

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF THE TOWN )  
OF HUNTERTOWN, INDIANA FOR (A) REVIEW OF )  
THE RATES AND CHARGES BEING IMPOSED BY )  
FORT WAYNE OF FORT WAYNE, INDIANA FOR )  
WHOLESALE SERVICE PURSUANT TO IND. CODE )  
§ 8-1-2-61.7; AND (B) APPROVAL OF REGULATORY )  
ORDINANCES ESTABLISHING SERVICE )  
TERRITORIES FOR THE TOWN'S MUNICIPAL )  
WASTEWATER AND WATER SYSTEMS PURSUANT )  
TO IND. CODE § 8-1.5-6 *ET SEQ.* )

CAUSE NO. 44519

APPROVED: MAY 04 2016

RESPONDENT: CITY OF FORT WAYNE, INDIANA )

ORDER OF THE COMMISSION

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Loraine L. Seyfried, Chief Administrative Law Judge**

On July 29, 2014, the Town of Huntertown, Indiana ("Huntertown") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") for (a) review pursuant to Ind. Code § 8-1-2-61.7 of the rates and charges being imposed by the City of Fort Wayne, Indiana ("Fort Wayne") for wholesale sewage service; and (b) approval pursuant to Ind. Code ch. 8-1.5-6 of Huntertown's regulatory ordinances establishing service territories for Huntertown's municipal wastewater and water systems ("Regulatory Ordinances"). Fort Wayne was named the Respondent.

On May 20, 2015, the Commission issued an Order establishing reasonable wholesale rates for Huntertown and approving Huntertown's Regulatory Ordinances subject to certain modifications ("May 20 Order"). On May 27, 2015, Fort Wayne filed its Notice of Appeal of the May 20 Order. Upon notice of a pending settlement, the Court of Appeals on December 2, 2015, remanded this matter "so that the [Commission] may rule on the parties' Settlement Agreement."

On December 9, 2015, Huntertown, Fort Wayne, Twin Eagles Development, II, LLC ("Twin Eagles"), and the Allen County Regional Water and Sewer District ("District") (collectively, the "Settling Parties") filed their Joint Petition for Approval of Joint Stipulation and Settlement Agreement along with the Joint Stipulation and Settlement Agreement ("Joint Stipulation"). On January 29, 2016, Fort Wayne and Huntertown filed their settlement testimony and exhibits in support of the Joint Stipulation. On February 15, 2016, the OUCC filed its Notice of Intent to Not File Testimony.

An evidentiary settlement hearing was held on March 31, 2016, at 1:00 p.m. in Room 224, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the Joint Stipulation and supporting testimony of Huntertown and Fort Wayne was offered and admitted into evidence without objection.

Based upon the applicable law and evidence presented, the Commission finds:

1. **Notice and Jurisdiction.** Notice of the hearing held in this Cause was given and published by the Commission as required by law. Huntertown and Fort Wayne are “utilities” as defined by Ind. Code §§ 8-1.5-6-4 and 8-1-2-61.7. The Commission’s May 20 Order was issued pursuant to Ind. Code § 8-1.5-6-8, which provides that if a municipality adopts regulatory ordinances after December 31, 2012, and the municipality’s utility has filed a wholesale sewage petition, the Commission has jurisdiction to approve the regulatory ordinances and also assumes jurisdiction over any remaining issues concerning the wholesale sewage petition. After appeal of the May 20 Order, and upon the parties’ request, the Indiana Court of Appeals remanded this matter to the Commission for consideration of the parties’ settlement. Therefore, the Commission has jurisdiction over Huntertown and Fort Wayne and the subject matter of this Cause.

2. **Utility Characteristics.** Huntertown is an Indiana municipal corporation located in Allen County, Indiana that, through its Utility Service Board, owns and operates a municipal water and wastewater utility. Huntertown’s municipal water and wastewater utilities each serve approximately 3,200 residential and commercial customers. Huntertown’s wastewater utility consists of a sewage collection system, which collects and currently transports sewage to Fort Wayne for treatment.

Fort Wayne is a municipality located in Allen County, Indiana. Through its municipally owned utilities, Fort Wayne provides both wastewater and water service to customers inside and outside its municipal limits. Fort Wayne is a regional provider of water and wastewater services, providing service to approximately 87,768 wastewater customers and 84,142 water customers.

3. **Relief Requested.** Huntertown and Fort Wayne requests Commission approval of their Joint Stipulation, which includes an agreed rate schedule and terms and conditions for wholesale sewage service to Huntertown from Fort Wayne and an agreed upon water and sewage service area for Huntertown.

4. **Joint Stipulation.** The Joint Stipulation incorporates various specific sections of a broader Settlement Agreement, which is attached to the Joint Stipulation as Exhibit 1. Pursuant to the Joint Stipulation, the Settling Parties agree that Fort Wayne and Huntertown will enter into a short-term wholesale sewage agreement. The terms and conditions and rates and charges under which such service is to be provided is set forth in Section 7 of the Joint Stipulation, which incorporates Section 2 of the Settlement Agreement. The Settling Parties also agree that Huntertown will modify its Regulatory Ordinances to amend its water and wastewater service territory as defined in the Section 8 of the Joint Stipulation, which incorporates Sections 3, 4, and 5 of the Settlement Agreement.

The Joint Stipulation further provides that the Settling Parties agree Section 4 of the Settlement Agreement, which addresses service on an intermediate basis in Huntertown's service area, will expire upon the Commission's approval of the Joint Stipulation. In addition, the Settling Parties agree that the broader Settlement Agreement supersedes any prior agreement (express or implied) between Fort Wayne and Huntertown and that the Joint Stipulation, upon approval of the Commission, supersedes the May 20 Order.

## **5. Summary of Settlement Testimony.**

**A. Fort Wayne's Settlement Testimony.** Matthew Wirtz, Deputy Director of Engineering Services and Chief Engineer for Fort Wayne, testified in support of the Joint Stipulation. Mr. Wirtz explained that the Joint Stipulation reaches a reasonable middle ground between the parties, allows Fort Wayne and Huntertown to continue to operate individual sewer systems, allows Huntertown to pursue development of its own wastewater treatment plant ("WWTP"), gives the development community certainty as to the provision of water and wastewater service, and provides Fort Wayne and Huntertown with operational certainty for current service and future planning purposes.

