

- D. **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.
- E. **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.
- F. **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.
- G. **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.

H. **Applicable Law.** This Contract shall be governed by, construed and interpreted in accordance with the laws of the State of Indiana.

[Signature Page to follow]

APPROVED BY
CITY OF FORT WAYNE, INDIANA

BOARD OF PUBLIC WORKS

By: [Signature]
Robert P. Kennedy, Chair

By: [Signature]
Mike Avilla, Member

By: [Signature]
Kumar Menon, Member

Attest: [Signature]
Lindsey Richards, Clerk

Date: 9/9/15

ACKNOWLEDGEMENT

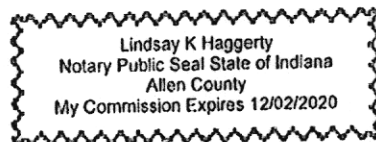
STATE OF INDIANA)
) ss
COUNTY OF ALLEN)

Before me, the undersigned a Notary Public in and for said County and State, this 9 day of September, 2015 personally appeared the above-named Mayor, Chair, Members and Clerk of the Board of Public Works of the City of Fort Wayne, who acknowledge the execution of the foregoing Agreement and that the same is their free act and deed.

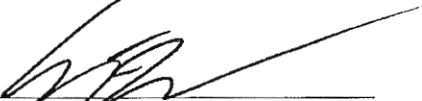
gm IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed my Notarial Seal, this 9 day of September, 15.


[Signature]
Notary Public and Resident of
Allen County, Indiana

My Commission Expires:
12/02/2020



APPROVED BY:
ALLEN COUNTY REGIONAL
SEWER AND WATER DISTRICT

By: 
Eric T. Zehr, its President

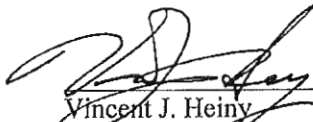
By: 
M.J. Klinker, its Secretary

ACKNOWLEDGEMENT

STATE OF INDIANA)
) ss
COUNTY OF ALLEN)

Before me, the undersigned a Notary Public in and for said County and State, this 27th day of MAY, 2015, personally appeared the Allen County Regional Water and Sewer District by Eric T. Zehr, its President, and M.J. Klinker, its Secretary, who acknowledge the execution of the foregoing Agreement and that the same is their free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed my Notarial Seal, this 27th day of MAY, 2015.

