

OFFICIAL
EXHIBITS

IURC
PETITIONER'S
EXHIBIT NO. 18
3-30-20 AT
DATE REPORTER

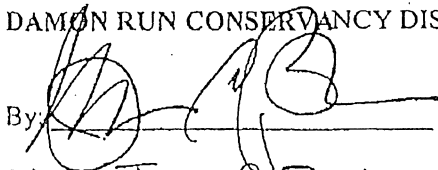
Petitioner's Exhibit 18

ASSIGNMENT OF AGREEMENT

The undersigned, Damon Run Conservancy District, an Indiana water and sewer conservancy district ("Assignor"), hereby assigns to the Valparaiso City Utilities, an Indiana municipal sewer and water utility ("Assignee"), all of Assignor's right, title and interest in and to the Sanitary Sewer Service and Water Utility Agreement with Duneland School Corporation dated July 17, 2009, and Amendment thereto dated February 3, 2014 (collectively, "Agreement"), copies of which are attached hereto as Exhibit A and incorporated herein by reference.

EXECUTED this 3rd day of September, 2019

DAMON RUN CONSERVANCY DISTRICT

By: 

Printed: John C. Barto

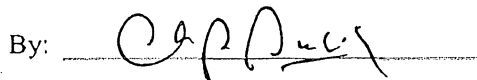
Its: Chairman

CONSENT

The undersigned, Duneland School Corporation, a current customer of, and party to the Agreement with, Assignor, hereby consents to the Assignment of the Agreement from Assignor to Assignee.

EXECUTED this 6th day of December, 2019.

DUNELAND SCHOOL CORPORATION

By: 

Printed: chip pettit

Its: Supt. of Schools

Exhibit A

SANITARY SEWER SERVICE AND WATER UTILITY AGREEMENT

17th This Sanitary Sewer Service Water Utility Agreement ("Agreement") is entered into the day of July, 2009, by and between the **Damon Run Conservancy District**, by and through its Board of Directors ("District") and the **Duneland School Corporation**, by and through its governing body ("School Corporation").

WHEREAS, the District has a sanitary sewer and water utility infrastructure system ("District's System") by and through the City of Portage and Indiana American Water Company respectively which system renders utility services in and around certain property owned and operated by the School Corporation commonly known as Liberty Intermediate and Elementary Schools ("Liberty Schools");

WHEREAS, the School Corporation desires to connect to and utilize the District's System for the Liberty Schools, including potential expansions of the Liberty Schools with the District as the exclusive provider of sanitary sewer and water service and;

WHEREAS, the purpose of this Agreement is to establish the terms and conditions under which the School Corporation will receive sanitary sewer and water utility services from the District and establish the respective responsibilities of the parties for maintenance of the District's System.

NOW THEREFORE, in consideration of the terms of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The parties agree that the above and foregoing recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

2. Effective Date and Term. The Effective Date of this Agreement shall be the date first set forth above. This Agreement shall continue in effect unless terminated by either party upon not less than one hundred eighty (180) days notice to the other party.

3. Provision of Sanitary and Water Service. Upon completion of the infrastructure contemplated herein, the District shall provide sanitary sewer and water utility service to the Liberty Schools.

4. Construction of Infrastructure. The infrastructure for the extension of utilities to the Liberty Schools ("New Infrastructure") has been designed by the Duneland Group, Inc. ("District Engineer") and shall substantially be completed in accordance with the plans prepared by the District Engineer ("Plans"), incorporated herein by reference. The parties recognize that during the course of construction certain changes to the Plans may be necessary due to matters outside the control of the parties, including, but not limited to, unforeseen soil conditions, and that due to such unforeseen conditions, changes to the Plans to accommodate such conditions may be made following review and agreement by the parties. Upon completion and approval of the New Infrastructure by the District Engineer, the New Infrastructure shall be dedicated to and

ownership of the New Infrastructure shall be vested in the District.

5. Costs of New Infrastructure. The School Corporation will provide for the installation of the waterline from Meridian to a point on the west side of their property per drawings prepared by Duneland Group. A reimbursement agreement will be set up with the District to allow the School Corporation to recoup the expense of installing this line from subsequent connections.

The School Corporation shall provide for the installation of the gravity sewer to Manhole "WN" per the drawings prepared by Duneland Group.

6. Reimbursement for Cost of Infrastructure; Waiver of Tap Fee. The School Corporation shall reimburse Timberland Farms, LLC for upsizing the lift station and forcemain an amount equal to .5 times the actual, certified costs directly related to the lift station, the forcemain, tree and land clearing, and engineering costs. The School Corporation shall pay costs pursuant to this paragraph within thirty (30) days of the date certified provided the applicable claim and payment procedures have been followed.

The District agrees to waive all District tap, inspection and administrative fees associated with the School Corporation's tie-in of the Liberty Schools to the District's system. The School Corporation agrees to pay all tap fees payable to the City of Portage and Indiana American Water Company, if any.

