

**FILED**  
September 8, 2021  
INDIANA UTILITY  
REGULATORY COMMISSION

**INTERMUNICIPAL AGREEMENT BETWEEN**

**THE TOWN OF AUSTIN**

**and**

**SCOTT COUNTY REGIONAL SEWER**

**DISTRICT**

**for**

**THE ACCEPTANCE OF SEWAGE**

**from**

**RICHE SUBDIVISION**

MUNICIPAL WASTEWATER SERVICE AGREEMENT

TOWN OF AUSTIN - SCOTT COUNTY REGIONAL SEWER DISTRICT

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MUNICIPAL WASTEWATER SERVICE AGREEMENT  
BETWEEN THE TOWN OF AUSTIN, INDIANA  
AND THE SCOTT COUNTY REGIONAL SEWER DISTRICT

THIS AGREEMENT, made and entered into this 5th day of \_\_\_\_\_ June \_\_\_\_\_, 1996, by and between the Town of Austin, a municipal corporation in Scott County, Indiana, by and through its Town Council (hereinafter referred to as "AUSTIN", and the SCOTT COUNTY REGIONAL SEWER DISTRICT, a municipal corporation in Scott County, Indiana, by and through its Board of Trustees (hereinafter referred to as "SCOTT COUNTY")

WITNESSETH THAT:

WHEREAS, SCOTT COUNTY does not have adequate means of disposing of its wastewater from Scott County; and

WHEREAS, the Town of Austin has a sewage treatment and disposal facility and is making improvements and additions to said facility which will have a capacity in excess of that required to process its own wastewater, and is willing to accept wastewater from Scott County and process and dispose of the same; and

WHEREAS, SCOTT COUNTY desires to construct and connect the sewer system from Richie Subdivision of Scott County to the sewage treatment and disposal facilities of AUSTIN and will transport wastewater within the jurisdiction of SCOTT COUNTY to the existing AUSTIN sewer for conveyance to and treatment by AUSTIN.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that AUSTIN will accept wastewater from SCOTT COUNTY in an amount of .0703 MGD average daily flow of sewer capacity and .0703 MGD treatment plant capacity with sewage being pumped to

AUSTIN at the rate of .0703 MGD as herein provided and AUSTIN will treat the same subject to the following covenants and conditions:

1. INTERCONNECTION. SCOTT COUNTY shall construct a sanitary sewer and extend a sewer line from the Richie Subdivision northward to connect to the AUSTIN Sanitary Sewer System at a manhole upstream of AUSTIN at the intersection of Booe Road 450N and Bogardus Road 100E for eventual treatment at the AUSTIN Sewage Treatment Plant, all in accordance with plans and specifications prepared and being prepared, approved and being approved, and in accordance with the approval of the engineers of the respective parties. The interconnection point is shown on attached Exhibit "A".

Each of the parties hereto shall obtain all necessary easements required for its construction at its own expense.

2. CONSTRUCTION ACCESS BY PARTIES.

A. AUSTIN reserves the right to be present and inspect the construction of all sewers, laterals, tap-ins, force mains, lift stations, and appurtenant devices which shall be interconnected to the AUSTIN Sanitary Sewer System. In such areas the AUSTIN inspectors shall have full access to all construction areas, project records, inspection reports, test results and all other data or documents available to inspectors pursuant to the construction contract documents associated with the SCOTT COUNTY interconnection project. Said inspectors shall report their observations in writing directly to the Project Manager or Project Engineer employed by SCOTT COUNTY to provide construction inspection services for the interconnection project. The inspec-

tions shall not interfere with work being performed by SCOTT COUNTY.

B. AUSTIN shall have the further right to be present if it chooses at all future connections, or tap-ins, to that portion of the SCOTT COUNTY System which connects to the AUSTIN Sanitary Sewer System and shall advise SCOTT COUNTY inspectors of its observations. Inspectors shall not interfere with SCOTT COUNTY employees or contractors engaged in their duties.

3. ACCEPTANCE AND TREATMENT OF SEWAGE.

A. Responsibility for Delivery and transportation. It is the understanding of the parties that SCOTT COUNTY'S discharge into the AUSTIN Sewer System will be composed principally of the effluent from existing and future sanitary sewer systems in the Richie Subdivision area and connections between that area and the corporate boundary of the Town of AUSTIN.

SCOTT COUNTY shall be solely responsible for delivery of the sewage material to the interconnection points. AUSTIN shall be solely responsible for accepting and treating the sewage material from the interconnection points.

B. Treatment. AUSTIN shall be solely responsible for the proper treatment of the sewage materials received from SCOTT COUNTY in accordance with the requirements of the Department of Environmental Management and the Environmental Protection Agency.

C. Sewage Materials Acceptable. SCOTT COUNTY shall adopt and enforce a Sewer Use Ordinance compatible with AUSTIN'S Sewer Use Ordinance as presently existing or as hereafter adopted, and amendments thereto, and specifically with any future requirements

related to Prohibited Industrial Discharges, Strengths of Wastes Surcharge, and the Rules and Regulations of the Environmental Protection Agency and the Department of Environmental Management. It is recognized by SCOTT COUNTY that AUSTIN'S Sewer Use Ordinance may be amended from time to time so as to change the types of wastes which may be accepted by AUSTIN. However, prior to passage of any such amendments, AUSTIN shall give SCOTT COUNTY written notice of such proposed Ordinances. Prior approval of amendments to AUSTIN'S Sewer Use Ordinance by IDEM will be obtained, if required by SCOTT COUNTY.

It is recognized by AUSTIN that said amendments may necessitate amendments to SCOTT COUNTY'S Sewer Use Ordinance and the parties agree that AUSTIN will give SCOTT COUNTY at least ninety (90) days notice prior to the effective date of such amendments in order to assure that sewage delivered to AUSTIN'S system complies with the AUSTIN Sewer Use Ordinance.

SCOTT COUNTY agrees to comply with AUSTIN limits on heavy metal and toxic waste limitations based on the Federal Categorical Pre-Treatment Standards and to use all necessary precautions and diligence to exclude heavy metal and toxic waste from wastewater transported to AUSTIN.

D. Inflow and Infiltration. SCOTT COUNTY has or will enact an ordinance which prohibits the introduction of excessive surface water and groundwater inflow and infiltration into its sewage system and will otherwise enforce such prohibition.

E. Discovery of unacceptable Material. Upon discovery that unacceptable sewage materials, as defined above or by said Sewer

Use Ordinance, are being transmitted to AUSTIN through SCOTT COUNTY'S interconnection points:

(1) SCOTT COUNTY shall begin corrective action within 48 hours after written notice to SCOTT COUNTY of unacceptable sewage being transmitted to AUSTIN.

(2) SCOTT COUNTY shall bear all liabilities and costs which AUSTIN may incur or become exposed to either by the transmission from SCOTT COUNTY of said unacceptable sewage or exercise of its rights hereunder, including the payment of fines and penalties imposed under NPDES permit enforcement procedures, and any damages to the AUSTIN sewage system or treatment plant.

4. MEASUREMENT OF VOLUME.

(A) Flow Meters. SCOTT COUNTY shall install at SCOTT COUNTY 'S expense proper and adequate flow metering devices for the purpose of measuring the quantity of sewage materials delivered to AUSTIN. Said metering devices shall be constructed in a manner and in a place acceptable to all parties. It is intended that the flow metering device shall be installed at the place of interconnection between the Richie Subdivision sewer and the Town of AUSTIN sewer.

Said metering facilities shall contain one (1) metering device, or more as later agreed, and the metering device shall be of a type and design as mutually approved by the engineers or governing bodies of both parties hereto. Such device shall be subject to the inspection, testing, and approval of each party at all times. For these purposes, and for the purpose of reading and recording data from said meter, each party shall at all times have complete and free access to said metering point and device, and

SCOTT COUNTY shall have the right to be present at any inspection of the metering device by AUSTIN after being given 24-hour notice of such inspection by AUSTIN.

SCOTT COUNTY shall be responsible for all the expenses incurred in the maintenance and repair of the metering devices, including the costs of annual recalibration and testing. Calibration of such metering equipment shall be performed not less than once every twelve (12) months or at the request of either party. Costs of recalibration done at the request of either party shall be paid by the requesting party. A meter registering not more than five percent (5%) above or below the test result at full scale shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the two (2) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any month, the amount of wastewater treated during such month shall be deemed to be the amount of wastewater treated in the month immediately prior to the failure.

If a meter is out of service for more than fifteen days, SCOTT COUNTY shall arrange for installation at its expense of a temporary flow metering device.

(B) Sampling devices. Sampling devices which are capable of providing a flow proportional twenty-four (24) hour composite sample taken hourly may be installed and maintained by AUSTIN at the interconnection point. The location of such sampling devices and specifications thereof shall be subject to the recommendations of the engineers of AUSTIN and SCOTT COUNTY. Composite twenty-four



(24) hour sampling may be conducted by AUSTIN on pH, suspended solids, BOD, phosphorous and ammonia nitrogen at the minimum, of thirty (30) day intervals at the interconnection point. Metal ions and other parameters shall be analyzed at a frequency sufficient to satisfy the Department of Environmental Management and the United States Environmental Protection Agency regulations, but no less frequently than annually.

AUSTIN shall be responsible for any expenses incurred for sampling, analysis and reporting of the parameters tested by AUSTIN.

Material samples as received from the sampling devices shall be available immediately to both AUSTIN and SCOTT COUNTY. The results of testing samples shall be forwarded by either party to the other upon completion of testing.

(C) Reporting. AUSTIN agrees to report to SCOTT COUNTY once each month, before the 15th day of the month, when sampled, the characteristics of the discharge of sewage into the AUSTIN system determined by such sample. In addition, on the first day of each month AUSTIN shall report to SCOTT COUNTY the volume of discharge into the AUSTIN system during the preceding month.