Mr. Wirtz explained that the Joint Stipulation is one piece of a broader settlement agreement ("Settlement Agreement") between Fort Wayne and Huntertown. He testified that the broader Settlement Agreement was negotiated to resolve four separate pieces of litigation between Huntertown and Fort Wayne, and that the Joint Stipulation adopts those portions of the broader Settlement Agreement that pertain to this Cause before the Commission. Mr. Wirtz briefly described each of the four pieces of litigation that were resolved by the broader Settlement Agreement: (1) the appeal of the May 20 Order in this Cause docketed before the Indiana Court of Appeals as Cause No. 93A02-1505-EX-444; (2) this Cause, which involved Fort Wayne's rates and charges for whole sewage service to Huntertown and Huntertown's Regulatory Ordinances; (3) an Allen County Circuit Court Case docketed as 02C01-1306-MI-1194 which involved, among other allegations, whether Fort Wayne could charge Huntertown certain conveyance charges; and (4) Office of Environmental Adjudication ("OEA") Cause No. 15-W-J-4783 involving Huntertown's NPDES Permit for a new WWTP. Mr. Wirtz also testified that it was his understanding that Huntertown and Twin Eagles, as a result of the broader Settlement Agreement, were able to resolve an annexation lawsuit between them.

Mr. Wirtz explained that the Settlement Agreement is fair and reasonable for four reasons. First, he stated that the Settlement Agreement resolves the four cases referenced above and also lead to the resolution of a fifth without the need for further contested litigation. Second, he indicated that the Settlement Agreement resolved the terms and conditions of wastewater service by negotiation between Fort Wayne and Huntertown. Third, he indicated that the Settlement Agreement delineated and reduced the water and wastewater service area of Huntertown in a way that was reasonable. Fourth, the Settlement Agreement provides future certainty with respect to how Huntertown and Fort Wayne will work together as Huntertown seeks to build its WWTP within an initial five-year term followed by a potential two-year extension. He noted that the Settlement Agreement permits Huntertown to disconnect from the Fort Wayne system at any time in the next seven years, and then provides for a long-term connection between the parties in the event that the disconnection does not occur.

Mr. Wirtz explained how the Settlement Agreement resolves Huntertown's wholesale sewage petition. He stated that the Settlement Agreement is consistent with the rates and charges provided in the May 20 Order. However, the May 20 Order did not resolve the rates and charges from April 28, 2013 to May 19, 2015. Therefore, Huntertown and Fort Wayne have agreed to rates that are effective as of April 28, 2013. Mr. Wirtz further stated that Section 2 of the Settlement Agreement, which is incorporated at Section 7 of the Joint Stipulation, provides Fort Wayne with certainty about the duration of its relationship as Huntertown's wholesale treatment provider while also giving Huntertown flexibility to pursue construction of its own WWTP. Finally, Mr. Wirtz indicated that Section 2 of the Settlement Agreement contains essential components Fort Wayne seeks in its long-term contracts to protect Fort Wayne's treatment system (e.g., metering, testing, and peak flow limits).

Finally, Mr. Wirtz explained how the Settlement Agreement resolved Huntertown's Regulatory Ordinances concerning water and wastewater service areas. Mr. Wirtz stated that Fort Wayne and Huntertown were able to agree to Huntertown reducing its exclusive water and wastewater service areas so that Fort Wayne could provide water and wastewater service to a portion of the area. He testified that Section 8 of the Joint Stipulation incorporates Sections 3, 4, and 5 of the Settlement Agreement. Within those sections, Fort Wayne and Huntertown agreed to reduce Huntertown's water and wastewater service areas as provided in those sections and depicted on Exhibits C and D to the Settlement Agreement. He testified that the yellow line on Exhibits C and D represent the reduced settlement water and wastewater service area for Huntertown while the blue hatched area represents the areas being carved out of Huntertown's area authorized in the May 20 Order for service by Fort Wayne. He indicated that the Settlement Agreement permits Fort Wayne to continue to serve the Whisper Rock and Timber Ridge subdivisions while Huntertown would continue to have the rights to serve the Cedar Canyon Elementary School. To effectuate the Settlement Agreement, Mr. Wirtz stated that the Settling Parties are asking the Commission to approve the Joint Stipulation, which will cause Huntertown to modify its Regulatory Ordinances and alleviate any confusion as to which entity is authorized to provide service in the area.

**B. Huntertown's Settlement Testimony.** Andrew Conner, President of the Utility Service Board of Huntertown, testified in support of the Joint Stipulation. Mr. Conner began with a brief overview of the May 20 Order, noting that the Order set the rates and charges Fort Wayne was to bill Huntertown, set the parameters for Fort Wayne's collection of area connection fees, approved Huntertown's proposed reduced service areas for water and wastewater, and provided certain details concerning Fort Wayne's provision of sewage treatment services to Huntertown, including treatment capacity.

Mr. Conner testified that Fort Wayne appealed the May 20 Order and that civil proceedings were pending between Fort Wayne and Huntertown in Allen County Court and before OEA. He also indicated there was litigation pending concerning Huntertown's proposed annexation. Mr. Conner stated that Huntertown's goal was to build its WWTP, and that the appeal and litigation were impeding Huntertown's ability to obtain funding from the State Revolving Fund to complete its WWTP. He stated that the inability to build a WWTP and the continuing cost of litigation spurred interest in an omnibus resolution.

Mr. Conner testified that the Settlement Agreement was the result of protracted arm's length negotiations that required a great deal of time and effort. He recommended the Settlement Agreement be approved by the Commission for several reasons. First, the settlement ends the protracted costly litigation between Fort Wayne, Twin Eagles, and Huntertown, including resolution of the Allen County litigation, the OEA case, and the annexation lawsuit. Mr. Conner also indicated that the settlement includes terms that serve to avoid future litigation between Huntertown and Fort Wayne and its supporters.

Second, the settlement allows Huntertown to receive its SRF funding for the purpose of constructing its WWTP and achieving its goals of utility growth and municipal sovereignty. Mr. Conner testified that completion of the WWTP will allow Huntertown to grow its wastewater utility service to match the growth of its area and provide quality wastewater collection and treatment at reasonable rates. Further, the WWTP completion will occur without charging customers any out of town surcharge or being required to abandon properly functioning septic systems and water wells.

Third, the settlement ensures Fort Wayne will continue to provide the wastewater treatment services that Huntertown needs during the period of time in which Huntertown is pursuing the construction of its WWTP. The settlement provides operational details regarding that service.

Fourth, Mr. Conner stated that, with the exception of modifications to the water and wastewater service areas, the Settlement Agreement retains many of the major facets of the May 20 Order. He indicated that the wholesale sewage rates to be charged by Fort Wayne to Huntertown as set forth in the Settlement Agreement are consistent with those set forth in the May 20 Order. As a compromise, Fort Wayne will provide water and wastewater service to the areas depicted on Exhibits C and D to the Settlement Agreement, and Huntertown will update its Regulatory Ordinances to reflect that modified service area.