7. Maintenance of New Infrastructure. The District shall be responsible for the maintenance, repair and replacement of the New Infrastructure up to and including the lift station shown on the Plans.

8. Utility Service Charges. The School Corporation agrees to pay during the term of this Agreement the charges and fees assessed by the District and contained herein. The School Corporation shall be billed in accordance with the then current rates and charges of the District pursuant to its ordinances. By entering into this Agreement, the School Corporation agrees to abide by and otherwise conform its activities to the District's sewer, water and use ordinances, rules, resolutions in effect and which may from time to time be amended by the District. The District shall not amend any rate structure without first having provided the School Corporation written notice of any hearing at which the District will consider such an amendment. The District's sewer and water rate ordinances as well as its use are incorporated into this Agreement by reference and are made a part of this Agreement as though fully set forth herein.

9. Allocation Charges. In lieu of annexing the School Corporation's property into the District, the School Corporation agrees that it will pay on a monthly basis, allocation charges to the District for the use of the District's System. It is the intent of the parties that the School Corporation pay on equal footing with and proportionate to homeowners in the District and predicated on an equivalent dwelling unit (EDU) factor and an average District tax bill. The School Corporation has provided 2008/2009 flow figures for the Liberty Schools. Based on these figures, the initial annual rate charged to the School shall be Fifty Thousand Dollars (\$50,000) or 27.7 EDUs. The number of EDUs shall be adjusted annually based upon actual use by the

Liberty Schools, pursuant to metering. The monthly payment shall be equal to the product of the number of EDUs (which is equal to annual flow divided by 310 gallons per day) multiplied by the current average single family residential annual tax bill (as of the date of this Agreement, the average tax bill for a single family residence for tax year 2007, payable 2008, is \$1,800) in the District divided by twelve (i.e. {EDUs x Average Tax Bill} ÷ 12 = Monthly Payment). Nothing in this Agreement shall require the School Corporation to file a petition for annexation into the District.

The monthly charge for services rendered hereunder shall be paid by the School Corporation to the District on or before the first day of the calendar month following the month for which service was rendered pursuant to this Agreement. The parties reserve the right to mutually agree to an alternate payment schedule. The District agrees to comply with any claim and payment procedures reasonably required by the School Corporation.

10. Governing Law and Severability. This Agreement shall in all respects be governed by, and enforced and interpreted in accordance with, the laws of the State of Indiana. The invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined by a Court of competent jurisdiction to be unenforceable, that provision shall be deemed severable and the Agreement may be enforced with that provision severed or modified by the Court.

11. Amendments, Agreement, Elections, Waivers and Consents. Any and all amendments and other agreements with respect to this Agreement including elections, waivers and consents, shall be made in writing signed by and on behalf of both parties.

12. Successors and Assigns. The rights inuring under this Agreement shall not be assigned by either party without the prior written consent of the other.

13. Entire Agreement. This Agreement, along with the exhibits hereto, constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and supersedes all negotiations, representations, warranties, offers, contracts and communications prior to the date hereof.

14. Counterparts and Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

15. Notices. Any notices required hereunder shall be in writing, signed by the party serving the same, deposited in the registered or certified U.S. mail, return receipt requested, postage prepaid, or sent by overnight carrier, fee prepaid, and shall be deemed delivered on the second business day after such deposit or on the first business day after being sent by such overnight carrier to the following:

School Corporation: Duneland School Corporation
c/o Superintendent
601 W. Morgan Ave.

Chesterton, IN 46304

District: Damon Run Conservancy District
c/o Board of Directors
P.O. Box 472
Valparaiso, Indiana 46384

or to such other address as any party may furnish the other in writing.

16. Further Assurances. Promptly upon request from time to time of either party, the other party shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged or deliver, to or at the direction of such party, all further acts, transfers, assignments, powers and other documents and instruments as may be so requested to give effect to the transactions contemplated hereby, including, but not limited to supporting petitions, application or requests to any reasonably necessary governing body or agency, municipality, political subdivision or agency thereof.

ALL OF WHICH HAVING BEEN AGREED TO by and between these parties on the date first set forth above.

Duneland School Corporation

By: Nick Jurasevich
Printed: NICK JURASEVICH
Title: BOARD PRESIDENT

Attest:

By: [Signature]
Printed: [Signature]
Title: Secretary

Damon Run Conservancy District

By: [Signature]
Printed: John C. Barko
Title: Secretary

Attest:

By: Jennifer Beauchamp
Printed: Jennifer Beauchamp
Title: Treasurer

AMENDMENT TO
SANITARY SEWER SERVICE AND WATER UTILITY AGREEMENT

THIS AMENDMENT TO SANITARY SEWER AND WATER UTILITY AGREEMENT ("Amendment") is made this 3rd day of February, 2014 by and between the Damon Run Conservancy District ("District") and the Duneland School Corporation ("School Corporation").