5. COST OF TREATMENT. SCOTT COUNTY agrees to pay AUSTIN for treatment of sewage flow received at the interconnection point both in respect to volume and composition of such flow as such elements are defined in the Sewer Use Ordinance of the Town of AUSTIN. The total cost of Treatment shall be the sum of Strength of Waste Surcharge, Volume Surcharge, and a proportionate share of the operation and maintenance expenses of the AUSTIN wastewater treat-

ment plant, as identified below. "Strength of Waste Surcharge", as used herein, shall be as established in subparagraph 5.B hereinafter. The rates charged SCOTT COUNTY will be subject to review annually by either AUSTIN or SCOTT COUNTY, and will be based on the following cost of service components:

A. Operation & Maintenance Costs; Payment on Equipment.

Payment shall commence on the date AUSTIN first accepts wastewater for treatment from SCOTT COUNTY or any mutually agreeable date, with said date to be endorsed by Addenda to this Agreement and signed by both parties. SCOTT COUNTY shall pay to AUSTIN for the treatment of wastewater from SCOTT COUNTY an amount as determined in Exhibit "B" hereof, "Calculation of Wholesale Rate for Operation and Maintaining Costs" to be completed and computed prior to connection. This rate shall be reviewed at the election of either party hereto upon written notice and request to the other, not more than annually nor less than every two (2) years, and shall be adjusted according to methods, conditions, and circumstances existing at the time of any such adjustment, taking into account the rate setting methodology of the AUSTIN Sewer User Charge System. At the time of such adjustment of review, AUSTIN shall provide to SCOTT COUNTY a verified statement detailing the calculation of the rate based upon the previous calendar year's operation and maintenance expense recorded by AUSTIN. That rate so determined shall be accepted by SCOTT COUNTY, subject to right of review, and shall be paid by SCOTT COUNTY to AUSTIN until modified again, as herein provided. However, at each said time SCOTT COUNTY shall have the opportunity to examine any biennial rate review reports

produced by AUSTIN and the books and records of AUSTIN pertaining to the costs which determine said figure. At such time, if SCOTT COUNTY, after such inspection, does not agree with the figures of AUSTIN, it may submit any difference to a court of competent jurisdiction, or to arbitration if mutually agreed upon by the parties.

The newer rate shall be deferred until SCOTT COUNTY shall have a reasonable time, not exceeding 90 days, to amend its ordinance to pass said increase on to SCOTT COUNTY'S customers and while any pending appeal of the rate is being prosecuted.

The monthly charge for operation and maintenance shall be determined by multiplying the number of gallons of wastewater accepted from SCOTT COUNTY as shown by said meter times the rate calculated.

AUSTIN shall, once each month, following the submission of the reports and data as heretofore provided in this Agreement, invoice SCOTT COUNTY for such operation and maintenance charges, and such amount shall be due from SCOTT COUNTY to AUSTIN on the 20th day following mailing of such invoice to SCOTT COUNTY.

AUSTIN shall give SCOTT COUNTY once each six months a report on the current status of its User Charge System and changes thereto since the last such report.

B. Strength of Waste Surcharge. SCOTT COUNTY shall be subject to the same surcharges for excessive loading as AUSTIN'S customers, which will be in addition to charges for operation and maintenance. In the event sewage is received by AUSTIN from SCOTT COUNTY in excess of normal domestic loadings of 300 mg/l BOD5, 300 mg/l suspended solids, and 40 mg/l ammonia nitrogen and 10 mg/l

phosphorous, as presently established by this Agreement, then SCOTT COUNTY shall pay to AUSTIN the rate per pound as established in attached Exhibit "D". In the event of future changes in the cost of treatment of suspended solids, BOD, ammonia nitrogen and phosphorous based upon studies in conformity with EPA requirements, SCOTT COUNTY shall be subject to such increased or decreased charges for excessive pollutants. In the event that future charges are made for other excessive pollutants received by AUSTIN and such charges are uniformly applied throughout the AUSTIN service area, then SCOTT COUNTY shall be subject to such charges.

C. Volume Surcharge. In the event AUSTIN is required to accept sewage from SCOTT COUNTY in volumes of flow which average more than 70,300 gallons per day but less than or equal to 140,600 gallons per day for any thirty (30) day period (hereafter called "qualifying period"), then an additional treatment plant capital surcharge (hereinafter called "volume surcharge"), will be paid to AUSTIN by SCOTT COUNTY, subject to the following particulars:

(1) The surcharge will be paid in addition to all other charges herein provided. The formula for assessment of the surcharge shall be as follows:

(2) The surcharge shall be computed within thirty days of the end of the first year of this agreement and shall apply for only that year. Each subsequent year shall involve a computation for a possible surcharge based on the formula in Section (1).

D. Reservation of capacity.

It is agreed that at the commencement of this Agreement, .075 MGD of capacity in the AUSTIN sewer system and .075 MGD of the 1.0

MGD design capacity of AUSTIN'S expanded wastewater treatment facility is reserved for SCOTT COUNTY for the average daily flow.

In the event that the average flow from SCOTT COUNTY exceeds the flow planned for in the original design, renegotiation of various sections of this agreement shall be undertaken.

In the event SCOTT COUNTY requires additional capacity and cannot acquire such capacity from AUSTIN, SCOTT COUNTY shall have the right at its own expense to construct its own wastewater treatment facilities, or the parties may negotiate terms and costs of expansion of the AUSTIN treatment facility.

6. RATE COVENANTS. AUSTIN and SCOTT COUNTY shall institute, maintain and enforce a system of user rates and charges in accordance with the guidelines of the Environmental Protection Agency and other state and federal agencies and shall provide evidence of continuing compliance therewith to the other party, to the EPA, and to any other agencies as may be required by said agency regulations.

AUSTIN and SCOTT COUNTY shall each adopt and enforce ordinances providing for rates, rules and regulations, and use of their sewage systems which are in conformity with similar requirements adopted and enforced by the other party in order to maintain the integrity of the AUSTIN treatment plant and sewer system and to permit each party, on a continuing basis, to be awarded grants or loans from the State of Indiana and from the Environmental Protection Agency and other governmental agencies which may in the future offer grants or loans incident to the treatment and collection of sewage.

7. BILLING. AUSTIN will have the responsibility of reading the flow metering devices and billing SCOTT COUNTY appropriately. SCOTT COUNTY shall have the right to verify the date, billing, meter reading, and sampling as to the quantity and the quality of wastewater and shall be given reasonable notice by AUSTIN of AUSTIN'S intent to perform meter readings and samplings.

8. REMEDIES IN THE EVENT OF DEFAULT. In the event that either party shall default (except for failure to make any required payment) hereunder and said default is not cured within thirty (30) days written notice of same, or, in the event said default is not of a type that can be cured within thirty (30) days, if either party is not proceeding with due diligence to cure said default within thirty (30) days written notice of same, or if either party shall fail to make any payment due herein within thirty (30) days after said payment is due either party (no notice being necessary in the event of nonpayment), then either party may apply to any court for appropriate relief.

In the event a declaration of default is disputed by the alleged defaulting party such dispute shall be negotiated by a representative of each party. However, if the representative cannot reach a decision that is mutually satisfactory to the parties, the parties shall seek a determination by arbitration if mutually agreed, or by proceeding in the Scott Circuit Court.

9. TERM OF AGREEMENT. This Agreement shall become effective on the date executed by the parties and shall continue for a period of twenty-five (25) years thereafter or until all bonds issued by either party to finance the construction of their sewer and sewage

disposal system are paid in full, whichever period is longer.

This Agreement shall continue in full force and effect for an indeterminate number of additional five (5) year terms after the initial twenty-five (25) year term subject to the same terms and conditions, unless either of the parties hereto shall notify the other in writing of intention to terminate the same at least thirty-six (36) months prior to the expiration of the original term or any additional five (5) year term. The parties may then desire to renegotiate the terms hereof by reason of governmental changes or requirements, changes in physical conditions, rates, costs, or expenses of any kind. Any such renegotiation shall reflect, in good faith, changes in terms and conditions based on the reasons hereinabove set forth. It is also understood and agreed that this Agreement may be subject to the approval of the Department of Environmental Management, the Environmental Protection Agency, and any other regulatory agency as may be required. In the event any of these agencies having jurisdiction do not approve this Agreement in its entirety, this Agreement shall have no force and effect. In addition, neither party shall be bound until currently planned construction is completed and certificates of completion are issued by the respective engineers. At the appropriate time, the parties shall execute an addendum to this Agreement attesting to approval of the Exhibits hereto and the commencement of terms of this Agreement.

10. SERVICE AREAS. The parties agree that the planning and service areas for each party are reflected upon the map attached hereto as Exhibit "C" and may be changed by agreement of the

parties. Unless a planning and service area is changed by agreement of the parties, neither party shall infringe on the other party's planning and service area. SCOTT COUNTY agrees not to object to AUSTIN'S attempts to annex territory adjacent to said sewer line which is agreed to be constructed herein.

If AUSTIN annexes territory served by SCOTT COUNTY'S sewer line, AUSTIN agrees to purchase the sewer line in the territory annexed at a price and on terms to be negotiated by the parties. After annexation, AUSTIN shall assume operational and maintenance expenses of the sewer line within the annexed territory.

11. SUCCESSORS AND ASSIGNS. This Agreement is expressly made binding upon the successors and assigns of the parties hereto.

12. ATTORNEY FEES AND PROFESSIONAL FEES. Any reimbursements or recoveries by one party hereto against the other party after a breach or an event of default not cured within thirty (30) days of notice of same shall include engineer's fees, accountant's fees, court costs and attorney's fees.

13. SEVERABILITY. The parties agree that in the event any provision of this Agreement is later declared unenforceable by any regulatory agency exercising its appropriate authority, after having been initially approved, or by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect and the failing provision shall be amended by good faith negotiations between the parties to cure any such defect.

14. NOTICES. Any notices required or desired to be given under this Agreement may be served personally or by mail. Any notice given by mail shall be deemed to have been served upon



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. At the date of the execution of this Agreement AUSTIN'S address is Town Hall, 80 West Main Street, Austin, Indiana 47102, Attention of the Clerk-Treasurer; and SCOTT COUNTY'S address is Scott County Regional Sewer District, ~~Post~~ <sup>40 South</sup> ~~Office Box~~ <sup>Main Street</sup>, Scottsburg, Indiana 47170.

IN WITNESS WHEREOF, the parties have executed this Agreement effective this 5th day of June, 1996.

TOWN OF AUSTIN, INDIANA

SCOTT COUNTY REGIONAL SEWER DISTRICT

BY: Larry J. McIntosh  
Larry J. McIntosh

BY: Larry Bower  
Larry Bower

BY: George W. Bowles, Jr.  
George W. Bowles, Jr.