Mr. Conner testified that the Settlement Agreement will promote the efficient provision of water and wastewater services by minimizing inefficient, redundant facilities and demarcating service area responsibilities. He recommended that the Commission approve the Settlement Agreement.

**6. Commission Discussion and Findings.** As indicated above, our May 20 Order established certain rates and charges to be charged by Fort Wayne to Huntertown for the provision of wholesale sewage service. The Order also required Huntertown to modify its Regulatory Ordinances to reflect a reduced service area for the provision of its water and wastewater service to customers. Fort Wayne appealed the May 20 Order to the Court of Appeals.

In addition to the issues raised in this Cause, some of the parties were involved in other litigated matters, including an appeal to OEA concerning Huntertown's NPDES permit, a lawsuit in the Allen Circuit Court, and an annexation challenge in the Allen Superior Court. In an effort to resolve the issues pending on appeal in this case and in an effort to resolve the other disputes

between the parties, the Settling Parties entered into a global settlement, part of which is now pending before us in the Joint Stipulation.

Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition of Ind., Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition of Ind., Inc. v. Public Service Co. of Ind., Inc.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Joint Stipulation, we must determine whether the evidence in this Cause sufficiently supports the conclusion that the Joint Stipulation is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

As an initial matter, we note that the Indiana General Assembly has set a policy of encouraging settlement between the parties in cases involving territorial disputes. Ind. Code 8-1.5-6-7(a)(3); Ind. Code § 8-1.5-6-8(e)(1). Although these provisions are geared to encourage settlement before a hearing, we understand that a multitude of factors, such as other pending litigation and issues between the parties, may impact the timing of or the ability to achieve a resolution through mutual agreement.

Based on the evidence presented, we find that the Settling Parties have provided the Commission with sufficient information to determine that the Joint Stipulation is reasonable and in the public interest, and should be approved.

**A. Fort Wayne’s Rates and Charges.** In our May 20 Order, we found that Huntertown should be subject to the proposed rates and charges established for Huntertown in the 2014 Accounting Report until January 1, 2020, or Huntertown’s termination of sewage treatment services from Fort Wayne, whichever occurs first. We also imposed upon Huntertown and Fort Wayne certain terms and conditions of service consistent with the then-terminated Agreement between the two parties.

Section 7 of the Joint Stipulation, which incorporates Section 2 of the Settlement Agreement, sets forth the rates and charges Fort Wayne shall charge Huntertown effective April 28, 2013, and terminating on January 1, 2020. These rates and charges are consistent with the May 20 Order in this Cause. Section 7 also provides for the terms and conditions under which Fort Wayne will provide wastewater treatment services to Huntertown for an interim period as well as the terms and conditions under which the interim period may be extended.



Based on the evidence presented, we find that Section 7 provides rates, charges, and terms and conditions that are just and reasonable for Fort Wayne's provision of wholesale sewage service to Huntertown and that approval is in the public interest. Accordingly, we approve Section 7 of the Joint Stipulation.

**B. Huntertown's Regulatory Ordinances.** In our May 20 Order, we found that Huntertown's Regulatory Ordinances as presented in its Petition should not be approved. Instead, we ordered Huntertown to modify its Regulatory Ordinances consistent with the reduced service areas described in Huntertown's rebuttal testimony.

Pursuant to the Joint Stipulation, the Settling Parties agree that Huntertown shall modify its Regulatory Ordinances consistent with Section 8 of the Joint Stipulation, which incorporates Sections 3, 4, and 5 of the Settlement Agreement. Under Section 8, Fort Wayne is permitted to serve in a defined area that was previously included in Huntertown's reduced service area. Specifically, the Fort Wayne permitted area includes an area east of Bunton Road, west of Corbin Road, south of Gump Road, and north of Union Chapel Road, and includes the Whisper Rock and Timber Ridge developments. The Settling Parties also agree that Huntertown shall, upon receipt of this Order, modify its Regulatory Ordinances to amend its water and wastewater service territories consistent with the Joint Stipulation. Further, consistent with Section 9 of the Joint Stipulation, the Settling Parties agree that Section 4 of the Settlement Agreement, which governed service on an intermediate basis, expires upon approval of this Order.

Based on the evidence presented, we find that Section 8 of the Joint Stipulation reasonably addresses and provides certainty going forward concerning Huntertown's water and wastewater service areas. Accordingly, we approve Section 8 of the Joint Stipulation.

**C. Conclusion.** The evidence of record demonstrates that the Joint Stipulation is reasonable and in the public interest. The Settlement Agreement, of which the Joint Stipulation is a part, brings to close several lawsuits and disagreements among the Settling Parties and provides a path forward with regard to operational certainty for at least the next several years. It also provides the development community with certainty about which utility can provide water and wastewater service in the area. Therefore, we approve the Joint Stipulation.

**D. Non-Precedential.** The parties agree that the Joint Stipulation should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce the terms. However, with regard to future citation, the Commission finds that our approval of the Joint Stipulation should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34880849, at \*7-8 (IURC March 19, 1997).

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The Joint Stipulation, a copy of which is attached and incorporated into this Order, is approved.

2. The rates and charges to Huntertown for wholesale sewage service shall be as set forth in the Joint Stipulation.

3. Huntertown shall amend its Regulatory Ordinances consistent with the Joint Stipulation within seven days from the date of this Order.

4. In accordance with Indiana Code § 8-1-2-70, Chandler shall, within 20 days from the date of this Order, pay into the Treasury of the State of Indiana, through the Secretary of this Commission, the following itemized charges, as well as any additional charges which were or may be incurred in connection with this Cause:

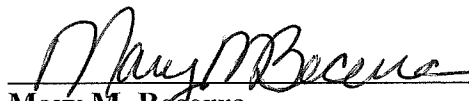
Commission Charges:	\$ 702.66
OUCC Charges:	\$ 692.08
Legal Advertising Charges:	\$ 253.44
<b>Total:</b>	<b>\$1,648.18</b>