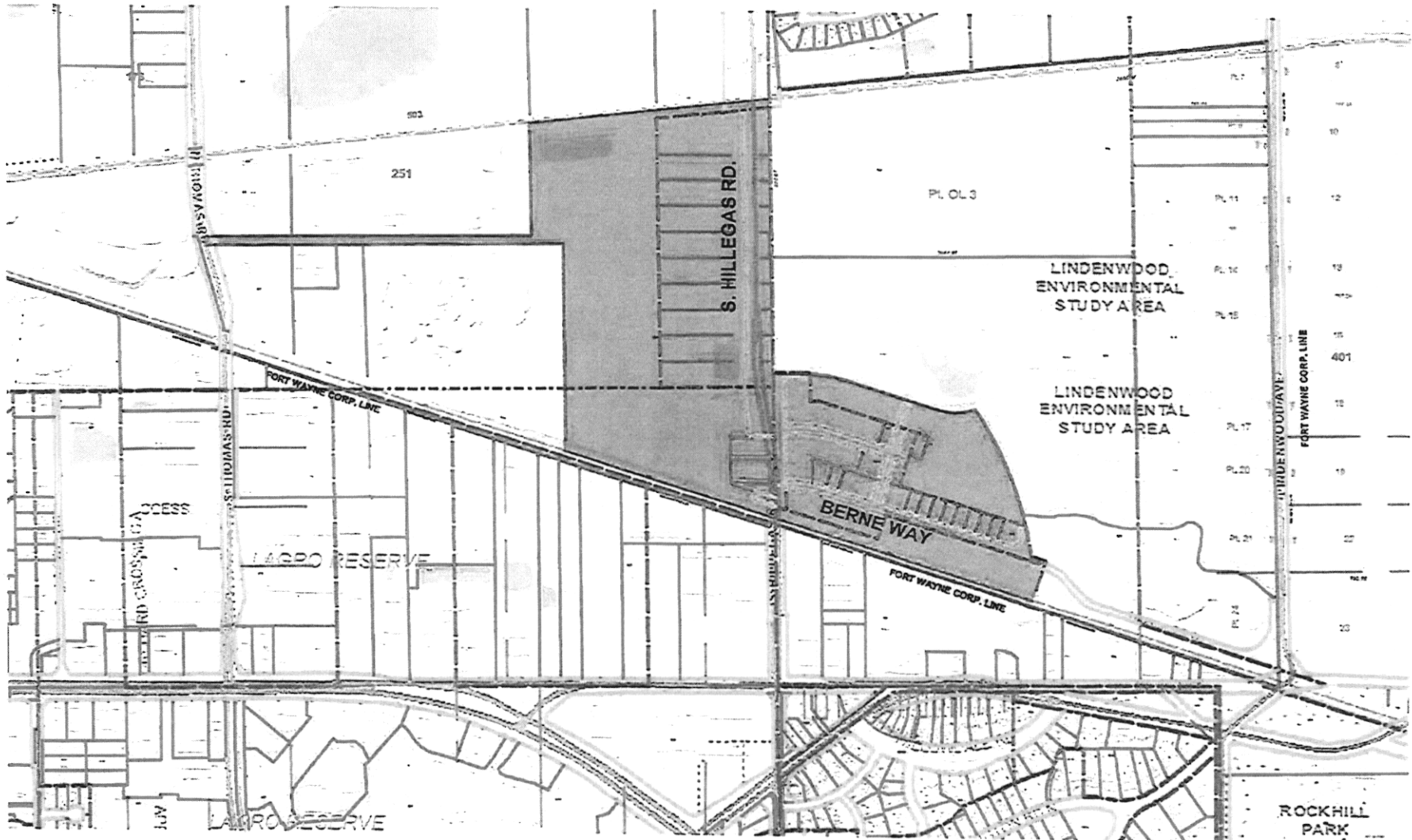

Vincent J. Heiny
Notary Public and Resident of
Allen County, Indiana

My Commission Expires:
July 18, 2016

Schedule of Exhibits

- Exhibit 1 - Berneway Service Area Map
- Exhibit 2 - Berneway Service Area Legal Description
- Exhibit 3 - Location of the Current Connection Point
- Exhibit 4 - Major Components and Further Details of the Connection Points
- Exhibit 5 - Limits of Sewer Interconnection Point

EXHIBIT 1 - BERNE WAY SERVICE AREA MAP



PREPARED BY:



LEGEND




SERVICE AREA

BERNEWAY SERVICE AREA

Part of Township 30 North, Range 12 East, Wayne Township, in Allen County, Indiana, as described below:

Subdivision:

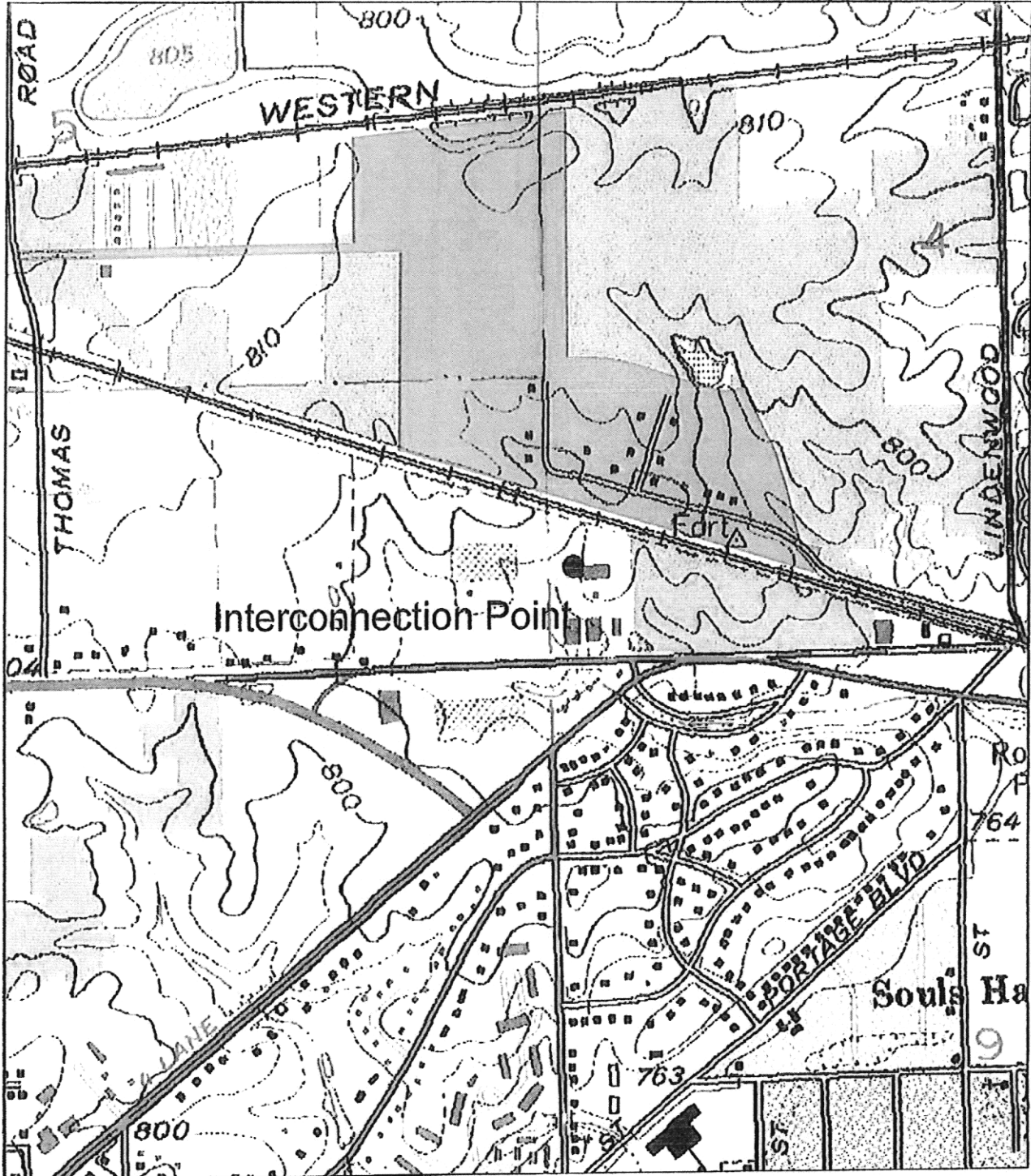
- All of Idle Wilde Summits, Section A as recorded in Plat Record 12 Page 48.

Properties:

- Property now owned by Joseph Christoff and Virginia C. Christoff 2/5 Interest & Joseph and Catherine Christoff 3/5 Interest as recorded in the following Record Document Numbers: 880032562, 920073075, 940043237 and 204043299. Property containing Maple Grove Addition.
- Properties now owned by the Board of Commissioners of the County of Allen, State of Indiana, as recorded in the following Record Document Numbers: 990051047, 990051048 and 990056411.

EXHIBIT 3

INTERCONNECTION POINT AND SERVICE AREA MAP ALLEN COUNTY REGIONAL WATER AND SEWER DISTRICT BERNE WAY SERVICE AREA



PREPARED BY:



Legend



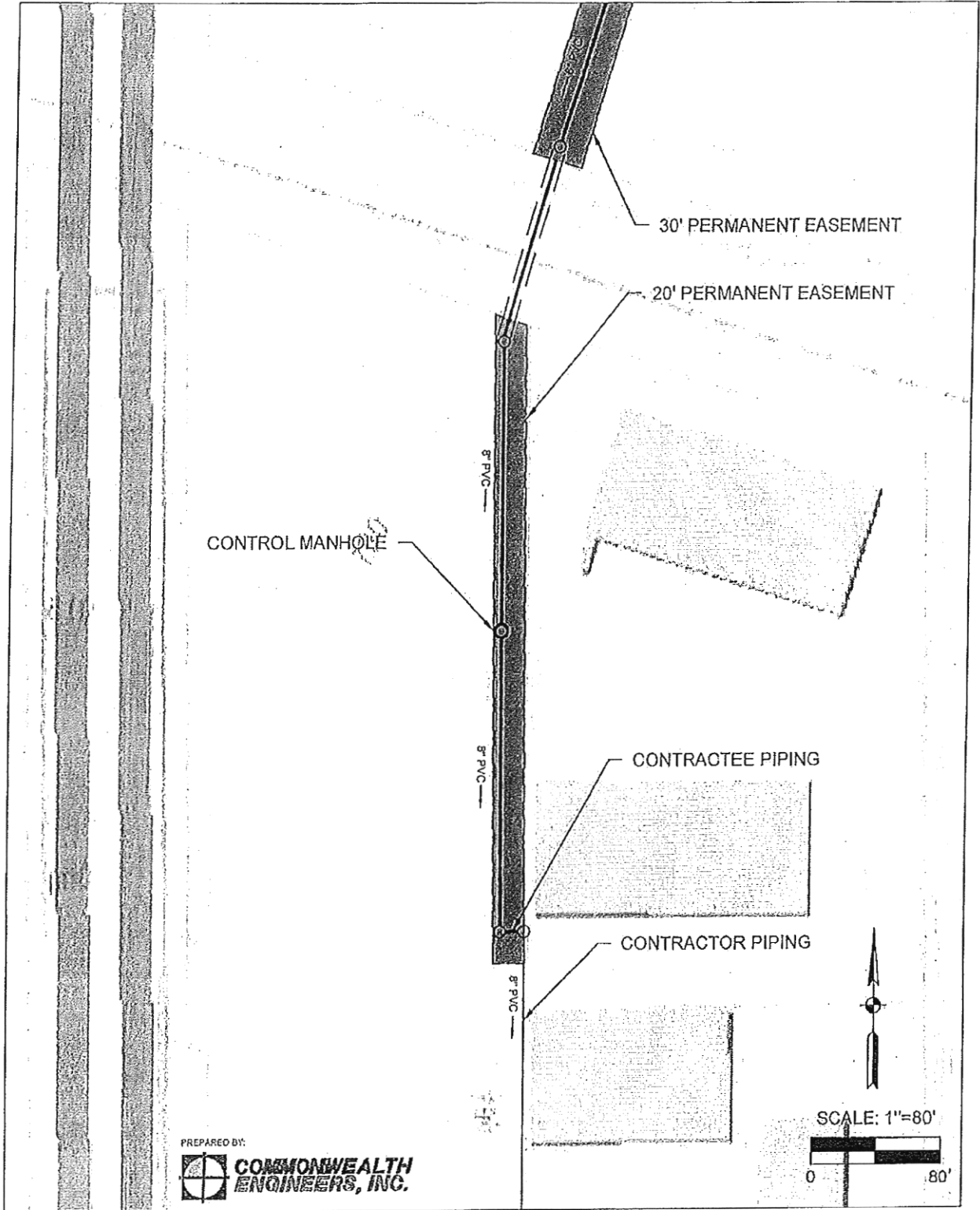
-  Southern Service Area
-  Interconnection Point

EXHIBIT 4

INTERCONNECTION POINT DETAILS
ALLEN COUNTY REGIONAL WATER AND SEWER DISTRICT
BERNE WAY SERVICE AREA



PREPARED BY:
 **COMMONWEALTH ENGINEERS, INC.**

Exhibit 5

Limits of Sewer Interconnection Point

In the event that the District is without a Contract Rate in accordance with Section VIII. B., the following limits, fees and charges shall apply:

Volume Limit and Peak Flow Limit

- Volume Limit (average for Billing Period): 5,000 gallons per day.
- Peak Flow Limit (average for any 15 minute period): 25.0 gallons per minute.

In the event new customers are connected to the District's collection system due to the Contributors, the Volume Limit will be increased by 310 gallons per day per ERU added and the Peak Limit will be increased by 1/0 gallon per minute per ERU added.