BY: Wanda Erb  
Wanda Erb

BY: Rick Sebastian  
Rick Sebastian

BY: Sharon M. Mlady  
Sharon Mlady

ITS TOWN COUNCIL

BY: Roy E. Bush  
Roy E. Bush

BY: Joe Gibson  
Joe Gibson

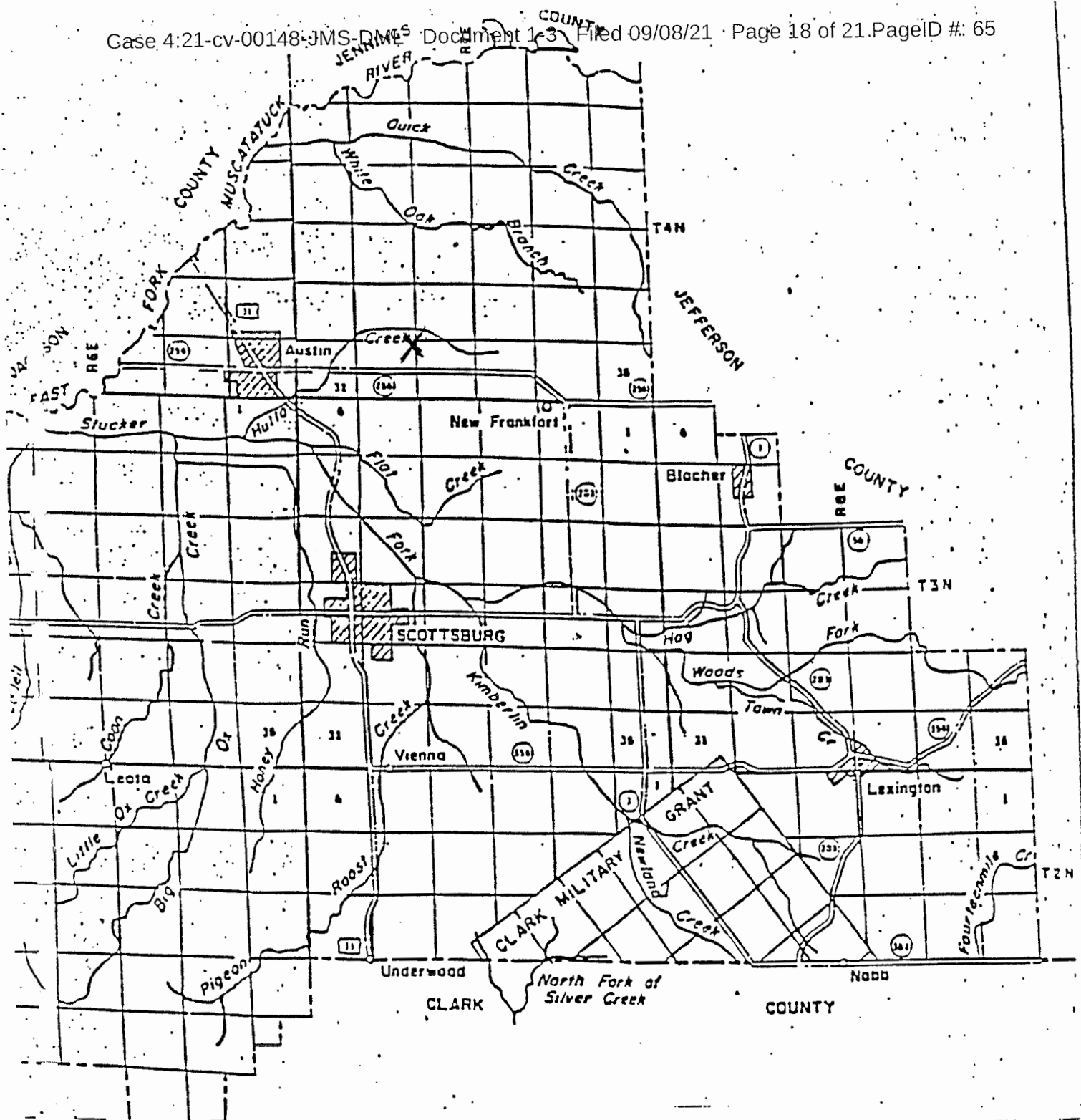
ITS BOARD OF TRUSTEES

ATTEST:  
Clara Adkins  
Clara Adkins, Clerk-Treasurer

ATTEST:  
Wanda Erb, Secretary  
Wanda Erb, Secretary

DATED: June 4, 1996.

DATED: \_\_\_\_\_ 1996.



Ex. A

X = Interconnect

**EXHIBIT B**

**TOWN OF AUSTIN, INDIANA  
AND  
SCOTT COUNTY REGIONAL SEWER DISTRICT  
SCHEDULE OF SEWAGE RATES AND CHARGES**

For the transportation and treatment of sanitary sewer wastewater generated by the Scott County Regional Sewer District (SCRSD), the SCRSD shall pay the Town of Austin, Indiana (Town) in accordance with the following schedule and charges.

The SCRSD will pay the minimum monthly charge in accordance with the Town's *Schedule of Sewage Rates and Charges*, multiplied by 130%, for each single family dwelling unit connected to the SCRSD collection system. The minimum monthly charge will permit the SCRSD to discharge to the Town a total of 2,500 gallons per month for each unit connected to the SCRSD system. Total monthly flows from the SCRSD system greater than the 2,500 gallons per month per unit shall result in an additional charge which shall be calculated by multiplying the total additional flow (in 1,000 gallon units) times the Town's current rate per 1,000 gallons for flows over 120,000 gallons per month.

The following table presents sample charges based on the Town's current and possible future rate schedule. The table is based on 54 units (Richie Subdivision) being connected to the SCRSD system.

Rate Structure	Number of Units	Flow per Unit(gallons per month)	Total Flow (gallons per month)	Minimum Monthly Charge	Charge per 1,000 gallons above 135,000 (54x2500) gallons per month
Current	54	2,500	135,000	(\$9.10X54X1.3) =\$638.82	(\$1.61X1.3) = \$2.09
Future	54	2,500	135,000	(\$17.00X54X1.3) =\$1,193.40	(2.09X1.87) =\$3.91

The Scott County Regional Sewer District shall pay a Tap on fee of \$12,500 payable \$2,500.00 after the first year of service and annual installments of \$2,500.00 on each anniversary date until paid.

The Scott County Regional Sewer District shall provide their proportionate share of repair and maintenance on the Hardy Lake sewer line serving Richie Subdivision based on percentage of flow.



EXHIBIT "D"

Additional charges for treating stronger-than-normal domestic waste shall be made on the following basis:

(a) (1) Rate Surcharge Based Upon Suspended Solids

There shall be an additional charge of \$.11 per pound of suspended solids for suspended solids received in excess of 300 milligrams per liter of fluid.

(2) Rate Surcharge Based Upon BOD

There shall be an additional charge of \$.11 per pound of biochemical oxygen demand for BOD received in excess of 300 milligrams per liter of fluid.

(3) Rate Surcharge Based Upon NH<sub>3</sub>N

There shall be an additional charge of \$.32 per pound of nitrogen for NH<sub>3</sub>N received in excess of 40 milligrams per liter of fluid.

(b) The determination of Suspended Solids and five-day Biochemical Oxygen Demand contained in the waste shall be in accordance with the current addition of "Standard Methods for the Examination of Water, Sewage and Industrial Wastes", as written by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation.



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April 16, 2021

Thomas E. Scifres, PC  
43 Public Square, Suite 103  
Salem, Indiana 47167

**Re: City of Scottsburg – Scott County Regional Sewer District**

Dear Tom:

This Letter sets forth the proposal of the City of Scottsburg to resolve boundary and building issues now existing between the City and the Scott County Regional Sewer District. We all recognize that resolution of these issues is critical to the future growth of the City of Scottsburg and the ability to serve at a reasonable cost the customers of the City Sewage Utility, including the present customers of the Sewer District. The partnership of the City and Sewer District began with the Municipal Wastewater Service Agreement dated November 11, 1988, which at that time anticipated allowing persons outside the City boundary to the west of the City boundary to discharge sewage into the City collector lines. That Agreement was amended on December 12, 1995, to extend the original term of the Agreement from 25 years to 40 years so the expiration is now November 11, 2028. As everybody recognizes, certain terms of that Agreement have not been followed from the date of inception. In particular, the City has installed infrastructure and served customers west of the City within the City boundary that could be construed to be within the service territory of the Sewer District. Also, the Flow Meters required to be installed by the Sewer District under terms of the Agreement so that an accurate measure of the flow into the City sewage system from the Sewer District and appropriate billing made for that flow were never installed by the Sewer District. Flow Meters were installed by the City in 2020.

After the sewage flow into the City's system began to be measured by the Flow Meters in Spring 2020, it was discovered to the surprise of the City, and probably to the surprise of the Sewer District, the flow to the City is well over two times the amount of gallonage that is being billed to the Sewer District by the City. Thus, for decades the City has been treating millions of gallons of sewage per year in excess of the billings to the Sewer District. A record of Flow Meter billings and payments by the Sewer District from July, 2020 to date is enclosed. As you can see, if the Sewer District is to pay based upon Flow Meter billings, the balance due the City for the bills from August 1, 2020 through February 1, 2021, for usage July 2020 through January 2021, is \$112,171.75.

You are also aware that the City is in the final stages of beginning construction of a remodeled Sewer Plant. The City is doing everything possible to avoid any rate increase related to that construction. At the present time, there is no assumption that rates will increase because of the Sewer Plant construction, so a rate adjustment based upon that project alone appears unlikely and unnecessary. The mayor and staff of the City have made great efforts to ensure that the sewer plant construction is done in a cost-effective manner in order to avoid a rate increase. The mayor is concerned, and rightfully so, that some citizens of Scottsburg are paying a substantially higher rate for sewage service if they are served by the Sewer

EXHIBIT 4

**Thomas E. Scifres**

**April 16, 2021**

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District. It should be the goal of both the City and the District that all sewer customers are served efficiently and with as low billing rate as possible, and under present circumstances that lower billing rate is only available to City customers.

The City also has concerns that the District has not been able to resolve its dispute with Michael Guthrie or Guthrie Development Group regarding ownership and maintenance of the sewer lines serving customers on Westavia Blvd. and Willowshore Drive. The Sewer District has always taken the position that it does not own those lines so it has no maintenance responsibilities. There are maintenance issues that have existed for years and remain unresolved. The inability of the District to respond to emergency issues, such as the lift station backup that occurred in 2020, is an obvious concern. Even though the customers affected were District customers, those persons are citizens of the City and look to the City for assistance when necessary. In that particular situation, the Sewer District again reiterated that it did not own the lines and the lift station backup was not its responsibility.