5. This Order shall be effective on and after the date of its approval.

**STEPHAN, HUSTON, AND ZIEGNER CONCUR; WEBER NOT PARTICIPATING:**

**APPROVED:**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**

  
**Mary M. Becerra**  
**Secretary of the Commission**



**BEFORE THE**  
**INDIANA UTILITY REGULATORY COMMISSION**

<b>IN THE MATTER OF THE PETITION OF THE</b>	)	
<b>TOWN OF HUNTERTOWN, INDIANA FOR</b>	)	
<b>(A) REVIEW OF THE RATES AND CHARGES</b>	)	
<b>BEING IMPOSED BY FORT WAYNE OF</b>	)	
<b>FORT WAYNE, INDIANA FOR WHOLESALE</b>	)	
<b>SERVICE PURSUANT TO IND. CODE § 8-1-2-</b>	)	
<b>61.7; AND (B) APPROVAL OF REGULATORY</b>	)	
<b>ORDINANCES ESTABLISHING SERVICE</b>	)	<b>CAUSE NO. 44519</b>
<b>TERRITORIES FOR THE TOWN'S</b>	)	
<b>MUNICIPAL WASTEWATER AND WATER</b>	)	
<b>SYSTEMS PURSUANT TO IND. CODE § 8-1.5-</b>	)	
<b>6 ET SEQ.</b>	)	
<b>RESPONDENT: CITY OF FORT WAYNE,</b>	)	
<b>INDIANA</b>	)	
	)	
	)	

**JOINT STIPULATION AND SETTLEMENT AGREEMENT**

This Joint Stipulation and Settlement Agreement ("Settlement Agreement") is entered into this 7<sup>th</sup> day of December, 2015 by and between the Town of Huntertown, Indiana ("Huntertown"), the City of Fort Wayne, Indiana ("Fort Wayne"), Intervenor Twin Eagles Development II, LLC ("Twin Eagles"), and Intervenor the Allen County Regional Water and Sewer District (the "District") who stipulate and agree for purposes of settling all matters in this Cause that the terms and conditions set forth below represent a fair and reasonable resolution of all issues in this Cause, subject to their incorporation in a final Indiana Utility Regulatory Commission ("Commission") Order without modification or the addition of further conditions that may be unacceptable to either party. If the Commission does not approve the Settlement Agreement in its entirety and incorporate the conclusions herein in its final Order, the entire

Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties (as defined below).

**Terms and Conditions of Settlement Agreement**

1. **Requested Relief.** On July 20, 2014, Huntertown initiated this Cause by filing a Verified Petition with the Commission requesting the Commission: (a) amend the rates and charges imposed by Fort Wayne for wholesale sewage service; and (b) approve the ordinances setting exclusive water and sewer service territories ("Regulatory Ordinances") adopted by the Huntertown Town Council.

2. **Prefiled Evidence of Parties Concerning Wholesale Sewage Rates and Charges.** On October 16, 2015, Fort Wayne filed the Prefiled Testimony and Exhibits of Matthew A. Wirtz, P.E. and Eric J. Walsh, CPA in support of its rates and charges. On November 21, 2014, Huntertown filed the Prefiled Direct Testimony and Exhibits of Stephen Carter, CPA and Derek Frederickson, P.E. in response to Fort Wayne's testimony. On December 23, 2015, Fort Wayne filed the Prefiled Rebuttal Testimony and Exhibits of Matthew A. Wirtz, P.E. and Eric J. Walsh, CPA. On January 13, 2015, the Commission held an evidentiary hearing at which time the parties entered their respective prefiled testimony and exhibits into the record without objection.

3. **Prefiled Evidence of Parties Concerning Approval of Huntertown's Regulatory Ordinances.** On October 16, 2015, Huntertown filed the Prefiled Testimony and Exhibits of Andrew Conner, and Derek Frederickson, P.E. in support of its proposed Regulatory Ordinances. On November 21, 2014, Twin Eagle's filed the Prefiled Direct Testimony and Exhibits of Jeffrey M. Thomas, the District filed the Prefiled Direct Testimony and Exhibits of Kenneth R. Neumeister, and Fort Wayne filed the Prefiled Direct Testimony and Exhibits of

Thomas T. Nitza, Jr., P.E., and Eric J. Walsh, CPA, in response to Huntertown's testimony. On December 23, 2015, Huntertown filed the Prefiled Rebuttal Testimony of Exhibits of Andrew Conner, Derek Frederickson, P.E., and Stephen Carter, CPA. On January 15, 2015, the Commission held an evidentiary hearing at which time the parties entered their respective prefiled testimony and exhibits and cross examined witnesses. All of the Prefiled Testimony and Exhibits were admitted into the record without objection with the exception of Huntertown's Rebuttal Testimony and Exhibits of Mr. Conner and Mr. Frederickson, which were entered into the record over the objection of Fort Wayne.

4. **Commission's Order.** On May 20, 2015, the Commission entered its Order of the Commission ("Order") which found, in general, as follows: (a) Huntertown should be charged the wholesale contract customer rates and charges as set forth in the chart at page 30 of the Order until January 1, 2020, or Huntertown's termination of sewage treatment services from Fort Wayne, whichever occurs first; and (b) Huntertown's Regulatory Ordinances were not approved, but the Commission approved of Huntertown having the exclusive water and sewer service rights in the "Reduced Service Areas" as such term is defined in the Order. On May 27, 2015, Fort Wayne filed its Notice of Appeal. On June 11, 2015, the Indiana Utility Regulatory Commission filed its Verified Petition to Intervene in that appeal. The Court of Appeals has remanded the matter to the Commission to consider this Settlement Agreement.

5. **Other Issues.** This Settlement Agreement is one integral, and necessary part of a larger settlement between the parties. In addition to the issues presented in this Cause, the parties have also been (and continue to be) involved in other disputes including a lawsuit in the Allen County Circuit Court, an appeal of Huntertown's Indiana Department of Environmental Management ("IDEM") National Pollutant Discharge Elimination System ("NPDES") permit to

the Office of Environmental Adjudication, disputes over amounts of unpaid sewer fees, and annexation disputes. Fort Wayne and Huntertown have settled all issues between them pursuant to an Interlocal Agreement, a true and accurate copy of which is attached hereto as Exhibit 1. Twin Eagles and Huntertown have settled the annexation issues between them as well. A necessary component of those settlements is the adoption of this Settlement Agreement, which pertains to adoption of the Interlocal Agreement concerning only the issues of (i) Fort Wayne's rates and charges to Huntertown from January 1, 2015 to January 1, 2020; and (ii) the exclusive water and sewer service areas of Huntertown.

6. **Settlement.** Through analysis, discussion, and negotiation, as aided by their respective technical staff and experts, Huntertown, Fort Wayne, Twin Eagles, and the District ("Settling Parties") agree on the terms and conditions as described herein that resolve all issues between them in this Cause.