Volume Exceedance Fee and Peak Flow Charge

- **Penalty for Exceeding Volume Limit (Volumetric Exceedance Fee)**
 - If the Volume Limit is exceeded, a Capital Surcharge will be assessed to the flows billed during the exceedance period.
 - Capital Surcharge will be calculated based upon the revised ERUs of the flow and a multiplier of 2.0 for the Flat Rate Monthly Charge.
- **Penalty for Exceeding Peak Flow (Peak Flow Charge)**
 - If the Peak Flow rate (average over 15 minute period), is exceeded for more than 15 minutes a Peak Flow charge shall be assessed.
 - Peak Flow charge will be calculated based upon multiplying the currently monthly bill by:
 - Factor of 5 for Peak Flow exceedances of 0-10%
 - Factor of 10 for Peak Flow exceedances over 10%

The multiplier will be charged for the next 12 months. After 12 months, the multiplier will be removed if another Peak Flow exceedance has not occurred

In the event that the District has a Contract Rate in accordance with Section VIII. B., the following limits, fees and charges shall apply:

- **Contract Customer Penalty for Exceeding Volume Limit (Volumetric Exceedance Fee)**
 - If the Volume Limit is exceeded in the average of any three consecutive billing periods, a Capital Surcharge rate will be assessed to the flows billed during the exceedance period
 - Capital Surcharge rate will be calculated based upon Contract Customers proportionate share (using Cost of Service Study allocation methodology) of current Common to All Conveyance Debt Service costs divided by consumption flow of the Contract Customer

- **Contract Customer Penalty for Exceeding Peak Flow (Peak Flow Charge)**
 - If the Peak Flow rate (average over 15 minute period), is exceeded for more than 15 minutes a Peak Flow charge shall be assessed
 - Peak Flow charge will be calculated based upon updating the Capacity allocation for conveyance at the new Peak Flow rate (observed during the exceedance) and then new conveyance rates will be calculated using the same methodology as the Cost of Service Study and then multiplied by:
 - Factor of 5 for Peak Flow exceedances of 0-10%
 - Factor of 10 for Peak Flow exceedances over 10%
 - The recalculated conveyance rate and conveyance base charge will be charged for the next 12 months, unless the new Peak Flow rate is exceeded
 - After 12 months, the conveyance rate and conveyance base charge will return to the original cost of service established level if another Peak Flow exceedance has not occurred

End.

Public Hearing Date, if applicable _____

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. 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>2</u>
BENDER	<u>✓</u>	_____	_____	_____
CRAWFORD	<u>✓</u>	_____	_____	_____
DIDIER	<u>✓</u>	_____	_____	_____
HARPER	_____	_____	_____	<u>✓</u> - Hines left before vote.
HINES	_____	_____	_____	<u>✓</u>
JEHL	<u>✓</u>	_____	_____	_____
PADDOCK	<u>✓</u>	_____	_____	_____
SHOAFF	<u>✓</u>	_____	_____	_____
SMITH	<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. S-98-15 on the 24th day of
November, 2015

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

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 30th day
of November, 2015, at the hour of 12:00 o'clock PM. E.S.T.

Michelle D. Chambers
MICHELLE D. CHAMBERS, CITY CLERK

Approved and signed by me this 1st day of December
2015, at the hour of 4:00 O'clock PM. E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR

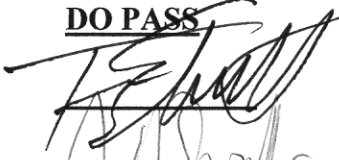

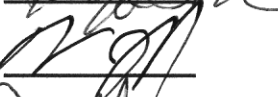

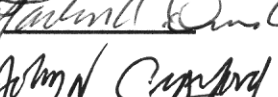
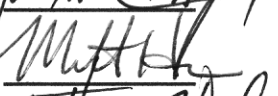

BILL NO. S-15-11-08

REPORT OF COMMITTEE ON CITY UTILITIES

NOVEMBER 17, 2015

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

AN ORDINANCE approving WATER POLLUTION TREATMENT CONTRACT between THE ALLEN COUNTY REGIONAL WATER AND SEWER DISTRICT BERNEWAY SERVICE AREA and the City of Fort Wayne, Indiana, in connection with the Board of Public Works. **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>
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

**MICHELLE D. CHAMBERS
CITY CLERK**