With these facts in mind, the City proposes the following as a resolution of present territory and billing issues that the City believes is in the best interests of all sewer utility users:

1. The City will forgive the outstanding balances based on Flow Meter billings to date. The District will pay the balances due based upon water usage through the billing period ending June 30, 2021. If a new agreement is not in place prior to that time the District will begin paying based upon flow meter readings as of July 1, 2021, until a new agreement is in effect.
2. The City will begin serving all areas within present City boundaries and all customers using sewer services within the City boundaries will become customers of the City of Scottsburg. The City will take ownership of the lines in dispute between the Sewer District and Michael Guthrie.
3. The City will also begin serving all present sewer customers of the Sewer District in the area west of the city boundaries and the area south of the city boundaries, so this includes the areas commonly referred to as the Hosea Addition, the Berna Addition, and Vienna. These customers will receive bills based upon the City Sewer Rate Ordinance. The City will take ownership of the sewer lines and appurtenances and be responsible for future maintenance and repair of the sewer lines and appurtenances.
4. The city will have future territorial jurisdiction for sewer service within four (4) miles of the City Boundaries in accordance with IC 36-9-2-18.
5. The City understands there is some outstanding debt owed by the Sewer District. The numbers are not exact, but the understanding is that approximately \$150,000 is owed to Rural Development and approximately \$700,000 is owed on a loan from the State Revolving Fund (SRF). The City also understands that the Sewer District has several hundred thousand dollars of cash on hand. If these numbers are correct, the City will assume the debt owing to SRF and the Sewer District will pay off the loan owed to Rural Development.

Thomas E. Scifres  
April 16, 2021  
Page Three

6. The City will also take ownership of the Lexington, Indiana sewer treatment plant and those customers will become City of Scottsburg customers for purposes of billing and maintenance.

7. The Municipal Wastewater Service Agreement between the City and the Sewer District that is presently scheduled to expire in 2028, will be amended to include these terms of agreement. Previously the City has given notice to the Sewer District that the Service Agreement will not be renewed when it expires, and this letter reaffirms that intention.

There are obvious benefits to residents now on the Sewer District system, including reliability of future maintenance, resolving the Guthrie dispute, and, most of all, much lower sewer bills. Since service to the public should be the ultimate goal of the Sewer District and the City, it is hard to imagine any viable argument or reason for not bringing all customers into the City system.

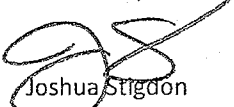
As the Sewer District has recently been made aware, in at least one circumstance, a developer will not proceed if the proposed subdivision development is not on the City system. Growth and economic development of both the City and County will be enhanced by having the City serve all customers within the city boundaries, existing customers now on the Sewer District collection lines, and future customers for developments within 4 miles of the City boundaries. That should be the goal of both the Sewer District and the City.

Since making these changes to past practices and the past Agreement will require approval by the Sewer District Board and the City Council and Board of Public Works and Safety, the representatives of the Sewer District and representatives of the City will agree to formalize the proposed changes and present them to the respective governing bodies for approval in as timely manner as possible.

The City looks forward to discussing resolution of the issues with the Sewer District and intends that any resolution be for the benefit of present and future users of the Scottsburg Sewage System. Please respond to this proposal within thirty days of date of this letter.

Sincerely,

HOUSTON, THOMPSON and LEWIS, PC

  
Joshua Stigdon  
Attorneys for the City of Scottsburg

  
Kerry Thompson

KT/dml

Sent by email to [Thomas@salemattys.com](mailto:Thomas@salemattys.com) and by U.S. mail



FILED  
August 26, 2021  
INDIANA UTILITY  
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF THE CITY OF )  
SCOTTSBURG, INDIANA AND THE CITY OF )  
AUSTIN, INDIANA (“JOINT PETITIONERS”) )  
FOR APPROVAL OF JOINT PETITIONERS’ )  
REGULATORY ORDINANCES )  
ESTABLISHING EXCLUSIVE SANITARY )  
SEWAGE SERVICE AREAS AND )  
REGULATING THE FURNISHING OF )  
SANITARY SEWAGE SERVICE THEREIN )  
PURSUANT TO IND. CODE § 8-1.5-6-1 *ET SEQ.* )

CAUSE NO. 45603

JOINT PETITION

Pursuant to Indiana Code § 8-1.5-6-9, the City of Scottsburg, Indiana (“Scottsburg”) and the City of Austin, Indiana (“Austin”) (collectively, the “Joint Petitioners”), by counsel, respectfully petition the Indiana Utility Regulatory Commission (“Commission”) for approval of Joint Petitioners’ regulatory ordinances establishing exclusive Sanitary Sewage Service Areas (as defined herein) and regulating the furnishing of sanitary sewage service in the Areas. In support of this Joint Petition, Joint Petitioners state:

1. Scottsburg is a municipality which owns and operates plant and equipment for the collection and treatment of sanitary sewage pursuant to Indiana Code ch. 36-9-23 (the “Scottsburg Sewer Utility”). Scottsburg provides sanitary sewage service to the public throughout the corporate limits of Scottsburg and to various customers outside the corporate limits.

2. Austin is a municipality which owns and operates plant and equipment for the collection and treatment of sanitary sewage pursuant to Indiana Code ch. 36-9-23 (the “Austin

Sewer Utility”). Austin provides sanitary sewage service to the public throughout the corporate limits of Austin and to various customers outside the corporate limits.

3. On or about July 26, 2021, Scottsburg adopted Ordinance No. 2021-14 establishing regulation pursuant to Indiana Code §§ 36-9-2-16 and -18 of sanitary sewage service throughout Scottsburg and throughout the area within four (4) miles surrounding the corporate limits of Scottsburg, but not including the areas agreed upon with Joint Petitioner City of Austin (such territory collectively the “Scottsburg Sanitary Sewage Service Area”). Austin adopted its own regulatory ordinance on August 10, 2021 establishing the “Austin Sanitary Sewage Service Area,” which includes all territory within the corporate boundaries of Austin and certain territory outside the City but within four (4) miles surrounding the corporate boundaries, but not including the areas agreed upon with Joint Petitioner City of Scottsburg (the “Austin Sanitary Sewage Service Area” and together with the “Scottsburg Sanitary Sewage Service Area,” collectively, the “Areas”). The Ordinances adopted by Scottsburg and Austin are substantially the same, and copies of said Ordinances are attached hereto as Exhibit A and Exhibit B, respectively. Maps depicting the Areas are attached to each Ordinance. While the Ordinances purport to extend four (4) miles from the corporate limits in all directions, their application is limited to Scott County pursuant to Ind. Code § 36-1-3-9(c)(2).

4. The Ordinances regulate sewer utility service within both the corporate boundaries of Joint Petitioners and within the regulated territory four (4) miles outside of Joint Petitioners’ corporate boundaries. Pursuant to Ind. Code § 8-1.5-6-9, the Commission has jurisdiction over the Ordinances and all issues presented therein, including those issues involving sewer utility service within Joint Petitioners’ corporate boundaries, as well as the authority to resolve all issues presented in this Joint Petition. Ind. Code § 8-1.5-6-9(a) applies if: “(1) a

municipality adopts a regulatory ordinance after December 31, 2012; and (2) a utility owned by the municipality does not, or is not eligible to, file a wholesale sewage petition.” Both requirements are satisfied in this case, and thus, Ind. Code § 8-1.5-6-9(c) provides that “after notice and hearing, the commission shall issue an order resolving all issues presented in [this joint petition], including the enforceability of the regulatory ordinance in a manner that the commission determines is in the public interest.”

5. Scottsburg and Austin are the only municipalities located in Scott County. Paragraph 9 of the Ordinances adopted by Joint Petitioners include mirror provisions exempting the other municipality’s exclusive territory from the enforcement and requirements of the Ordinance. In any area where the Scottsburg Sanitary Sewage Service Area and the Austin Sanitary Sewage Service Area overlap, the Ordinances provide that Joint Petitioners will enter into a separate agreement for service within the overlapping area. Such an agreement would be entered when there is a request for service. Further, a Regional Sewage District organized pursuant to Ind. Code 13-26 operates within and outside the corporate limits of Scottsburg and Austin. Paragraph 9 of the Ordinances provides that a sewer utility providing services within the Areas as of the effective date of the Ordinances may continue to provide service to its existing customers and to future customers located where it makes service available, provided the sewer utility complies with the other terms of the Ordinances. Joint Petitioners have caused a copy of this Joint Petition to be mailed to the Regional Sewer District. Besides the Regional Sewer District, there are no utilities actually or potentially affected by the Ordinance.

6. Each of the Scottsburg Sewer Utility and the Austin Sewer Utility is a “municipal utility”; each of the Ordinances is a “regulatory ordinance”; and the territory outside the City of

Scottsburg and the City of Austin and covered by the Ordinances is each a “regulated territory” as those terms are defined in Indiana Code § 8-1.5-6-1 through 3.

7. Both Scottsburg and Austin propose to continue charging its existing rates and charges for its service to be provided in the Areas until such time as said rates are lawfully changed. A schedule of Joint Petitioners’ respective rates is attached hereto as Exhibit C. There are no pending administrative or judicial proceedings involving the Ordinances.

8. Joint Petitioners consider Indiana Code § 8-1.5-6-9 to be relevant to the subject matter of this proceeding.

9. Joint Petitioners are represented by counsel as reflected below, and request service of all petitions, motions, reports, testimony, exhibits, or objections of any kind to be served upon Joint Petitioners’ counsel of record:

Nicholas K. Kile, Attorney No. 15203-53  
Hillary J. Close, Attorney No. 25104-49  
Lauren M. Box, Attorney No. 32521-49  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Telephone: (317) 231-7768  
Facsimile: (317) 231-7433  
Kile Email: [nicholas.kile@btlaw.com](mailto:nicholas.kile@btlaw.com)  
Close Email: [hillary.close@btlaw.com](mailto:hillary.close@btlaw.com)  
Box Email: [lauren.box@btlaw.com](mailto:lauren.box@btlaw.com)

10. Joint Petitioners intend to file their case-in-chief within thirty (30) days of the filing of this Joint Petition, at which time Joint Petitioners believe the Commission’s three hundred (300) day timeline set forth under Ind. Code § 8-1.5-6 would commence. Joint Petitioners will work with both the Office of the Utility Consumer Counselor and the Regional Sewage District on a proposed procedural schedule and will file a proposed schedule within thirty (30) days of the filing of this Joint Petition.

WHEREFORE, Joint Petitioners respectfully request the Commission conduct an evidentiary hearing and thereafter issue an order:

- (1) Approving the regulatory ordinances;
- (2) Granting all other relief appropriate in the premises.

Dated this 26th day of August, 2021.