7. **Rates and Charges.** The Settling Parties agree that Section 2 of the Interlocal Agreement between Huntertown and Fort Wayne sets the rates and charges Fort Wayne shall charge Huntertown effective April 28, 2013 and terminating on January 1, 2020. These rates and charges are consistent with the Order. In addition, Section 2 of the Interlocal Agreement (attached as Exhibit 1) provides the terms and conditions under which Fort Wayne will provide sewer treatment services to Huntertown for an interim period. Section 2 of the Interlocal Agreement also provides the terms and conditions under which the interim period may be extended. Accordingly, the Settling Parties agree to and hereby incorporate, by reference, Section 2 of the Interlocal Agreement.

8. **Water and Sewer Service Areas.** The Settling Parties agree that the Interlocal Agreement in Sections 3 and 4 provide the terms and conditions under which Fort Wayne is permitted to serve in a defined area that was previously in the area defined in Huntertown's "Reduced Service Area" as such area is defined in the Order. The Settling Parties further agree that pursuant to Section 5 of the Interlocal Agreement between Fort Wayne and Huntertown that Huntertown shall, upon approval of this Settlement Agreement, modify its Regulatory Ordinances to amend its water and sewer service territories. Accordingly, the Settling Parties agree to and hereby incorporate, by reference, Sections 3, 4, and 5 of the Interlocal Agreement.

9. **Interlocal Expiration.** The Settling Parties agree that Section 12 of the Interlocal Agreement provides the terms and conditions under which Section 4 of the Interlocal Agreement expires. Accordingly, the Settling Parties agree to and hereby incorporate, by reference, Section 12 of the Interlocal Agreement.

10. **Admissibility and Sufficiency of Evidence.** The Settling Parties hereby stipulate that the prefiled testimony and exhibits of Fort Wayne, Huntertown, the District, and Twin Eagles were previously submitted into the record. The Settling Parties agree that such evidence together with the settlement testimony of the parties which is currently being prepared constitutes substantial evidence sufficient to support the Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make all findings of fact and conclusions of law necessary for the approval of this Settlement Agreement as filed.

11. **Supersedes.** Fort Wayne and Huntertown agree that the Interlocal Agreement supersedes any prior agreement (express or implied) between Fort Wayne and Huntertown. The Settling parties further acknowledge that Fort Wayne disputes that Fort Wayne and Huntertown ever had an implied contract covering any of the matters discussed in the Interlocal Agreement,

but to the extent any such implied contract existed, the Settling Parties agree that the express Interlocal Agreement supersedes any such implied agreement. Fort Wayne, Hometown, the District, and Twin Eagles also acknowledge that this Settlement Agreement, upon adoption by the Commission shall supersede the Commission's May 20, 2015 Order in this Cause. To that end, the Commission's Order approving this Settlement Agreement shall be the only final order in this Cause.

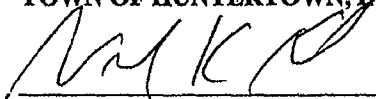
12. **Non-Precedential Effect of Settlement.** The Settling Parties agree that the facts in this Cause are unique and all issues presented are fact specific. Therefore, the Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any party in any other proceeding except as necessary to enforce its terms before the Commission or any court of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that either party may take with respect to any issue in any future regulatory or non-regulatory proceeding.

13. **Authority to Execute.** The undersigned have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of the designated parties, who will hereafter be bound thereby.

14. **Approval of Settlement Agreement in its Entirety.** As a condition of this settlement, the Settling Parties specifically agree that if the Commission does not approve this Joint Stipulation and Settlement Agreement in its entirety and incorporate it into the Final Order as provided above, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties. In such an event, the Interlocal Agreement shall continue in full force and effect to the fullest extent permitted by law.

15. **Proposed Order.** The Settling Parties agree to work together in preparing a mutually acceptable proposed order that the Settling Parties agree to file with the Commission on or before February 26, 2016 or after an evidentiary hearing, whichever occurs last.

**TOWN OF HUNTERTOWN, INDIANA**



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**ALLEN COUNTY REGIONAL WATER AND  
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15. **Proposed Order.** The Settling Parties agree to work together in preparing a mutually acceptable proposed order that the Settling Parties agree to file with the Commission on or before February 26, 2016 or after an evidentiary hearing, whichever occurs last.

**TOWN OF HUNTERTOWN, INDIANA**

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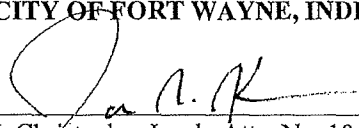
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**TWIN EAGLES DEVELOPMENT II, LLC**

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**CITY OF FORT WAYNE, INDIANA**



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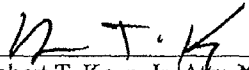
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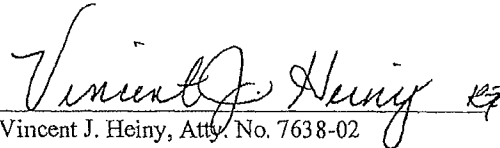
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# **Exhibit 1**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



- g. **"User."** Any domestic or non-domestic discharger of sewage which introduces pollutants into the Water Pollution Control Utility.
  - h. **"Water Pollution Control Plant."** The arrangement of devices, structures, and equipment used for treating and disposing of sewage and sludge.
  - i. **"Water Pollution Control Utility."** All facilities and systems, collectively, for collecting, transporting, pumping, treating, or disposing of sewage and sludge, including the Water Pollution Control Plant and sewage system.
- (B) Effective April 28, 2013: The Town expressly consents to treatment as a wholesale contract customer of Fort Wayne subject to the then-applicable wholesale contract rates dating back to April 28, 2013, and subject to the terms and conditions of this Interlocal Agreement.
- (C) Connection of Sewer Facilities:
- a. **Connection Points:** The locations of the current three Connection Points are generally identified as "Tap in Point A"; "Tap in Point B"; and "Tap in Point C" on the attached Exhibit A, hereby incorporated by reference.
  - b. **Maintenance of Connection Points:** Each party shall be responsible for the maintenance and operation of its own sewage system and its portion of the Connection Points. The Town owns the force main piping on the Town's side of the meter, the meter, and the force main piping that extends from the meter to the manhole where the Town's sewage is ultimately discharged in to the City's system at each of the Connection Points. The City may inspect the Town's portion of the Connection Points at any time. If City inspection finds that The Town's portion of the Connection Points are not being properly maintained or operated, the City may notify the Town in writing in accordance with Section 2(U) of this Interlocal Agreement. Upon its receipt of a written notification from the City, the Town shall, within ten (10) days, provide City with a written plan to complete all reasonably necessary maintenance, repairs or modifications. In the event Town fails to timely provide such a written plan or to promptly implement the actions described in the written plan to City's reasonable satisfaction (which satisfaction shall not be unreasonably withheld), the City may complete the maintenance and the Town shall, within thirty (30) days, reimburse the City for all maintenance costs incurred by the City.
- (D) Conveyance and Treatment of Sewage.
- a. **Responsibility for Conveyance:** The Town shall be solely responsible for delivery of the sewage to its Connection Points in a form compliant with Section 2(H) of this Interlocal Agreement. Thereafter, the City shall be responsible for conveyance of the sewage through its sewage system to its Water Pollution Control Plant.