WHEREAS, the District and the School Corporation are parties to a certain Sanitary Sewer Service and Water Utility Agreement dated July 17, 2009 ("Original Agreement") regarding the provision of sewer and water service to the School Corporation's facilities and property commonly known as Liberty Intermediate and Elementary Schools ("Liberty Schools");

WHEREAS, as a result of the June 19, 2013 Order issued by the Indiana Utility Regulatory Commission in Cause No. 44146 the District passed Ordinance 2013-1 and Ordinance 2013-2 (together the "Ordinances") on September 30, 2013, amending respectively the District's rates for water and sewer utility service to the School Corporation.

WHEREAS, the District and the School Corporation wish to further amend the Original Agreement to reflect the rate revisions resulting from the Ordinances.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties enter into this Second Addendum according to the following terms:

1. Incorporation of Recitals. The parties agree that the above and foregoing recitals are true and correct and are hereby incorporated into and made a part of this Amendment and this Amendment shall be a part of the Original Agreement.

2. Revised Rate Structure. Paragraph 9 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

9. Annexation Into District Not Required. In lieu of annexing the Liberty Schools into the District, the School Corporation agrees to pay for use of the District's system as set forth herein. It is the intent of the parties that the School Corporation pay on equal footing with and proportionate to homeowners in the District and predicated on an equivalent dwelling unit ("EDU") factor and an average single family residential district tax bill. To accomplish this purpose, the School Corporation's monthly water and sewer service bill shall each include a Monthly User Fee that is comprised of an Operation and Maintenance Component and a Debt Service Component. The Operation and Maintenance Component of the School Corporation's water and sewer service bills shall be equivalent to the tariffed monthly User Fee for a single EDU for Residential customers multiplied by the School Corporation's EDU consumption as described below. The Debt Service Component of the School Corporation's monthly user fee shall be the District's tariffed monthly user fee for Outside District Boundary customers, minus the

Operation and Maintenance Component, multiplied by the School Corporation's EDU consumption as defined below. The School Corporation's EDU consumption shall be based on actual flow figures determined through the School Corporation's water meter, and shall be adjusted annually based on the twelve (12) month average flow recorded by the School Corporation's water meter with one (1) EDU being equal to 310 gallons of water per day for a single family dwelling unit.

By way of example only, the Debt Service Portion of the School Corporation's water and sewer bills shall be calculated as follows:

Sewer:	School Corporation EDUs x	Debt Service portion of monthly Sewer user fee	=	Debt Service component of monthly Sewer user fee payment
Water:	School Corporation EDUs x	Debt Service portion of monthly Water user fee	=	Debt Service component of monthly Water user fee payment

Based on a School Corporation EDU factor of 13, which may change annually based on actual consumption, the debt service component of the School Corporation bill would be:

Sewer:	13 x \$64.13 ⁽¹⁾	=	\$ 833.69
Water:	13 x \$145.69 ⁽²⁾	=	<u>1,893.97</u>
	Monthly Total		\$2,727.66
	Times 12 months	<u>x 12</u>	
	Annual Total		<u>\$32,731.92</u>

(1) Sewer user fee of \$76.13 - \$12.00 Operation & Maintenance component = \$64.13.

(2) Water user fee of \$157.69 - \$12.00 Operation & Maintenance component = \$145.69.

On an annual basis, the District will perform a true-up calculation for the Debt Service Component of the School Corporation's Monthly User Fee. The true-up calculation will be based on the total actual User Fees paid by the School Corporation for the Debt Service Component during the previous twelve month period compared to the Outside District customers' EDU count multiplied by the District's average single family residential tax bill for the year. If the true-up calculation results in a difference between the actual payments made by the School Corporation and the EDU residential tax bill calculation, the School Corporation will either (i) receive a credit from the District equal to the amount the School Corporation's actual payments exceed the EDU residential tax bill calculation; or (ii) pay the District, within 30 days of receipt of invoice, the amount by which the School Corporation's actual payments are less than the EDU residential tax bill calculation.

3. Scope of Amendment. Except as expressly provided for herein, all terms and conditions of the Original Agreement shall remain in full force and effect and shall apply to this Amendment.

4. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. A facsimile or electronically scanned signature shall be deemed an original for all purposes.

ALL OF WHICH HAVING BEEN AGREED TO by and between these parties on the date first set forth above.

District:

Damon Run Conservancy District

By: 

Printed: JOHN C. BANKO

Title: CHAIR PERSON

ATTEST:

By: 

Printed: RICHARD W. HALOIN

Title: SECRETARY

School Corporation:

Duneland School Corporation

By: 

Printed: Mr. Ralph Ayres

Title: School Board President

ATTEST:

By: 

Printed: Mr. Ron Stone

Title: School Board Secretary