Respectfully submitted,



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Nicholas K. Kile, Attorney No. 15203-53  
Hillary J. Close, Attorney No. 25104-49  
Lauren M. Box, Attorney No. 32521-49  
BARNES & THORNBURG LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Telephone: (317) 231-7768  
Facsimile: (317) 231-7433

Attorney for Joint Petitioners  
City of Scottsburg, Indiana and City of  
Austin, Indiana

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was served this 26th day of August, 2021 by electronic mail upon the following counsel of record:

Office of the Utility Consumer Counselor  
PNC Center  
115 W. Washington Street, Suite 1500 South  
Indianapolis, Indiana 46204  
[infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov)

J. Christopher Janak  
Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, Indiana 46204  
[cjanak@boselaw.com](mailto:cjanak@boselaw.com)



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Nicholas K. Kile

COMMON COUNCIL

ORDINANCE NO. 2021-14

AN ORDINANCE ESTABLISHING THE CITY OF SCOTTSBURG SANITARY  
SEWAGE SERVICE AREA AND REGULATING THE FURNISHING OF SANITARY  
SEWAGE SERVICE THEREIN

**WHEREAS**, the City of Scottsburg (the "City") owns and operates a plant and equipment for the collection and treatment of sanitary sewage pursuant to Indiana Code § 36-9-23 (the "Scottsburg Sewer Utility"); and

**WHEREAS**, Indiana Code § 36-9-2-16 permits a municipality to regulate the furnishing of sanitary sewage service to the public; and

**WHEREAS**, Indiana Code § 36-9-2-18 permits a municipality to regulate the furnishing of sanitary sewage service in areas within four (4) miles outside its corporate boundary; and

**WHEREAS**, this Council wishes to establish the territory in which it will regulate the furnishing of sanitary sewage service including all territory within the corporate boundaries of the City and certain territory outside the City but within four (4) miles outside the corporate boundaries of the City as show on Exhibit "A" hereto (such territory collectively the "Scottsburg Sanitary Sewage Service Area" or the "Area"); and

**WHEREAS**, this Council wishes to enact certain regulations pursuant to Indiana Code § 36-9-2-16 on the furnishing of the service of collecting, processing, and disposing of waste substances and domestic or sanitary sewage within the Scottsburg Sanitary Sewage Service Area.

**NOW, THEREFORE**, be it ordained by the Common Council of the City of Scottsburg, Indiana that:

1. Subject to paragraph (9) of this Ordinance, the Scottsburg Sanitary Sewage Service Area is hereby declared as an exclusive service territory of the Scottsburg Sewer Utility unless the Council shall permit a sewer utility other than Scottsburg Sewer Utility to provide domestic or sanitary sewer services within the Area.
2. Upon the effective date of this Ordinance and subject to paragraph (9) of this Ordinance, no sewer utility other than the Scottsburg Sewer Utility shall commence or continue the collection, processing, or disposition of waste substances and domestic or sanitary sewage within the Scottsburg Sanitary Sewage Service Area without first obtaining a permit from the City authorizing the sewer utility to provide such services within the Area.

COMMON COUNCIL

3. Subject to paragraph (9) of this Ordinance, no end service user shall permit a connection to sanitary sewer service within the Scottsburg Sanitary Sewage Service Area by any sewer utility except the Scottsburg Sewer Utility or a sewer utility permitted by the City to operate domestic or sanitary sewer services in the Area.
4. If a sewer utility providing services within the Scottsburg Sanitary Sewage Service Area is a Regional Sewer District organized pursuant to Indiana Code 13-26, such a Regional Sewer District shall be duly constituted with a Board of Trustees properly appointed or elected pursuant to Indiana Code 13-26 and shall provide to this Council evidence that its Board of Trustees has been duly appointed or elected. If the sewer utility is unable to demonstrate that its Board of Trustees has been duly appointed or elected, a duly elected or appointed Board of Trustees shall be established within sixty (60) days of notice by the City.
5. A sewer utility providing services within the Scottsburg Sanitary Sewage Service Area shall operate in compliance with such regulations as the City may from time to time adopt on the furnishing of the service of collecting, processing, and disposing of waste substances and domestic or sanitary sewage within the Area.
6. A sewer utility providing services within the Scottsburg Sanitary Sewage Service Area shall provide all support, maintenance, and other services required for and incident to the reasonably adequate provision of sewage services and shall provide for the maintenance of any and all sewer lines and mains within the Area which are used in the provision of such services to customers of such sewer utility.
7. A sewer utility providing services within the Scottsburg Sanitary Sewage Service Area shall provide all support, maintenance, and other services required for and incident to avoiding inflow and infiltration of groundwater and storm water into the sewer system of the sewer utility or the Scottsburg Sewer Utility in excess of inflow and infiltration which is the reasonable and natural result of the normal operation of a well maintained sewer system.
8. The City reserves the right to revoke the right to service, including any sewer service permit which it may grant, in whole or in part, for any of the following grounds as determined by the Council in its legislative capacity at any regular meeting of the Council:



COMMON COUNCIL

- a. Failure of the sewer utility holding such sewer service permit to furnish reasonably adequate sewer service within the area defined in the permit.
- b. Failure of the sewer utility holding the sewer service permit to comply with such regulations as City has or may from time to time enact for the regulation of domestic and sanitary sewer service within the Scottsburg Sanitary Sewage Service Area.
- c. Any act or undertaking by the Indiana Department of Environmental Management or the Indiana Utility Regulatory Commission which in any way limits or restricts the ability of the sewer utility to act upon the authority of said state bodies.

9. Exceptions:

- a. Upon compliance with Paragraph 4 of this Ordinance, a sewer utility providing services within the Area as of the effective date of this Ordinance may continue to provide service to its existing customers and to future customers located where it makes service available. For purposes of this paragraph, an existing sewer utility makes service available to those parcels where the sewer utility has facilities existing as of the effective date of this Ordinance that are located within or adjacent to the parcels to be served.
- b. The City of Austin, Indiana operates its own separate sewer utility, and its exclusive territory is exempt from the enforcement and requirements of this Ordinance. In any area that the Scottsburg Sanitary Sewage Service Area and the City of Austin's exclusive territory overlap, the City of Scottsburg will enter into a separate agreement for service with the overlapping area.

10. Throughout the Area, private sewer mains are prohibited. For purposes of this paragraph, a private sewer main is a sewer main (including associated pumps, stations and other facilities) that serves multiple customers but which the sewer utility contends it does not own or maintain. A sewer lateral serving one customer is not a private sewer main. Ownership and maintenance responsibilities for any private sewer mains existing as of the effective date of this Ordinance shall become the responsibility of the sewer utility using the private sewer main serving the affected customers.

11. This Ordinance shall be in full force and effect upon approval by the Indiana Utility Regulatory Commission.

COMMON COUNCIL

12. If any one or more of the terms or provisions of this Ordinance, or portions of the Scottsburg Sanitary Sewage Service Area shall be deemed by a court of competent jurisdiction to be contrary to law, then such term or provision shall be deemed severable from the remaining terms and shall in no way affect the validity of the other provisions of this Ordinance.

INTRODUCED, FILED AND APPROVED on the 28<sup>th</sup> day of June, 2021 by a vote of 5 ayes and 0 nays.

PASSED AND ADOPTED by the Common Council of the City of Scottsburg, Indiana, this 30<sup>th</sup> day of July, 2021 by a vote of 5 ayes and 0 nays.

Common Council City of Scottsburg, Indiana  
Terry Amick  
Terry Amick, Presiding Officer

Attest:

Janetta C. Hardy  
Janetta C. Hardy, Clerk-Treasurer

Presented by me to the Mayor of the City of Scottsburg for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, on July 26<sup>th</sup> at 6:37 p.m.

Janetta C. Hardy  
Janetta C. Hardy, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1), on July 26<sup>th</sup> at 6:37 p.m.

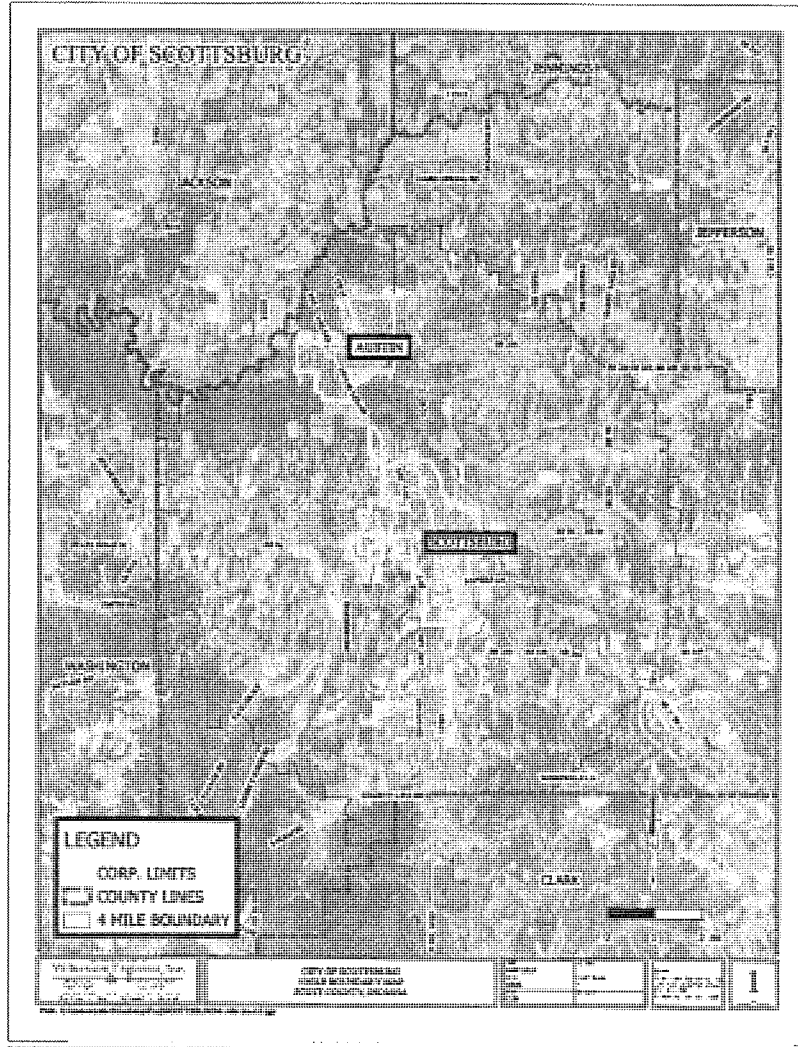
Terry Amick  
Terry Amick, Mayor

Attest:

Janetta C. Hardy  
Janetta C. Hardy, Clerk-Treasurer

COMMON COUNCIL

**Exhibit "A"**



**COMMON COUNCIL OF THE CITY OF AUSTIN, INDIANA**

**ORDINANCE NO. 2021- 10**

**AN ORDINANCE ESTABLISHING THE CITY OF AUSTIN SANITARY SEWAGE SERVICE AREA REGULATING THE FURNISHING OF SANITARY SEWAGE SERVICE THEREIN**

**WHEREAS**, the City of Austin (the “City”) owns and operates a plant and equipment for the collection and treatment of sanitary sewage pursuant to Indiana Code § 36-9-23 (the “Austin Sewer Utility”); and

**WHEREAS**, Indiana Code § 36-9-2-16 permits a municipality to regulate the furnishing of sanitary sewage service to the public; and

**WHEREAS**, Indiana Code § 36-9-2-18 permits a municipality to regulate the furnishing of sanitary sewage service in areas within four (4) miles outside its corporate boundary; and

**WHEREAS**, this Council wishes to establish the territory in which it will regulate the furnishing of sanitary sewage service including all territory within the corporate boundaries of the City and certain territory outside the City but within four (4) miles outside the corporate boundaries of the City as show on Exhibit “A” hereto (such territory collectively the “Austin Sanitary Sewage Service Area” or the “Area”); and

**WHEREAS**, this Council wishes to enact certain regulations pursuant to Indiana Code § 36-9-2-16 on the furnishing of the service of collecting, processing, and disposing of waste substances and domestic or sanitary sewage within the Austin Sanitary Sewage Service Area.