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

(E) Metering:

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

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

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

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

(H) Quality:

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

b. **Prohibited Discharges**:

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

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

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

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

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

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

(II) Sampling and Monitoring Quality:

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

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

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

(J) Inspection and Enforcement:

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

- iv. Inspect all facilities of permitted industries discharging into the Town's sewage system.
  - v. Collect and analyze samples of waste sewage from permitted industries discharging into the Town's sewage system.
  - vi. Carry out all inspections, surveillance and monitoring procedures necessary to determine, independent of information supplied by permitted dischargers to the Town's system, their compliance statuses pertaining to pretreatment limits, reporting requirements, and the industry's wastewater permit.
  - vii. Enter the premises of any permitted industrial facility or industrial user which has a discharge source or pretreatment system, in order to inspect same or view records, relevant to the user's operation, treatment, monitoring, or discharge.
  - viii. Immediately and effectively make all reasonable attempts to prevent any discharge of pollutants into the Town's sewage system which would present an imminent endangerment to the health or welfare of the public, the environment or which threatens the operation of the Town's sewage system or the City's Water Pollution Control Utility.
  - ix. Undertake a full range of enforcement when pretreatment violations occur, as provided in the City Ordinances and the Rules and Regulations of the City Sewer Utility, and as set out in the City's Enforcement Response Guide.
  - x. Charge fees consistent with those assessed against industrial and commercial users discharging directly to the City for sampling.
  - xi. Undertake any other action necessary to ensure compliance with 40 CFR 403 or with the City's National Pollutant Discharge Elimination System permit.
- c. **City Board of Public Works As Agent:** The Town hereby appoints City Board of Public Works as its agent with full authority and license to enforce through the City's Attorney, the provisions of the City Ordinances and Rules and Regulations and all applicable State and Federal regulations upon industrial customers of the Town which have a pretreatment program at Town's reasonable expense.
- (K) Compliance with all Applicable Laws: The Town shall comply with all relevant and lawful federal, state, and local laws, regulations, and codes pertaining to sewage collection, conveyance, and treatment services (including, but not limited to, City municipal codes and regulations which are not inconsistent with this Interlocal Agreement).

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

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

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

(O) Default:

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

(U) Miscellaneous:

**a. Notices and Invoice:**

- i. Any notices required under this Section 2 of this Interlocal Agreement shall be served by certified mailing, return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party.
- ii. Invoicing by the City under this Section 2 of this Interlocal Agreement shall be served by first class mail addressed to the Town at the last address filed by the Town.
- iii. At the execution date of this Interlocal Agreement, the City's address is:  
  
Fort Wayne City Utilities, Attention of the Director  
200 E. Berry Street  
Fort Wayne, Indiana 46802

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

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

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

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

**c. Indemnities:**

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

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

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

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

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

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

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

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

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

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

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

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

(A) **Twin Eagles/Timber Ridge Annexation:** Twin Eagles Development II, LLC and Timber Ridge Group, LLC shall agree to dismiss, with prejudice, Cause No. 02D09-1409-PL-341 in the Allen Superior Court; and

(B) **Court of Appeals Case:** The City, Huntertown, and Twin Eagles Development II, LLC, shall request that the Court of Appeals remand the pending appeal in the Indiana Court of Appeals, Cause No. 93A02-1505-EX-444; and

(C) **Allen Circuit Court Case(s):** The City, Town, Twin Eagles Development II, LLC, Timber Ridge Group, LLC, and IRM Partnership, LLC, shall dismiss, with prejudice, Cause No. 02C01-1306-MI-1194 (including all claims in the consolidated cause docketed as Cause No 012D01-1036-MI-10288) in the Allen Circuit Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

TOWN COUNCIL OF THE TOWN OF  
HUNTERTOWN, INDIANA

Patricia Freck

Patricia Freck, President

Dave Garman

Dave Garman, Council Member

Gary Grant

Gary Grant, Council Member

Brandon Seifert, Council Member

Mike Stamets

Mike Stamets, Council Member

Attest:

Cathy Mittendorf

Cathy Mittendorf, Clerk-Treasurer

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

By Robert P. Kennedy  
Robert P. Kennedy, Chair


By Mike Avila  
Mike Avila, Member

By Kumar Menon  
Kumar Menon

ATTEST:

Lyndsey Richard  
Lyndsey Richard, Clerk

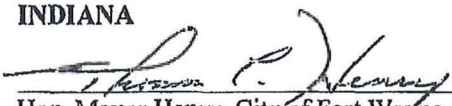
COMMON COUNCIL OF THE CITY OF  
FORT WAYNE, INDIANA

  
Presiding Officer

Attest:

  
City Clerk

MAYOR OF THE CITY OF FORT WAYNE,  
INDIANA

  
Hon. Mayor Henry, City of Fort Wayne, Indiana

Attest:


  
City Clerk  
2850049\_4





Exhibit A: Tap in Points for Huntertown



Although strict accuracy standards have been employed in the compilation of this map, the accuracy of the information contained herein and the accuracy of any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen  
State Plane Coordinate System, Indiana East



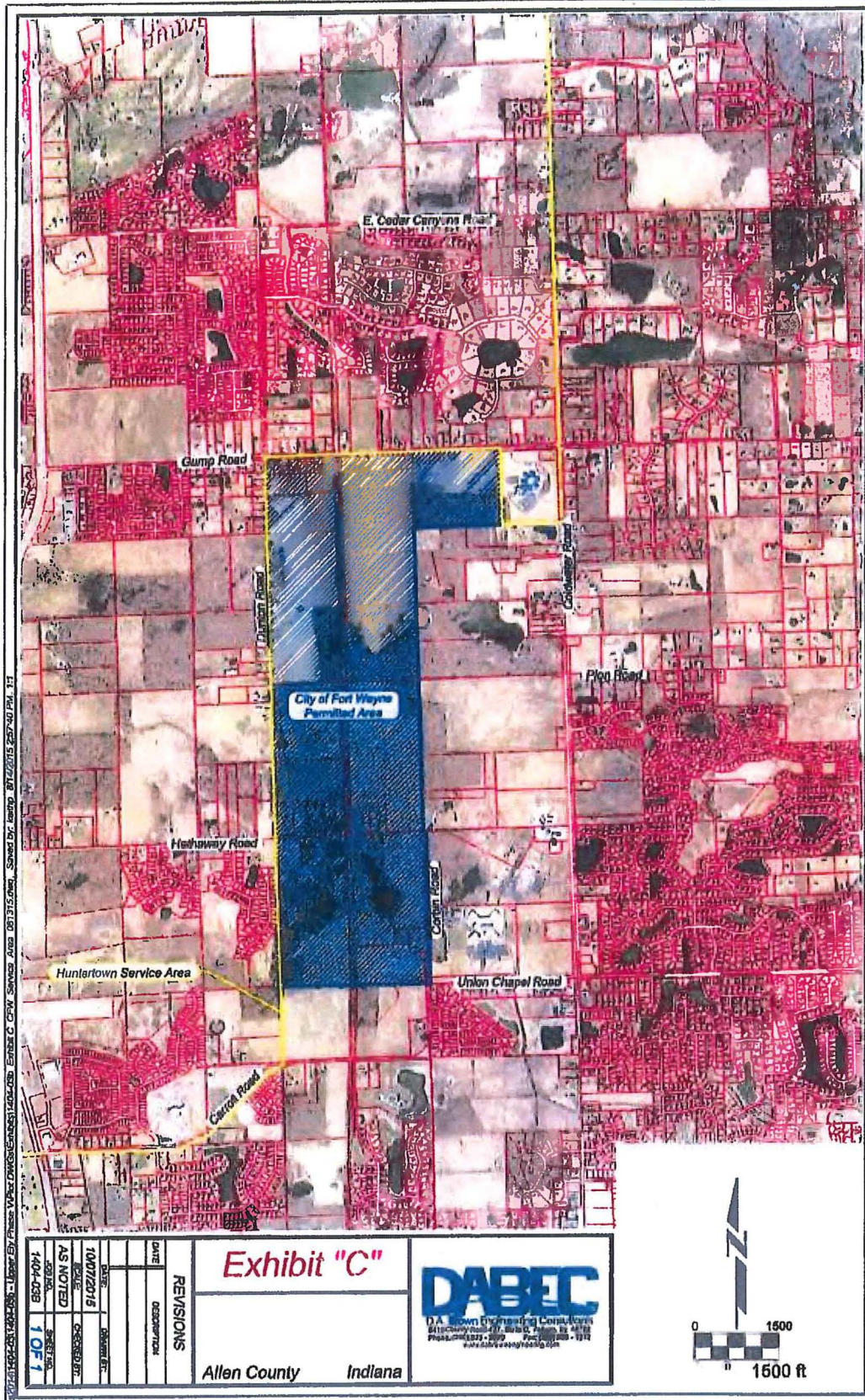
Date: 8/12/2015 1" = 500'

## EXHIBIT B- REMAINING CAPACITY TOWN OF HUNTERTOWN

No.	Project Name	Initial Allocation	Date of Allocation
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Running Total of Remaining ERUS (Starting Total = 904)	ACF Waiver Applied? - Number of Waivers In ERUs
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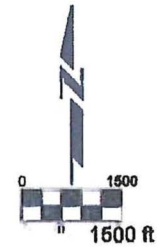
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REVISIONS	
DATE	DESCRIPTION
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AS NOTED	CHECKED BY:
10/04/08	3/23/15
10/04/08	1 OF 1