**NOW, THEREFORE**, be it ordained by the Common Council of the City of Austin, Indiana that:

1. Subject to paragraph (9) of this Ordinance, the Austin Sanitary Sewage Service Area is hereby declared as an exclusive service territory of the Austin Sewer Utility unless the Council shall permit a sewer utility other than Austin Sewer Utility to provide domestic or sanitary sewer services within the Area.
2. Upon the effective date of this Ordinance and subject to paragraph (9) of this Ordinance, no sewer utility other than the Austin Sewer Utility shall commence or continue the collection, processing, or disposition of waste substances and domestic or sanitary sewage within the Austin Sanitary Sewage Service Area without first obtaining a permit from the City authorizing the sewer utility to provide such services within the Area.
3. Subject to paragraph (9) of this Ordinance, no end service user shall permit a connection to sanitary sewer service within the Austin Sanitary Sewage Service Area by any sewer utility except the Austin Sewer Utility or a sewer utility permitted by the City to operate domestic or sanitary sewer services in the Area.
4. If a sewer utility providing services within the Austin Sanitary Sewage Service Area is a Regional Sewer District organized pursuant to Indiana Code 13-26, such a Regional Sewer District shall be duly constituted with a Board of Trustees properly appointed or elected pursuant to Indiana Code 13-26 and shall provide to this Council evidence that its Board of Trustees has been duly appointed or elected. If the sewer utility is unable to demonstrate that its Board of Trustees has been duly appointed or elected, a duly elected or appointed Board of Trustees shall be established within sixty (60) days of notice by the City.
5. A sewer utility providing services within the Austin Sanitary Sewage Service Area shall operate in compliance with such regulations as the City may from time to time adopt on

- the furnishing of the service of collecting, processing, and disposing of waste substances and domestic or sanitary sewage within the Area.
6. A sewer utility providing services within the Austin Sanitary Sewage Service Area shall provide all support, maintenance, and other services required for and incident to the reasonably adequate provision of sewage services and shall provide for the maintenance of any and all sewer lines and mains within the Area which are used in the provision of such services to customers of such sewer utility.
  7. A sewer utility providing services within the Austin Sanitary Sewage Service Area shall provide all support, maintenance, and other services required for and incident to avoiding inflow and infiltration of groundwater and storm water into the sewer system of the sewer utility or the Austin Sewer Utility in excess of inflow and infiltration which is the reasonable and natural result of the normal operation of a well maintained sewer system.
  8. The City reserves the right to revoke the right to service, including any sewer service permit which it may grant, in whole or in part, for any of the following grounds as determined by the Council in its legislative capacity at any regular meeting of the Council:
    - a. Failure of the sewer utility holding such sewer service permit to furnish reasonably adequate sewer service within the area defined in the permit.
    - b. Failure of the sewer utility holding the sewer service permit to comply with such regulations as City has or may from time to time enact for the regulation of domestic and sanitary sewer service within the Austin Sanitary Sewage Service Area.

- c. Any act or undertaking by the Indiana Department of Environmental Management or the Indiana Utility Regulatory Commission which in any way limits or restricts the ability of the sewer utility to act upon the authority of said state bodies.

9. Exceptions:

- a. Upon compliance with Paragraph 4 of this Ordinance, a sewer utility providing services within the Area as of the effective date of this Ordinance may continue to provide service to its existing customers and to future customers located where it makes service available. For purposes of this paragraph, an existing sewer utility makes service available to those parcels where the sewer utility has facilities existing as of the effective date of this Ordinance that are located within or adjacent to the parcels to be served.
- b. The City of Scottsburg, Indiana operates its own separate sewer utility, and its exclusive territory is exempt from the enforcement and requirements of this Ordinance. In any area that the Austin Sanitary Sewage Service Area and the City of Scottsburg's exclusive territory overlap, the City of Austin will enter into a separate agreement for service with the overlapping area.

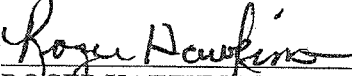
10. Throughout the Area, private sewer mains are prohibited. For purposes of this paragraph, a private sewer main is a sewer main (including associated pumps, stations and other facilities) that serves multiple customers but which the sewer utility contends it does not own or maintain. A sewer lateral serving one customer is not a private sewer main. Ownership and maintenance responsibilities for any private sewer mains existing as of the effective date of this Ordinance shall become the responsibility of the sewer utility using the private sewer main serving the affected customers.

11. This Ordinance shall be in full force and effect upon approval by the Indiana Utility Regulatory Commission.

12. If any one or more of the terms or provisions of this Ordinance, or portions of the Austin Sanitary Sewage Service Area shall be deemed by a court of competent jurisdiction to be contrary to law, then such term or provision shall be deemed severable from the remaining terms and shall in no way affect the validity of the other provisions of this Ordinance.

**INTRODUCED, FILED AND APPROVED** on the first reading on the 13 day of July, 2021 by a vote of 5 ayes and 0 nays.

**PASSED AND ADOPTED** by the Common Council of the City of Austin, Indiana, this 10 day of August, 2021 by a vote of 5 ayes and 0 nays.

  
\_\_\_\_\_  
ROGER HAWKINS, Mayor  
Presiding Officer

Attest:

  
\_\_\_\_\_  
Chris Fugate, Clerk-Treasurer

Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, this 10 day of August, 2021 at 6:25 p.m.

  
\_\_\_\_\_  
Chris Fugate, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1), this 10 day of August, 2021 at 6:20 p.m.

  
\_\_\_\_\_  
Roger Hawkins, Mayor

Attest:

  
\_\_\_\_\_  
Chris Fugate, Clerk-Treasurer



**Exhibit "A"**



COMMON COUNCIL OF THE CITY OF SCOTTSBURG

ORDINANCE NO. 2017-8

**AN ORDINANCE AMENDING THE SCHEDULE OF RATES AND CHARGES COLLECTED BY THE CITY OF SCOTTSBURG, INDIANA FROM THE OWNERS OF PROPERTY SERVED BY THE SEWAGE WORKS OF SCOTTSBURG AND FROM USERS OF THE SEWER SYSTEM, AND OTHER MATTERS CONNECTED THEREWITH.**

WHEREAS, the City of Scottsburg, Indiana ("City") has heretofore constructed and has in operation a sewage works for the purpose of collecting and disposing of the sewage of users of the City's sewage system; and

WHEREAS, the Common Council of the City on the 3rd day of September, 2013, passed Ordinance No. 2013-7 ("2013 Ordinance") which established a schedule of rates and charges to be collected by the City from the owners of property served by the sewage works of the City; and

WHEREAS, the City has been advised that it will be necessary to construct additions and improvements to its sewage works and issue sewage works revenue bonds in order to better service the property owners served by the sewage works of the City and meet federal requirements applicable to the City's sewage works; and

WHEREAS, the Common Council finds that, based upon the advice of its financial advisor, the existing sewage rates and charges are insufficient to enable the City to properly operate and maintain its sewage works facility, pay debt service on its bonds, and fund additions and improvements to the system; and

WHEREAS, based on the immediate needs of the City's sewage works and its expected needs in the following calendar year, a rate report prepared by the City's financial advisor has recommended an increase in the sewage rates and charges to be implemented in two phases; and

WHEREAS, it is necessary to establish a revised schedule of rates and charges in order to produce sufficient revenue to pay expenses of maintenance and operation, pay debt service on its bonds, and to provide funds for necessary replacements and improvements to the sewage works;

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

Section 1. Section 3 of the 2013 Ordinance is hereby amended and restated as follows:

"Section 3. For the use of and the service rendered by said sewage works, rates and charges shall be collected from the owners of each and every lot, parcel of real estate or building that is connected with the City's sanitary system or otherwise discharges sanitary sewage, industrial wastes, water or other liquids, either directly or indirectly, into the sanitary sewer system of the City. Such rates and charges include User Charges, debt service costs, excessive strength surcharges and other service charges, which rates and charges shall be payable as hereinafter provided and shall be in an amount determinable as follows:

(a) The sewage rates and charges for Class I users shall be based on the quantity of water used on or in the property or premises subject to such rates and charges, as the same is measured by the water meter there in use, plus a base charge, based on the size of water meter installed, except as herein otherwise provided. For the purpose of billing and collecting the charges for sewage service, the water meters shall be read monthly and the users shall be billed monthly (or period equaling a month).

The sewage rates and charges for Class II and Class III users shall be based on the quantity of wastewater discharged into the City's sanitary system by these users, measured by flow meters installed at locations to be mutually agreed upon by the city of Scottsburg and by the Scott County Regional Sewer District.

Installation and reading of the flow meters and review of these rates shall be done under terms of the Wastewater Service Agreement between the city of Scottsburg and the Scott County Regional Sewer District now in effect, or as amended from time to time.

Until flow meters are installed, the billings to Class II and Class III users shall be based upon water meter readings in the same manner that billings are made to Class I users. The city of Scottsburg Sewer Department shall, without delay, take whatever action is necessary to allow installation of the flow meters by the Scott County Regional Sewer District.

The Flow Charge component of the sewage rates and charges shall be increased in two phases hereafter referred to as Phase I and Phase II.

The water usage or wastewater discharge schedule on which the amount of said rates and charges shall be as follows:

1) Flow Charge Per Month (per 1,000 gallons)

	<u>Total Flow Charge</u>	
	<u>Phase I</u>	<u>Phase II</u>
Class I	\$10.90	\$14.50
Class II	10.90	14.50
Class III	10.90	14.50

plus;

2) Monthly Base Charge

<u>Meter Size</u>	<u>Phase I and Phase II Base Charge</u>
5/8 - 3/4 inch water meter	\$16.55
1 inch water meter	37.25
1 ¼ inch water meter	57.95
1 ½ inch water meter	82.80
2 inch water meter	140.75
3 inch water meter	320.15
4 inch water meter	554.75
6 inch water meter	1,258.55

(b) For residential users of the sewage works that are unmetered water users or accurate meter readings are not available, the

monthly charge shall be determined as an average of single-family dwelling except as herein provided. Sewage service bills shall be rendered once each month (or period equaling a month). The schedule of which said rates and charges shall be determined is as follows:

UNMETERED USERS

	<u>Total Charge Per Month</u>	<u>Total Charge Per</u>
	<u>Phase I</u>	<u>Month Phase II</u>
Single family residence/unit	\$61.25	\$76.00

Unmetered non "Residential Single-Family Dwelling Units" shall be charged a rate to be determined by the City on an individual basis by applying the above-metered rates to estimated usage.

(c) For the service rendered to the City, said City shall be subject to the same rates and charges hereinabove provided, or to charges and rates established in harmony therewith.

(d) In order to recover the cost of monitoring industrial wastes the City shall charge the user the actual cost of monitoring but not less than \$25 per sampling event. This charge will be reviewed and revised on the same basis as all other rates and charges in this ordinance."

- (e) Connection Fee. An application for a sewer connection permit shall be filed with the utility office of the sewage works on a form supplied by the City. Each user at the time of connection with the sanitary sewer system shall have paid a connection fee to the City in the amount of \$2,000.

Section 2. Sections 5(a) (1), (2) and (3) of the 2013 Ordinance are hereby amended and restated as follows:

"(1) Rate Surcharge Based Upon Suspended Solids

There shall be an additional charge of \$0.63 per pound of suspended solids for suspended solids received in excess of 300 milligrams per liter of fluid.

(2) Rate Surcharge Based Upon BOD

There shall be an additional charge of \$0.63 per pound of biochemical oxygen demand for BOD received in excess of 300 milligrams per liter of fluid.

(3) Rate Surcharge Based Upon NH<sub>3</sub>N

There shall be an additional charge of \$2.23 per pound of nitrogen for NH<sub>3</sub>N received in excess of 40 milligrams per liter of fluid."

Section 3. All provisions of the 2013 Ordinance not amended by this ordinance shall remain in full force and effect.

Section 4. The rates and charges as herein set forth shall become effective as follows: (i) Phase I rates and charges for Class I users shall become effective for the November 2017 billings, and for Class II and Class III users shall become effective for the December 2017 billings; and (ii) Phase II rates and charges for all users shall become effective for the November 2018 billings.

Section 5. This ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

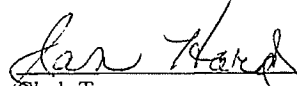
Passed by the Common Council of the City of Scottsburg, Indiana this 5<sup>th</sup> day of February, 2017, 2018

AYES	NAYS
<u>Stan Allen</u> STANLEY ALLEN	_____
<u>Bill Hoagland</u> BILL HOAGLAND	_____
<u>Karen Gričius</u> KAREN GRICIUS	_____
<u>Chuck M. Rose</u> CHUCK ROSE	_____
_____ JOHN KONKLER	_____

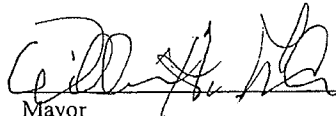
Attest: Jan Hardy  
 Jan Hardy  
 Clerk-Treasurer

John Konkler (ABSTAIN)  
William H. Graham  
 William H. Graham, Mayor  
 Presiding Officer

Presented by me to the Mayor for his approval and signature this 5<sup>th</sup> day of February, 2018, at 6:45 p.m.

  
Clerk-Treasurer

Approved and signed by me this 5<sup>th</sup> day of February, 2018 at 6:45 p.m.

  
Mayor

COMMON COUNCIL OF THE CITY OF SCOTTSBURG

ORDINANCE NO. 2018-18

AN ORDINANCE AMENDING ORDINANCE NO. 2017-8 IN ORDER TO DELETE FROM THE SCHEDULE OF SEWER RATES AND CHARGES THE RATES CURRENTLY SCHEDULED TO GO INTO EFFECT WITH THE NOVEMBER, 2018, BILLING FROM THE SEWAGE UTILITY AS PHASE II RATES.

WHEREAS, the City of Scottsburg adopted Ordinance 2017-8 on February 5, 2018; and

WHEREAS, the sewage rates and charges established in Ordinance 2017-8 were scheduled to be implemented in two phases, which were referenced as Phase I and Phase II in that Ordinance; and

WHEREAS, the City of Scottsburg has continued to explore financing options for the repairs and rehabilitation needed in the sewage system and for construction at the Wastewater Treatment Plant; and

WHEREAS, final financing needs for the sewage system improvement project and construction at the Wastewater Treatment Plant cannot yet be determined; and

WHEREAS, the Common Council desires to amend the rate structure to continue indefinitely the implementation of the Phase II schedule of rates;

NOW THEREFORE, BE IT HEREBY ORDAINED by the Common Council of City of Scottsburg, Indiana:

Section 1. Ordinance 2017-8 adopted on February 5, 2018, adopted a new schedule of sewer rates and charges to be implemented in two phases, set forth as Phase I and Phase II in the ordinance. The schedule of rates and charges referenced as Phase I in the Ordinance has previously been implemented effective with the March 1, 2018 billing and shall remain in full force and effect.

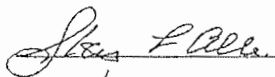
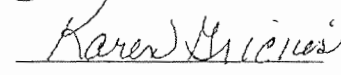


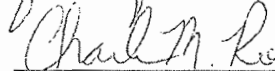
Section 2. The rates set forth in Ordinance 2017-8 to be implemented as Phase II, beginning with the November, 2018, billing, are indefinitely suspended and the change in rates scheduled for November, 2018, is eliminated.

This Ordinance shall be in full force and effect from and after its passage and approval by the mayor.

Passed and adopted by the Common Council on the <sup>21</sup>25<sup>th</sup> day of October, 2018.

AYES

NAYS

	STANLEY ALLEN	_____
	KAREN GRICIUS	_____
	WILLIAM HOAGLAND	_____
	JOHN KONKLER	_____
	CHARLES ROSE	_____

228

COMMON COUNCIL OF THE CITY OF SCOTTSBURG

Attest: Janetta C. Hardy  
Janetta C. Hardy  
Clerk-Treasurer

William H. Graham  
William H. Graham  
Presiding Officer  
Scottsburg Common Council

Presented by me to the Mayor of the City of Scottsburg on the 25<sup>th</sup> day of October, 2018, at the hour of 5:40 p.m.

Janetta C. Hardy  
Janetta C. Hardy  
Clerk-Treasurer

This ordinance approved and signed by me on the 25<sup>th</sup> day of October, 2018, at the hour of 5:40 p.m.

William H. Graham  
William H. Graham, Mayor



ORDINANCE 2021-02

AN ORDINANCE AMENDING RATES AND CHARGES FOR THE  
USE OF AND SERVICES RENDERED BY THE  
CITY OF AUSTIN, INDIANA SEWAGE WORKS

WHEREAS, pursuant to Ind. Code § 36-9-23-1 et seq., the Austin Common Council (“Council”) shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due;

WHEREAS, Ind. Code § 36-9-23-25(b) provides that just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service;

WHEREAS, the fees must be sufficient to: (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations; (2) provide the sinking fund required by Ind. Code § 36-9-23-21; (3) provide adequate money to be used as working capital; and (4) provide adequate money for improving and replacing the works;

WHEREAS, the City’s financial advisor has conducted a rate study (“Rate Study”) and provided the Council with said Rate Study, attached hereto as Exhibit “A” and incorporated herein;

WHEREAS, the Rate Study has fully analyzed the costs of operation of the Sewage Works including reasonable forecasts of expenses, sinking fund, working capital and debt service requirements of the Sewage Works;

WHEREAS, Indiana Code § 36-9-23-25(d)(1) authorizes the City to charge a flat fee for each sewer connection in the City;

WHEREAS, Indiana Code § 36-9-23-25(d)(2) authorizes the City to charge a sewer fee based on the amount of water used on the property;

WHEREAS, Indiana Code § 36-9-23-25(d)(3) authorizes the City to charge a sewer fee based on the number and size of water outlets on the property;

WHEREAS, after introduction of the ordinance establishing fees, but before it is finally adopted, the Council must hold a public hearing at which users of the sewage works, owners of

property served or to be served by the works, and other interested persons may be heard concerning the proposed fees.

WHEREAS, pursuant to Ind. Code § 36-9-23-26, on March 9, 2021, the Council held a public hearing regarding the fees, which was properly noticed.

WHEREAS, the City Council now finds that the existing rates and charges for the use of the service rendered by the sewage works are too low and are insufficient to enable the City to properly operate its sewage works plant and infrastructure, provide for depreciation, and finance necessary extensions and additions; that the future improvements will improve the service rendered by the sewages work system and increase the value of the sewage works to the City and its citizens; and that the existing rates and charges should be increased.

THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUSTIN as follows:

**Section 1.** The rates and charges for users of the sewage works of the City are amended as follows:

**A. Metered Users:**

<u>Meter Size</u>	<u>Monthly minimum charge</u> <u>Gallons</u>	<u>Rate</u>
5/8"	1,530	\$20.47
1"	6,500	\$69.93
1.5"	15,380	\$158.28
2"	29,725	\$301.01
3"	76,210	\$763.54
4"	151,310	\$1,508.99
6"	419,025	\$4,174.55

Includes Base Charge Below

5/8"	\$5.25
1"	\$5.25
1.5"	\$5.25
2"	\$5.25

3"	\$5.25
4"	\$5.25
6"	\$5.25
Monthly Flow Charge	Per 1,000 Gallons
All Users	\$9.95

**B. Unmetered Users:**

Residential Single Family	\$45.05
Vacant Property	\$5.25

**C. Outside City Surcharge:** Customers living outside the City Limits will be billed 130% of the above rates and charges.

**D. Excessive Strength Charge:**

Monthly Charge Per Pound (lb)	
Biological oxygen demand	\$0.45
Suspended Solids	\$0.45

**Section 2.** The City shall conduct an annual review of these rate provisions in order that variations in the cost revenue pattern can be altered in an equitable manner in the charges to all users.


**Section 3.** All other ordinances or provisions thereof not specifically changed shall remain in full force and effect.

**Section 4.** If any portion of this Ordinance is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of the same can be given the same effect.