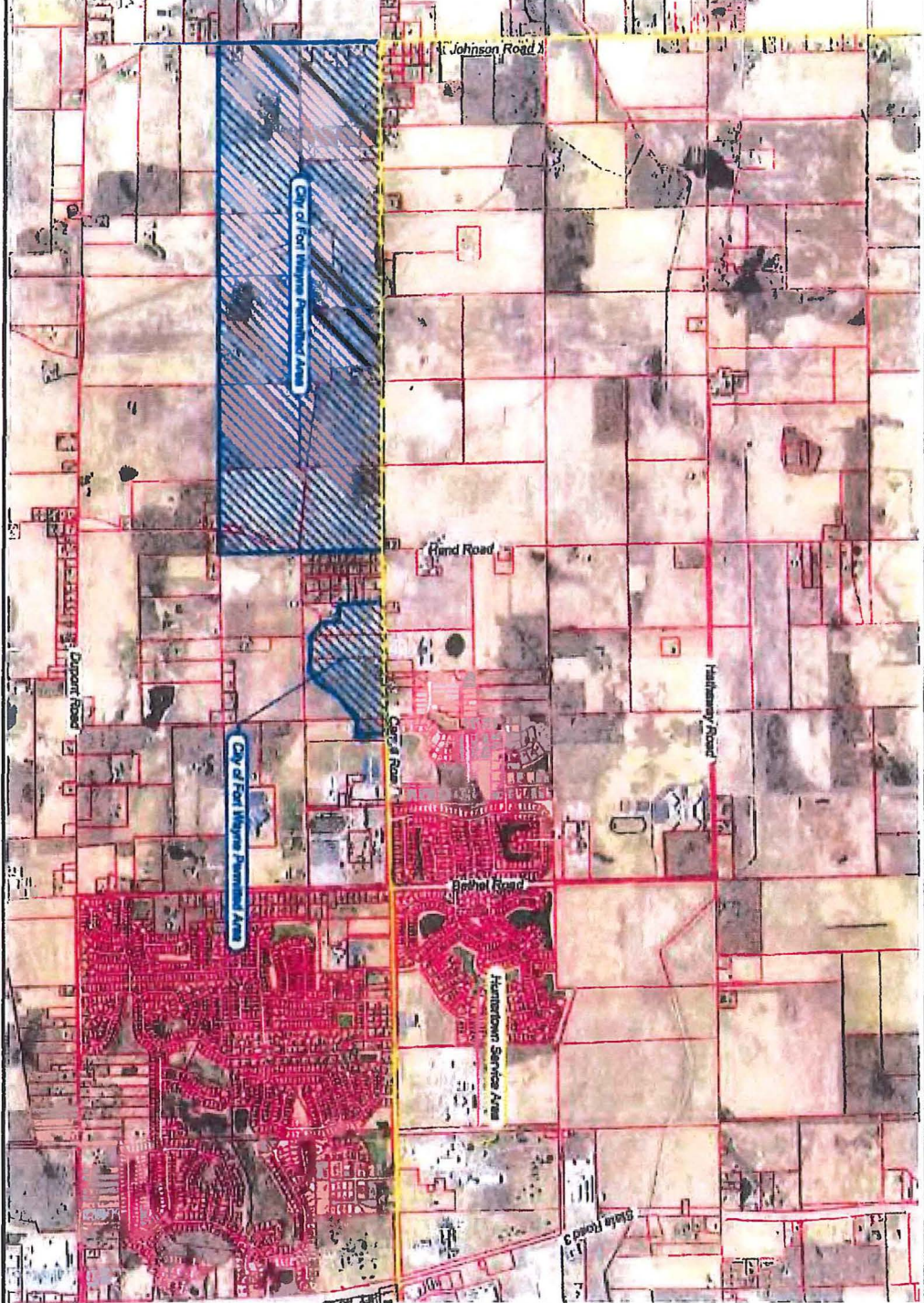
**Exhibit "C"**

Allen County Indiana

**DABEC**  
 D.A. Brown Engineering Consultants  
 811 County Road 777, Suite 200, Fort Wayne, IN 46825  
 Phone: (317) 233-7090 Fax: (317) 233-7091  
 www.dabecengineering.com





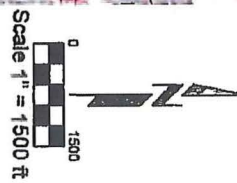


# Exhibit "D"



D.A. Brown Engineering Consultants  
9419 County Road 270, Suite C, Auburn, IN 47002  
Phone: (317) 433-1700 Fax: (317) 433-1702  
www.dabecinc.com

Allen County Indiana



REVISIONS	
DATE	DESCRIPTION
08/14/2015	AS NOTED
1404-03b	1 OF 1





REVISIONS	
DATE	DESCRIPTION
08/25/2015	AS NOTED
1404-03B	10/1

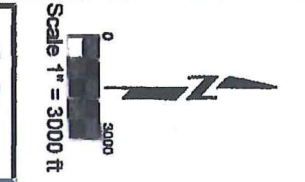
**Exhibit "E"**

**Annexation Area**

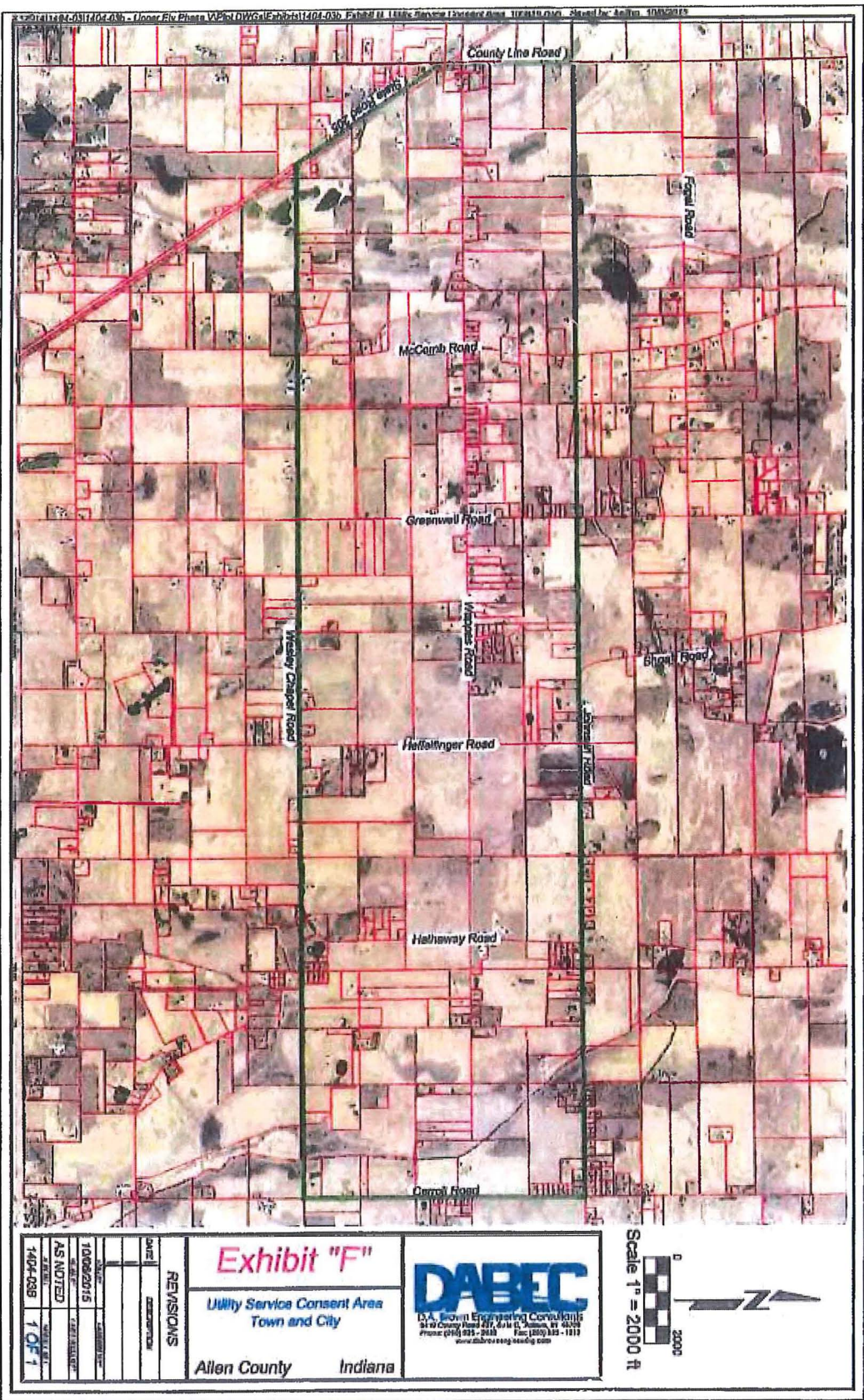
Allen County Indiana

**DABEC**

D.A. Brown Engineering Consultants  
6410 County Road 210, Suite 100, Indianapolis, IN 46216  
Phone: (317) 628-2010 Fax: (317) 628-1212  
www.dabecengineering.com







REVISIONS	
DATE	DESCRIPTION
10/06/2015	AS NOTED
10/04/2016	1 OF 1

**Exhibit "F"**  
**Utility Service Consent Area**  
**Town and City**  
**Allen County Indiana**

**DABEC**  
D.A. Brown Engineering Consultants  
3400 County Road 287, Suite 20, Auburn, IN 46830  
Phone (219) 835-2838 Fax (219) 835-1811  
www.dabec-engineering.com

Scale 1" = 2000 ft