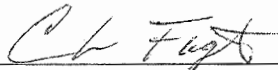
**Section 5.** This ordinance is and shall be effective as of the date of passage and upon notice provided pursuant to Indiana law.

**Section 6.** The rates and charges set out herein shall become effective on April 1, 2021.

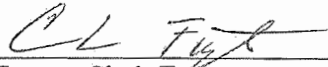
PASSED AND ADOPTED by the Common Council of the City of Austin, Indiana on March 9, 2021 by a vote of 5 to 0.

  
\_\_\_\_\_  
ROGER HAWKINS, Mayor  
Presiding Officer

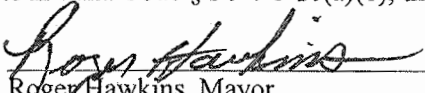
Attest:

  
Chris Fugate, Clerk-Treasurer

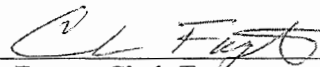
Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, this 9<sup>th</sup> day of March 2021 at 6 : 25 p.m.

  
Chris Fugate, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1), this \_\_\_ day of March 2021 at 6 : 25 p.m.

  
Roger Hawkins, Mayor

Attest:

  
Chris Fugate, Clerk-Treasurer

PREPARED BY: Joshua Stigdon  
Houston, Thompson and Lewis, PC  
49 E. Wardell St.  
Scottsburg, IN 47170

**BOSE  
McKINNEY  
& EVANS LLP**

ATTORNEYS AT LAW

**J. Christopher Janak**

Direct Dial: (317) 684-5249  
Fax: (317) 223-0249  
E-Mail: [JJanak@boselaw.com](mailto:JJanak@boselaw.com)

August 13, 2021

**Via Email Only: [jstigdon@htllawyers.com](mailto:jstigdon@htllawyers.com)  
and [ktompson@htllawyers.com](mailto:ktompson@htllawyers.com)**

Joshua Stigdon  
Kerry Thompson  
Houston, Thompson and Lewis  
49 East Wardell Street  
Scottsburg, IN 47170

*Re: Sewage territory and treatment issues*

Dear Counsel:

The Scott County Regional Sewer District (“District”) has retained me to assist in its discussions with the City of Scottsburg, Indiana (“Scottsburg”), regarding the inter-municipal sewer agreements and an ordinance establishing a regulatory territory around Scottsburg (“Regulatory Ordinance”). The District has forwarded me a letter from you dated April 16, 2021, and email correspondence.

I wanted to use this letter as opportunity to introduce myself to you, begin discussions regarding the agreements, and raise potential legal issues that may not have been previously considered. I have only recently begun reviewing relevant documents. With this in mind, this letter is based on the facts as understood today, and further investigation and discussions could change these understandings. I would like to set up a time to discuss Scottsburg’s position with the hope of moving toward an amicable resolution of any disagreements in the best interest of all users.

As an initial matter, there may have been discussion of Scottsburg serving the District’s users or of the Regulatory Ordinance limiting the District’s ability to serve future new users. In this regard, the fact that the District is a federally indebted rural association for purposes of federal law must be considered. Federal law prohibits a municipality curtailing or encroaching on the area the District serves. 7 U.S.C. § 1926(b). “The statute explicitly prohibits municipal encroachment on a rural water association’s service area by means of annexation or grant of private franchise.” *Jennings Water, Inc. v. City of North Vernon, Ind.*, 895 F.2d 311, 314 (7th Cir. 1989). “Congress intended section 1926(b) to be read broadly, and federal courts construing the statute have accordingly interpreted it liberally to protect [federally]-indebted rural water associations.” *CSL Utilities, Inc. v. Jennings Water, Inc.*, 16 F.3d 130, 137 (7th Cir. 1993) (internal citation omitted).



August 13, 2021

Page Two

Section 1926(b) protects sewer service, as well as water service. *Green Valley Special Utility District v. City of Schertz*, 969 F.3d 460, 477 (5th Cir. 2020).

Section 1926(b) not only protects the District from a municipality taking its current customers, but it also protects the District's ability to serve new users. *See, Brown Cnty. Water Utility, Inc. v. Town of Nashville, Ind.*, 2019 WL 2123461 (S.D. Ind. May 15, 2019). To the extent the Regulatory Ordinance seeks to curtail or limit the area served by the District or seeks to limit the District's ability to serve future users, it violates federal law. To be clear, the District strongly desires to work out a mutually agreeable and advantageous agreement with Scottsburg but it will defend the rights federal law grants it, including its right to collect attorney fees. *City of Cowan, Tenn. v. City of Winchester, Tenn.*, 2015 WL 6393879 \*1 (E.D. Tenn. Oct. 21, 2015).

The Regulatory Ordinance also purports to regulate the District in a number of ways, which most likely violates Indiana law. For example, the Regulatory Ordinance purports to require the District to prove to Scottsburg that its board is duly constituted. (Regulatory Ordinance p.2.) In another example, the Regulatory Ordinance purports to require utilities to acquire private sewer facilities and to operate them. (*Id.* pp.4-5.)

Ind. Code § 13-26-5-2(22) provides that the District can “[e]xercise the powers of the district without obtaining the consent of other eligible entities.” Eligible entity is defined to include a city. Ind. Code § 13-11-2-62. Therefore, the District does not need Scottsburg's consent or approval to operate.

In addition, the Home Rule Act prohibits Scottsburg from exercising a power “expressly granted to another entity,” Ind. Code § 36-1-3-5, and the District has been expressly granted the power to dispose of sewage within its service area. In *Town of Merrillville v. Merrillville Conservancy Dist.*, 649 N.E.2d 645, 652 (Ind. 1995), the Indiana Supreme Court held that “[t]o the extent that [utilities] have been granted specific powers . . . to provide for the collection, treatment and disposal of sewage, including the creation of a taxing district, we agree that Merrillville is precluded from exercising conflicting powers under the home rule statute.” Similarly, because the District has already been expressly granted the power to provide for the collection of sewage within its service area, and it has been doing so for many years, Scottsburg is precluded from regulating the District's provision of sewage collection services.

It is also my understanding that several issues have arisen under the parties' intermunicipal sewer service agreements. For example, there is an issue regarding how Scottsburg charges the District. The parties entered the agreements in the late 1980s, and since that time, Scottsburg has charged the District based on the amount of water its users purchase from Stucker Fork Conservancy District. Last year, Scottsburg installed meters and now desires to charge the District based on volume of sewage, rather than based on volume of water purchased. To the extent the agreements

**BOSE  
McKINNEY  
& EVANS LLP**  
ATTORNEYS AT LAW

August 13, 2021  
Page Three

ever permitted Scottsburg to charge based on volume of sewage, Scottsburg waived the right to charge on that basis by charging based on water consumed for almost thirty years. *McGraw v. Marchioli*, 812 N.E.2d 1154, 1157 (Ind. Ct. App. 2004) (“Waiver is an intentional relinquishment of a known right . . .” (internal quotation omitted)). In addition, charging the District a rate based on sewer flow while all other customers pay rates based on water usage is unfair and discriminatory.

There also appears to be an issue concerning the amount of inflow and infiltration (“I and I”) of water in the sewer flow from the District to Scottsburg. There may have even been some discussion that the presence of I and I breached the parties agreement. This is incorrect. The agreements provide that the District “will otherwise enforce” the limit on I and I. (*See*, Nov. 11, 1988 Intermunicipal Agreement p.5.). The District has worked to address any I and I issues by soliciting proposals from contractors for several months and has now approved the proposal from one of the contractors to start testing to determine the locations in the Hosea and Miller service areas for repair and remediation. It is the District’s intention to have all repairs in those areas done by the end of the year.

Please let me know when you and Scottsburg would be available to have a meeting discuss the outstanding issues. While the District disagrees with Scottsburg’s recent attempts to regulate the District and encroach on its territory, we would like to meet and begin to work through and address any outstanding issues.

Sincerely,



J. Christopher Janak

JCJ

4183053\_2

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p style="text-align: center;">Scott County Regional Sewer District</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Scott</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> J. Christopher Janak and Bradley M. Dick Bose McKinney &amp; Evans LLP 111 Monument Circle, Suite 2700</p>	<p><b>DEFENDANTS</b></p> <p style="text-align: center;">City of Scottsburg, Indiana, and City of Austin, Indiana</p> <p>County of Residence of First Listed Defendant <u>Scott</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <p><i>(For Diversity Cases Only)</i></p> <table style="width:100%;"> <tr> <td style="width:25%;">Citizen of This State</td> <td style="width:5%;">PTF <input type="checkbox"/> 1</td> <td style="width:5%;">DEF <input type="checkbox"/> 1</td> <td style="width:45%;">Incorporated or Principal Place of Business In This State</td> <td style="width:5%;">PTF <input type="checkbox"/> 4</td> <td style="width:5%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input checked="" type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:  
 7 U.S.C. § 1926(b)

Brief description of cause:  
 Violation of rights protected by 7 U.S.C. 1926(b) for federally indebted utility.

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    **DEMAND \$** \_\_\_\_\_    CHECK YES only if demanded in complaint: **JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: September 8, 2021    SIGNATURE OF ATTORNEY OF RECORD: /s/ Bradley M. Dick

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

Southern District of Indiana

SCOTT COUNTY REGIONAL SEWER DISTRICT )

)

)

)

\_\_\_\_\_  
*Plaintiff(s)*

)

v.

)

Civil Action No. 4:21-cv-148

CITY OF SCOTTSBURG, INDIANA, and  
CITY OF AUSTIN, INDIANA

)

)

)

)

)

\_\_\_\_\_  
*Defendant(s)*

)

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* City of Scottsburg, Indiana  
c/o Mayor Terry Amick  
Chief Executive Officer  
2 E. McClain Avenue  
Scottsburg, IN 47170

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

J. Christopher Janak  
Bradley M. Dick  
Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, Indiana 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

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

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 4:21-cv-148

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

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

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

SCOTT COUNTY REGIONAL SEWER DISTRICT )

)

)

)

)

\_\_\_\_\_  
*Plaintiff(s)*

)

v.

)

Civil Action No. 4:21-cv-148

CITY OF SCOTTSBURG, INDIANA, and  
CITY OF AUSTIN, INDIANA

)

)

)

)

\_\_\_\_\_  
*Defendant(s)*

)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* City of Austin, Indiana  
c/o Mayor Roger Hawkins  
Chief Executive Officer  
82 W. Main Street  
Austin, IN 47102

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

J. Christopher Janak  
Bradley M. Dick  
Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, Indiana 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

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

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 4:21-cv-148

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

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

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: