

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF CWA AUTHORITY, INC.	)	
FOR REVIEW OF CERTAIN AGREEMENTS	)	
FOR WASTEWATER TREATMENT AND	)	CAUSE NO. 44685 S1
DISPOSAL SERVICE WITH VARIOUS	)	
SATELLITE CUSTOMERS AND FOR	)	APPROVED: JUL 26 2017
REVIEW OF COST ALLOCATION ISSUES	)	
RELATED TO THOSE AGREEMENTS.	)	

ORDER OF THE COMMISSION

**Presiding Officers:**  
**James F. Huston, Commissioner**  
**Aaron A. Schmoll, Senior Administrative Law Judge**

On September 25, 2015, CWA Authority, Inc. (“CWA” or “Petitioner”) filed a Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) to initiate a base rate case, which was assigned Cause No. 44685. Among the relief sought by CWA in Cause No. 44685 was the establishment of a subdocket proceeding to address the subsidy resulting from the difference between the cost to serve satellite customers (the “Satellite Customers”)<sup>1</sup> and the contract revenue received from agreements for wastewater treatment and disposal service entered into by the Sanitary District of the City of Indianapolis<sup>2</sup> (the “Sanitary District”) and the Satellite Customers (the “Satellite Agreements”), which assignments to CWA were approved in the Commission’s Final Order in Cause No. 43936.

On January 22, 2016, in Cause No. 44685, Ben Davis Conservancy District (“Ben Davis”) filed a Motion to Dismiss for Lack of Jurisdiction, a Motion for Partial Summary Judgment, and a Brief in Support of its Motion for Partial Summary Judgment (the “Ben Davis Motions”). Also in Cause No. 44685, on January 25, 2016, Ben Davis filed a Petition to Intervene for Limited Purposes, to object to the jurisdiction of the Commission over Ben Davis.

On January 28, 2016, CWA filed a Motion to Formalize Subdocket and Set Briefing Schedule on the Ben Davis Motions. On February 2, 2016, the Commission issued a Docket Entry which created this subdocket under Cause No. 44685 S1 and incorporated into it several filings made in Cause No. 44685, including the Ben Davis Motions. The Commission’s Entry provided that “notice of the creation of the subdocket shall be provided to the following satellite customers: Beech Grove Sanitation, Ben Davis Conservancy District, Whitestown Municipal

<sup>1</sup> The Satellite Customers are the City of Beech Grove; the Ben Davis Conservancy District; the Town of Whitestown; the City of Greenwood; Hamilton Southeastern Utilities; the City of Lawrence; and the Tri-County Conservancy District.

<sup>2</sup> The Sanitary District of the City of Indianapolis also includes the Department of Public Works and/or the Board of Public Works, and will be referred to herein as the “Sanitary District.”

Utility, Greenwood Sanitation, Hamilton Southeastern Utilities, City of Lawrence, and Tri-County Conservancy District.” On February 3, 2016, the Commission issued a Docket Entry granting Ben Davis’ petition to intervene for the limited purpose of objecting to the Commission’s jurisdiction, and in a separate Docket Entry of the same date, the Commission established a briefing schedule with respect to the Ben Davis Motions.

On March 29, 2016, the City of Greenwood, Indiana (“Greenwood”) filed a petition to intervene, which the Commission granted by Docket Entry on April 19, 2016. On March 31, 2016, Greenwood filed its Motion to Dismiss for Lack of Jurisdiction.

On May 13, 2016, the City of Lawrence, Indiana (“Lawrence”) filed a petition to intervene for limited purposes. (Ben Davis, Greenwood and Lawrence are referred to herein as the “Intervenor Satellite Customers”). On June 3, 2016, Lawrence filed its Motion to Dismiss for Lack of Jurisdiction.

On March 18, 2016, April 11, 2016, and June 13, 2016, CWA filed responses to the respective motions to dismiss and motion for partial summary judgment. On April 1, 2016, Ben Davis filed its Reply, on April 18, 2016, Greenwood filed its Reply, and on June 20, 2016, Lawrence filed its Reply.

On December 6, 2016, CWA filed a Motion for Administrative Notice, as well as the direct testimony and exhibits of the following witnesses:

- Jeffrey A. Willman, Vice President of Water Operations for CWA and Citizens Energy Group;
- Mark C. Jacob, Vice President Capital Programs and Engineering for CWA and Citizens Energy Group;
- Michael C. Borchers, Principal Consultant in the Management Consulting Division at Black & Veatch Corporation; and
- Korlon L. Kilpatrick II, Director Regulatory Affairs for CWA and Citizens Energy Group.

On December 28, 2016, the Commission issued a Docket Entry which denied the Intervenor Satellite Customers’ motions to dismiss and Ben Davis’ Motion for Partial Summary Judgment.

On March 23, 2017, CWA filed a Submission of Settlement Agreement (“Settlement Agreement”) resolving each of the cost allocation issues between CWA and the Intervenor Satellite Customers in this Cause. In support of the Settlement Agreement, on March 30, 2017, CWA filed the supplemental testimony and exhibits of Mr. Willman, Mr. Kilpatrick and Mr. Borchers, and the OUCC filed the settlement testimony of Jerome D. Mierzwa, Principal and Vice President of Exeter Associates, Inc. On April 3, 2017, the Intervenor Satellite Customers filed the settlement testimony of John R. Skomp. On May 12, 2017, CWA filed a Notice of Revision to Petitioner’s Supplemental Testimony and an Addendum to the Supplemental Testimony of Mr. Willman.

On April 27, 2017, the Town of Whitestown, Indiana (“Whitestown”) filed a verified petition to intervene for limited purposes, and also a Motion to Dismiss for Lack of Jurisdiction or Alternatively to Stay or Amend Procedural Schedule as to Whitestown. CWA filed its response to the petition to intervene on May 4, 2017. The Commission, by Docket Entry on May 4, 2017, granted Whitestown’s petition to intervene, and issued another Docket Entry dated May 16, 2017, which created a second subdocket to address the issues related to Whitestown.

On May 16, 2017, at 9:30 a.m., the Commission conducted a hearing in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis Indiana. The parties appeared and participated in the hearing. No members of the public appeared or sought to testify.

Based upon the applicable law, the evidence presented herein, and being duly advised, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the hearings conducted in this subdocket proceeding was given as provided by law. CWA is an Indiana nonprofit corporation created pursuant to an Interlocal Cooperation Agreement entered into by the Sanitary District and the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, d/b/a Citizens Energy Group (“Citizens Energy Group” or the “Board”) in accordance with Indiana Code ch. 36-1-7. Pursuant to Ind. Code §§ 8-1-2-24 and 25, contracts between utilities and customers are “under the supervision and regulation” of the Commission. Ind. Code § 8-1-2-24(a). Further, the right to determine the reasonableness of such contracts and revoke or modify any order related to those contracts is vested in the Commission. Ind. Code § 8-1-2-25. Pursuant to Ind. Code § 8-1-2-42, the Commission has jurisdiction to change utility rates. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Background and Relief Requested.** On or about December 12, 1979, Ben Davis and the Sanitary District entered into that certain Agreement for Sewage Transportation and Treatment Services (the “Ben Davis Agreement”), as amended. On or about November 13, 1998, Lawrence and the Sanitary District entered into that certain Agreement for Wastewater Treatment and Disposal Services (the “Lawrence Agreement”), as amended. On or about December 23, 1998, Greenwood and the Sanitary District entered into that Agreement for Sewage and Wastewater Treatment and Disposal Services (the “Greenwood Agreement”) as amended. Collectively, the Ben Davis Agreement, Lawrence Agreement and Greenwood Agreement shall be referred to herein as the “Current Contracts.”

As a result of the Commission’s July 13, 2011 Order in Cause No. 43936, each of the Current Contracts, and all of the Sanitary District’s rights and obligations thereunder, were assigned and transferred to CWA. In Cause No. 44685, CWA sought to increase its rates and charges, and for establishment of a subdocket proceeding to address certain cost allocation issues. Consistent with the presentation of evidence in its first rate case, CWA filed in Cause No. 44685 a cost of service study prepared by Black & Veatch. The cost of service study showed the total allocated cost of service for the Satellite Customers was greater than the revenue collected from those customers under the contracts with the Satellite Customers (including the Current Contracts) in the amount of \$14,174,600. CWA presented evidence that this difference or subsidy had to be re-allocated in the cost of service study to the retail customer classes.

The parties to Cause No. 44685, which did not include the Intervenor Satellite Customers, settled that case and filed a settlement agreement with the Commission, together with supporting testimony and exhibits on March 8, 2016. On July 18, 2016, the Commission issued its Order in Cause No. 44685 approving the settlement agreement in that Cause as modified. The settlement agreement in Cause No. 44685 provided that CWA would present evidence in this subdocket proceeding regarding the existence, calculation, amount and cost of service basis of what was defined in the Cause No. 44685 settlement agreement as the “Satellite Customer Subsidy.”

**3. CWA’s Evidence.** Jeffrey A. Willman first described how CWA’s wastewater system is operated, and how the nature of the wastewater system supports CWA’s proposal to eliminate the cost of service subsidy to the Satellite Customers over eight years through the implementation of a single wholesale tariff. Mr. Willman stated that CWA provides wastewater collection and treatment service to approximately 230,000 customers within Marion County, as well as wholesale wastewater treatment to the Satellite Customers pursuant to the individual Satellite Agreements. Mr. Willman described the collection and treatment facilities that are a part of CWA’s wastewater system. He indicated wastewater from all customers, including Satellite Customers, flows through a network of laterals, mains, interceptors and lift stations to the Belmont and Southport treatment plants for processing, treatment and discharge. Mr. Willman also described the 27-mile long deep rock tunnel system CWA is constructing to capture and store more than 250 million gallons of raw sewage during rain events to reduce sewer overflows to local rivers and streams. Mr. Willman testified that the deep rock tunnel system will provide an indirect connection between the Belmont and Southport plants for wastewater flows. According to Mr. Willman, the size, nature and location of the wastewater system causes CWA to approach system operations and cost allocations in a highly integrated and holistic manner.

Mr. Willman next provided an overview of the Satellite Agreements. Mr. Willman explained that the Commission approved the assignment of the Satellite Agreements to CWA as part of CWA’s acquisition of the Wastewater System from the City of Indianapolis in Cause No. 43936. Mr. Willman described the Commission’s exercise of authority over the Satellite Agreements in Cause No. 44305, wherein it directed CWA to pursue renegotiation of the Satellite Agreements to eliminate the subsidization of the Satellite Customers by CWA’s other retail customers. Mr. Willman reviewed the testimony of Michael C. Borchers of Black & Veatch in Cause No. 44305, which showed a subsidy in favor of the Satellite Customers of approximately \$11.5 million for CWA’s revenue requirement in Phase I and a subsidy of approximately \$12.8 million for CWA’s Phase II revenue requirement, all of which were re-allocated to the other customers of CWA’s wastewater system.

In its Order in Cause No. 44305, the Commission ordered CWA to pursue all possible means to renegotiate the Satellite Agreements, and Mr. Willman described CWA’s efforts to comply with this directive. Mr. Willman stated that, based on an analysis of the cost of service study approved in Cause No. 44305, CWA would need to adjust the treatment charges to each of the Satellite Customers to approximately \$2.89 per 1,000 gallons to completely eliminate the Satellite Customer Subsidy shown in that Cause. Mr. Willman noted that Whitestown had recently completed its own wastewater treatment plant to handle all of its flows, and as such,

Whitestown's flows were not factored into CWA's analysis to eliminate the Satellite Customer Subsidy. Thereafter, with the Commission's guidance, CWA met with Satellite Customers that would receive a rate increase if moved to full cost of service, and Mr. Willman described these meetings. Mr. Willman stated that as of the date CWA filed its case-in-chief in Cause No. 44685, CWA had not reached agreement with any of the Satellite Customers, and CWA proposed to create this subdocket to address the issues.

Mr. Willman stated that the current Satellite Customer Subsidy is now approximately \$13,954,900, in light of CWA's Phase II revenue requirements from its October 21, 2016 compliance filing to the Commission in Cause No. 44685. Mr. Willman then explained that CWA proposes to eliminate the Satellite Customer Subsidy by moving all Satellite Customers to a single wholesale tariff, Sewer Rate No. 6. Proposed Sewer Rate No. 6 would transition those Satellite Customers that are currently paying less than full cost of service to a full cost of service rate (\$3.0592) over an eight-year period, beginning on January 1, 2018 with an adjustment to \$1.0474 per 1000 gallons, with eight annual equal volume charge adjustments of \$.2515. Mr. Willman described that under this proposal, CWA's retail customer classes would achieve concurrent and equal rate decreases. According to Mr. Willman, all Satellite Customer Subsidies would be eliminated by January 1, 2026, in a gradual, fair and reasonable manner.

Mr. Willman further explained that CWA is proposing that all Satellite Agreements would terminate on December 31, 2017, and the single wholesale tariff, Sewer Rate No. 6, would become effective January 1, 2018. Mr. Willman asserted that Sewer Rate No. 6 will impose reliable and consistent rates and charges based upon the metered volumes discharged, along with excessive strength surcharges and a monthly minimum capacity charge.

Mark C. Jacob testified regarding CWA's wastewater collection system, described occurrences of combined sewer overflows ("CSO") and the December 19, 2006 Consent Decree entered into among the City of Indianapolis, EPA, and IDEM. Mr. Jacob stated that the Consent Decree described the major CSO control measures to be commenced, completed, constructed or continued during this period. CWA acquired the Consent Decree as part of the transaction approved by the Commission in Cause No. 43936. Mr. Jacob explained how compliance with the Consent Decree benefits the Satellite Customers, and that the Commission has granted CWA approval to recover the costs incurred to implement the Consent Decree and related Long Term Control Plan ("LTCP") from its customers as an environmental compliance plan.

Mr. Jacob also addressed the development of the LTCP. Mr. Jacob stated that the LTCP was developed in conjunction with a community outreach program, including mailings and information sent to officials of Satellite Customers Lawrence, Beech Grove and Greenwood. Mr. Jacob noted that the Satellite Customers were discussed in the Financial Capability Assessment contained in the LTCP, which assumed that the Satellite Customers would be paying for a proportionate share of the cost of implementing the LTCP, particularly in light of the system-wide benefits they enjoy.

Mr. Jacob also discussed CWA's National Pollutant Discharge Elimination System ("NPDES") permits, including those approved for the Belmont and Southport treatment plants. Mr. Jacob asserted the Satellite Customers should not be absolved from paying for costs

associated with such permit compliance because the regulatory frameworks generally recommend a holistic approach to utility operations, which allows for the most affordable model of operating a utility for the largest number of users.

Michael C. Borchers presented the results of the cost of service studies filed in CWA's last two rate cases: Cause No. 44305 and Cause No. 44685. Mr. Borchers also explained CWA's proposal to eliminate the Satellite Customer Subsidy.

Mr. Borchers first described the development of CWA's cost of service study in Cause No. 44305 and Cause No. 44685. Mr. Borchers explained that to determine the cost of service of the Satellite Customers, Black & Veatch consolidated these customers into a Satellite Customer class to determine their cost of service utilizing a system-wide basis of allocation. Mr. Borchers described that general service requirements and usage characteristics for Satellite Customers were incorporated into the cost of service studies, such as no allocation of cost for CWA's small mains (diameters of less than 24 inches).

Mr. Borchers noted that in Cause No. 44305, the allocated cost of service for the Satellite Customer class, as presented in CWA's case-in-chief, was \$17,255,400 and \$18,219,400 for Phase 1 and Phase 2, respectively, and for CWA's case-in-chief filed in Cause No. 44685, the allocated cost of service for the Satellite Customers class was \$19,156,100 and \$19,832,000 for Phase 1 and Phase 2, respectively. Mr. Borchers asserted the difference between the allocated cost of service to the aggregate test year revenues from the Satellite Customers per their respective agreements was the subsidy re-allocated to the other customer classes. In examining the settlement in Cause No. 44685, Mr. Borchers explained the settling parties (which did not include the Intervenor Satellite Customers) agreed that the Satellite Customer Subsidy for Phase 2 rates was approximately \$13.1 million to \$14.1 million. Factoring in various other adjustments related to a compliance filing for a debt service true-up, the Phase 2 cost of service for the Satellite Customer class was \$18,861,900.

Mr. Borchers then explained the proposed phase-in of Satellite Customer class revenue to the Phase 2 cost of service for Cause No. 44685 (Attachment MCB-2). Mr. Borchers said the proposed phase-in would be achieved over nine adjustments, with the initial Satellite Customer volume charge going into effect on January 1, 2018. Mr. Borchers explained the pro forma Phase 2 effective volume charge under the existing agreements is \$0.7959 per thousand gallons, and for each annual period, \$0.2515 per thousand gallons is added until the cost of service volume charge is achieved in Year 8 of \$3.0592 per thousand gallons. Mr. Borchers explained that, by the end of 2026, the Satellite Customer revenue achieves the Satellite Customer cost of service for Phase 2 consistent with Final Order in Cause No. 44685 and incorporating the compliance filing adjustments to CWA's revenue requirements. Mr. Borchers also described the proposed Monthly Minimum Capacity Charge of \$5,000, which CWA directed Black & Veatch to develop for Satellite Customers that rely on the CWA system.

Korlon L. Kilpatrick II first described CWA's proposed schedule to transition the Satellite Customers to full cost of service rates. Mr. Kilpatrick stated that CWA is proposing to reduce the subsidy using nine adjustments over a period of eight years, with the first rate adjustment effective January 1, 2018, and the next eight adjustments occurring annually on

January 1 through the year 2026. Mr. Kilpatrick explained that the size of the proposed annual adjustment of \$0.2515 was developed by Mr. Borchers. Additionally, Mr. Kilpatrick testified each adjustment would generate approximately \$1.5 million in incremental revenue from the Satellite Customer class, and concurrently, there would be an equal rate decrease applied to the retail customer classes. Mr. Kilpatrick stated that CWA's proposal calls for the Satellite Customer class to absorb any base rate increases due to rate cases following entry of a Commission Order.

Mr. Kilpatrick next explained that proposed Sewer Rate No. 6 was developed in order to provide a common rate for all Satellite Customers as well as consistent contract administration. Mr. Kilpatrick reviewed the availability of proposed Sewer Rate No. 6, as well as variable charges related to treatment and excessive strength charges, where necessary. Mr. Kilpatrick further explained that for Satellite Customers who are currently paying below full cost of service (Beech Grove, Ben Davis, Greenwood, and Lawrence), the eight-year transition would promote the principle of gradualism to avoid rate shock. Alternatively, for Satellite Customers who are currently paying more than full cost of service (Tri-County, Hamilton Southeastern Utilities ("HSE") and any new communities), the rates under Sewer Rate No. 6 would occur without a phase-in.

Mr. Kilpatrick also addressed the \$5,000 monthly minimum capacity charge contained in proposed Sewer Rate No. 6 for each community maintaining a metered connection. Mr. Kilpatrick maintained that a monthly minimum capacity charge is appropriate to address Satellite Customers that are using CWA's system as a stand-by service in the event their system cannot handle all of the discharge it receives. Mr. Kilpatrick stated that when CWA completes its capacity calculations upon a new customer's application for a connection permit to connect to CWA's system, CWA must reserve room in its plant and pipes for flows in the event that these Satellite Customers would use their capacity in the future. Mr. Kilpatrick explained the appropriateness that a customer would pay a minimum fee to reserve that capacity for their use in both the collection system and the treatment plant. Mr. Kilpatrick went on to explain the remaining sections of proposed Sewer Rate No. 6.

**4. The Settlement Agreement.** On January 30, 2017, CWA, the Intervenor Satellite Customers, and the OUCC (the "Settling Parties") notified the Commission that they had reached an agreement in principle with respect to all of the issues in this proceeding. On March 23, 2017 the Settling Parties filed a Settlement Agreement resolving all issues among them in this subdocket proceeding.

In the Settlement Agreement, the Settling Parties agree that the Current Contracts shall remain in effect up to and including December 31, 2018, and shall terminate on January 1, 2019 and be of no further force or effect. The Settling Parties agree that until January 1, 2019, the Intervenor Satellite Customers will operate under their Current Contracts; however, the Intervenor Satellite Customers will be obligated to make Fixed Cost payments in the amount each Intervenor Satellite Customer was billed in 2016, as reflected on Exhibit A to the Settlement Agreement.

The Settlement Agreement further provides that, except to the extent modified by the terms of any Special Contracts, upon such termination of the Current Contracts, the Intervenor Satellite Customers shall be subject to and governed by Sewer Rate No. 6, attached as Exhibit B to the Settlement Agreement.

The Settling Parties further agree the Intervenor Satellite Customers will phase-in to the full Satellite Tariff Treatment Rate over a succeeding ten-year period under the terms of the applicable Special Contracts, attached to the Settlement Agreement as Exhibits C (Ben Davis), D (Greenwood) and E (Lawrence). In the Settlement Agreement, the Settling Parties agree that as to the Intervenor Satellite Customers, the Special Contracts would contain a phase-in of ten years consisting of eleven adjustments, with the final adjustment taking place on January 1, 2029, as shown on Exhibit F to the Settlement Agreement.

The Settling Parties also agree to use certain revised cost of service allocations in the cost of service model for the pro forma test year in Cause No. 44685, and as a result, have calculated a revised Satellite Customer Subsidy in the amount of \$9,909,400 and a cost of service of \$15,323,000 for the Satellite Customers. The Settling Parties agree to a revised Satellite target treatment rate designed to transition to the revised cost of service rate for Satellite Customers (the "New Target Treatment Rate") of \$2.4852 per 1,000 gallons ( $\$15,323,000 / 6,165,602$  per 1,000 gallons). Following the transition to the New Target Treatment Rate, the Settling Parties acknowledge that the Satellite Customer Subsidy will have been eliminated.

The Settlement Agreement, in incorporating the Special Contracts, refer to CWA's continued use of the revised cost of service allocation methodology to: (a) include Satellite Customers' actual flow, estimated peak day flow, and associated pollutant loadings for determining the Satellite Customers' portion of net capital revenue requirements; (b) exclude the Satellite Customers from the allocation of CWA system inflow and infiltration; (c) exclude the Satellite Customers from the allocation of costs attributable to the CWA plant in service collection mains (i.e., collection mains other than consolidating sewers or relief sewers) with diameters less than 66-inches; and (d) exclude the Satellite Customer class from the allocation of costs or reallocation of revenue resulting from the implementation by CWA of a residential rate based on qualification for state or federal income-related assistance, an alternative residential rate or a substantially similar rate. The Settling Parties further agree that any future proposed CWA rate increases impacting Sewer Rate No. 6 shall incorporate these four revised allocation methodologies.

In the Settlement Agreement, the Settling Parties acknowledge that the amount of the operating revenues resulting from the reduction to the Satellite Customer Subsidy should be allocated to the Non-Industrial, Self-Reporter, and Surcharge (BOD, TSS & NH3-N) rate classes in order to reduce the agreed upon revenue allocations contained in the Commission's Final Order in Cause No. 44685, and that new rates should be implemented within thirty-five days of entry of the Final Order in this subdocket (subject to the Commission's approval of a compliance filing of CWA's rates and charges for services and all parties reserving any rights under Ind. Code ch 8-1-3). The reduction shall be based on each class's respective percentage of total revenues from the Non-Industrial, Self-Reporter and Surcharge (BOD, TSS & NH3-N) rate



classes allocated to it at the time such reduction is ordered (i.e. Phase 2), as described in the Commission's Final Order in Cause No. 44685.

**5. Evidence Supporting Settlement Agreement.**

A. **CWA.** CWA witness Jeffrey A. Willman provided some background of the events that led to the Settlement Agreement, including the cost of service issues between the retail customers and the Satellite Customers which arose in Cause No. 44305, and were discussed in the Commission's April 23, 2014 Order. Mr. Willman reiterated the steps CWA has taken to comply with such Order, which led to the creation of this subdocket proceeding, and the subsequent regular meetings among the Settling Parties which culminated in the Settlement Agreement. Mr. Willman explained that the positions among the parties were particularly divergent, in that CWA had proposed to eliminate the Satellite Customer Subsidy by cancelling the Satellite Agreements, moving the Satellite Customers to a single wholesale tariff, and transitioning those customers paying less than full cost of service to full cost of service over an eight-year period. The Intervenor Satellite Customers believed they should continue to receive service under their individual Satellite Agreements, and disagreed with CWA and the OUCC regarding the amount of the Satellite Customer Subsidy, the inputs required in a cost of service study, and the jurisdiction of the Commission over the Satellite Agreements.

Mr. Willman explained the benefits of reaching a settlement include the elimination of the Satellite Customer Subsidy and transition to a single tariff with cost-based rates in a reasonable and gradual manner. Additionally, Mr. Willman stated that another benefit is the preservation of good working relationships with the Intervenor Satellite Customers, as well as avoiding the risk and cost of extended litigation of unique and complex issues of first impression.

Mr. Willman next described the key features of the Settlement Agreement. He explained that the Settling Parties made certain modifications to the Black & Veatch cost of service study model presented by CWA in Cause Nos. 44305 and 44685, resulting in a revised Satellite Customer Subsidy of \$9,909,400. Mr. Willman summarized the portions of the Settlement Agreement that will allow the Intervenor Satellite Customers to continue operating under their Current Contracts through December 31, 2018, after which they will fall under Sewer Rate No. 6, except to the extent modified by a Special Contract. Mr. Willman further explained that under the Special Contracts, the Intervenor Satellite Customers will phase in to full cost of service rates over a succeeding ten-year period, with the final adjustment occurring on January 1, 2029. Furthermore, Mr. Willman said that as the Satellite Customer Subsidy is reduced, the Settlement Agreement provides for a mechanism to reduce the rates of other rate classes. Mr. Willman also described efforts CWA has made to provide notice of this subdocket proceeding, the proposed settlement, and its potential impact on the other non-intervening Satellite Customers, making clear that proposed Sewer Rate No. 6 will apply to all of CWA's wholesale customers, with the exception of Whitestown, as he understood that issues related to Whitestown will be addressed in a separate subdocket proceeding. Accordingly, all Satellite Customer Contracts, except for Whitestown's Contract, would terminate and be replaced with Sewer Rate No. 6. Mr. Willman recommended the Commission approve the Settlement Agreement, Special Contracts, and Sewer Rate No. 6.

In the addendum to his supplemental testimony filed on May 12, 2017, Mr. Willman provided an update on discussions CWA has had with those Satellite Customers that had not intervened in this proceeding at the time CWA submitted the Settlement Agreement to the Commission on March 23, 2017. Mr. Willman testified that Tri-County and CWA have executed a Termination Agreement (Attachment JAW-3) whereby, upon approval of a Final Order in this subdocket proceeding, (i) Tri-County would become subject to Sewer Rate No. 6 on a date specified in such Final Order; (ii) at which time Tri-County's Satellite Agreement immediately would terminate and have no further force or effect; and (iii) an acknowledgement that all responsibilities and obligations under Tri-County's Satellite Agreement have been fulfilled. Mr. Willman also stated that CWA has submitted a proposed Special Contract to Beech Grove (Attachment JAW-4), with terms substantially similar to the Special Contracts that CWA has entered into with Ben Davis, Lawrence, and Greenwood. Mr. Willman understood that Beech Grove may approve and execute on or about June 5, 2017.<sup>3</sup> Pursuant to the Special Contract, Beech Grove's Satellite Agreement would remain effective until December 31, 2018, after which Sewer Rate No. 6 would apply, except as set forth in the Special Contract. Mr. Willman next explained that CWA has submitted to "HSE a proposed Termination Agreement (Attachment JAW-5), whereby, upon approval of a Final Order in this subdocket proceeding, HSE would become subject to Sewer Rate No. 6 on a date specified in such Final Order and HSE's Satellite Agreement would terminate and have no further force or effect. Finally, as to Whitestown, Mr. Willman explained CWA is no longer requesting application of Sewer Rate No. 6 to Whitestown and termination of its Satellite Customer Contract with Whitestown as a part of the relief requested in this subdocket proceeding. Instead, Mr. Willman stated that, as reflected in its Response to Whitestown's Petition to Intervene, CWA agrees that issues with respect to Whitestown should be addressed in a separate subdocket proceeding. Therefore, Mr. Willman provided CWA's view that the Commission's approval of the Settlement Agreement in this subdocket should have no impact or prejudice on Whitestown.

CWA witness Korlon L. Kilpatrick II testified that CWA's case-in-chief had proposed an eight-year transition to full cost of service, while under the Settlement Agreement, the Intervenor Satellite Customers will continue to be governed by their respective Current Contracts through December 31, 2018, with a phase-in to the full Satellite Tariff Treatment over the succeeding ten years as set forth in their Special Contracts. Mr. Kilpatrick identified that the rates for each step in Phase 1 of the transition period are set forth in paragraph 4B of the Special Contracts, and he explained the calculation of the elimination of the Satellite Customer Subsidy.

Mr. Kilpatrick next described how the increased rates and charges for the Satellite Customers will result in CWA also making a 30-day filing with the Commission for approval of reduced rates and charges for the other customer classes. Mr. Kilpatrick also stated that under the Settlement Agreement, the Intervenor Satellite Customers will be obligated to make fixed cost payments in the amounts that CWA billed them individually in 2016, as shown on Exhibit A to the Settlement Agreement.

Mr. Kilpatrick also testified that Sewer Rate No. 6 will govern all Satellite Customers,<sup>4</sup>

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<sup>3</sup> A fully executed version was filed with the Commission on June 5, 2017.

<sup>4</sup> Mr. Kilpatrick's supplemental testimony was filed prior to the submission of the revisions to Mr. Willman's

becoming effective on the first day of the month following Commission approval of the Settlement Agreement, except to the extent modified or superseded by the terms of a Special Contract. Mr. Kilpatrick explained that Sewer Rate No. 6 provides that all applicable communities receiving wholesale sewage disposal service shall pay a variable treatment charge of \$2.4852 per 1,000 gallons. Additionally, Sewer Rate No. 6 provides that before CWA is permitted to petition the Commission for a change in rates or charges that impact Sewer Rate No. 6, CWA shall first provide each Satellite Customer written notice 30 days prior to the filing of the petition. Mr. Kilpatrick concluded by recommending the Commission approve the cost of service allocations.

CWA witness Michael C. Borchers testified regarding the cost of service and rate design issues involved in the settlement, and the negotiations that led to the Settlement Agreement. Mr. Borchers explained that the Settling Parties agreed to modify the cost of service models to: (1) utilize Satellite Customer Class actual volumes and associated capacity and pollution strengths for determining the cost of service related to CWA's net capital revenue requirements for the class; (2) exclude the Satellite Customers from the allocation of costs attributable to the CWA plant in service collection mains (i.e., collection mains other than consolidating sewers or relief sewers) with diameters less than 66-inches; and (3) exclude the Satellite Customer Class from the allocation of CWA system infiltration and inflow. Mr. Borchers explained that these cost of service model modifications resulted in an agreed Satellite Customer Subsidy of \$9,909,400.

Mr. Borchers concluded that, in his opinion, Commission approval of the agreed-upon changes to the cost of service allocations is in the public interest, and should be approved.

**B. OUCC.** OUCC witness Jerome D. Mierzwa, principal and Vice President of Exeter Associates, Inc., testified in support of the Settlement Agreement. Mr. Mierzwa provided an overview of the history of this proceeding and the Satellite Customer Subsidy. Mr. Mierzwa explained that the Settling Parties engaged in arms-length negotiations to reach a resolution that avoids litigation. Mr. Mierzwa set forth CWA's and the Intervenor Satellite Customers' positions, noting that a number of revisions were made to the cost allocations reflected in the cost of service initially filed by CWA in its case-in-chief in this proceeding. As such, the Settling Parties were well aware of the various conflicting and divergent litigation positions. The move to full cost of service by January 2029 falls within the range of potential outcomes had the case been litigated.

Mr. Mierzwa went on to describe some of the significant terms of the Settlement Agreement, including the current subsidy of \$9,909,400, the application of the Current Contracts for the Intervenor Satellite Customers until December 31, 2018, as well as Sewer Rate No. 6 and the modifications included in the Special Contracts. Mr. Mierzwa also stated that upon Commission approval of the Settlement Agreement, the four Satellite Customers that did not intervene would be assessed the rates applicable under Sewer Rate No. 6.

Mr. Mierzwa concluded that the terms of the Settlement Agreement represent a reasonable resolution of the issues concerning the Satellite Customer Subsidy and cost

allocations. Accordingly, Mr. Mierzwa recommended that the Commission approve the terms of the Settlement Agreement.

**C. Intervenor Satellite Customers.** John R. Skomp, Partner with Crowe Horwath LLP, also testified in support of the Settlement Agreement on behalf of the Intervenor Satellite Customers. Mr. Skomp began by discussing his concerns with some of the assumptions and calculations contained in the cost of service study filed in Cause No. 44685 that related to the Satellite Customers. Based on these concerns, Mr. Skomp testified that he met with representatives of the Settling Parties to discuss proposed changes to the cost of service model. Mr. Skomp explained that these meetings led to changes to the cost of service study used as a basis for the settlement. These changes included the exclusion of collection mains smaller than 66-inches<sup>”</sup> in diameter (other than specific consolidating or relief sewers) from the costs allocated to the Satellite Customer class, and the elimination of the allocation of the cost of CWA system inflow and infiltration to the Satellite Customer class.

Mr. Skomp then described that the rate increase included in the Settlement Agreement for the Intervenor Satellite Customers essentially occurs over a twelve-year period. Mr. Skomp explained that Phase I is an eight-year period that includes a two-year period of continued charges under the Intervenor Satellite Customers’ Current Contracts with minor changes which will allow the Intervenor Satellite Customers to prepare for the increase in rates. Mr. Skomp testified that the two-year period would be followed by a change to bring all of the Intervenor Satellite Customers’ volumetric charges to a single uniform treatment charge of \$0.9718 per one thousand gallons on January 1, 2019, to be followed by proportional steps each year until the agreed upon rate of \$2.4852 per thousand gallons for transportation and treatment service has been reached on January 1, 2025.

Mr. Skomp stated that Phase II, which is expected to last four years, is designed to increase the rates beyond \$2.4852 per thousand gallons to the extent that CWA has petitioned and obtained approval from this Commission for any additional base rate changes or tracker mechanisms applicable to the Satellite Customers that occur during the eight-year period of Phase I and the four-year period of Phase II. Mr. Skomp asserted that Phase II is also designed to spread those increases proportionately to avoid rate shock, but that rate increases related to CWA’s base rate cases that occur during Phase II will be absorbed by the Intervenor Satellite Customers as they occur.

Mr. Skomp next described the individual Special Contracts. Mr. Skomp concluded by recommending the Commission approve the Settlement Agreement, Special Contracts and Sewer Rate No. 6, all of which are reasonable and in the public interest.

**6. Commission Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. 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 v. PSI Energy*, 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.

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

The relief requested for Commission approval is two-fold. First, the Settling Parties seek approval of a new sewer rate for Satellite Customers. Second, in order to mitigate the rate shock of switching customers to Sewer Rate No. 6, the Settling Parties seek approval of certain special contracts under the provisions of Ind. Code §§ 8-1-2-24 (“Section 24”) and -25 (“Section 25”) to provide for a more gradual implementation of Sewer Rate No. 6. Section 24 of the Act provides:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter. Such arrangement shall be under the supervision and regulation of the commission.

Section 25 provides as follows:

The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.

Therefore, special contracts are lawful if the Commission finds their provisions to be reasonable and just, practicable and advantageous to the parties, and not inconsistent with the purposes of the Act.

The Settlement Agreement provides that all of the Intervenor Satellite Customers will transition off of their Current Contracts and onto Sewer Rate No. 6, a wholesale rate. As noted in prior orders, the current contracts do not reflect cost of service for the Satellite Customers. The transition from individualized wastewater treatment contracts, with different terms and conditions, to one single tariff will achieve certainty and clarity both for CWA and the Intervenor

Satellite Customers, Tri-County, HSE and Beech Grove, as it provides wastewater treatment services to these entities.

CWA witness Borchers and Intervenor Satellite Customer witness Skomp testified that they engaged in numerous meetings and lengthy negotiations to address the Intervenor Satellite Customer's concerns with the cost of service study filed by CWA in Cause No. 44685. Some of the agreed-upon changes to the cost of service model include the exclusion of collection mains smaller than 66-inches in diameter (other than specific consolidating or relief sewers) from the costs allocated to the Satellite Customer class, and the elimination of the allocation of the cost of CWA system inflow and infiltration to the Satellite Customer class. As Mr. Mierzwa testified on behalf of the OUCC, the Settling Parties were well aware of the various conflicting and divergent litigation positions and the move to full cost of service rates by January 2029 fell within the range of potential outcomes had the case been litigated. The Commission finds these compromises made by the Settling Parties to be just and reasonable.

The Settling Parties' compromises on the cost of service model directly led to the terms of Sewer Rate No. 6, which is attached to the Settlement Agreement as Exhibit B. Sewer Rate No. 6 was developed to include the New Target Treatment Rate and other terms and conditions of wholesale wastewater treatment service.

To this end, the evidence before the Commission shows that the Settling Parties agreed to use certain revised cost of service allocations in the cost of service model for the pro forma test year in Cause No. 44685, and as a result, have calculated a revised Satellite Customer Subsidy in the amount of \$9,909,400 and a cost of service of \$15,323,000 for the Satellite Customers. As a substantive matter, the transition to Sewer Rate No. 6, as provided in the Special Contracts attached to the Settlement Agreement respectively as Exhibits C, D and E, will eliminate the Satellite Customer Subsidy over a transition period, which is designed to lessen the potential rate shock that might occur if the Intervenor Satellite Customers were immediately moved from their existing contract rates to the full cost of service rate of \$2.4852 per 1,000 gallons. The phase-in to the New Target Treatment Rate will take place in seven annual steps beginning on January 1, 2019 and ending on January 1, 2025, as shown in Paragraph 4 (B) of the Special Contracts. The evidence demonstrated that following the transition to the New Target Treatment Rate, the Satellite Customer Subsidy will have been eliminated.

The evidence further showed that Satellite Customers Tri-County and HSE are currently paying more than their cost of service, so a prompt transition from the rate in their Current Contracts to the treatment rate in Sewer Rate No. 6 upon Commission approval of the Settlement Agreement and Sewer Rate No. 6 would be advantageous to them. As such, in the Addendum to his Supplemental Testimony, Mr. Willman testified that Tri-County has executed a Termination Agreement with respect to its Satellite Agreement, which is contingent on approval of the Settlement Agreement (Attachment JAW-3) by this Commission. Mr. Willman also testified HSE has been provided with a similar proposed Termination Agreement, an unexecuted version of which was entered into evidence at the May 16, 2017 hearing as Attachment JAW-5. An executed version of the Termination Agreement with HSE was submitted to the Commission as a compliance filing on June 5, 2017. Therefore, the Commission determines that the transition of

Tri-County and HSE to Sewer Rate No. 6 upon issuance of this Final Order is just, reasonable, and in the public interest.

With respect to the Intervenor Satellite Customers and Beech Grove, which are paying well below their full cost of service, an immediate transition to Sewer Rate No. 6 would result in large increases in their rates and impose an undesirable rate shock upon them. Therefore, as noted above, the Settlement Agreement has attached to it Special Contracts by which the Intervenor Satellite Customers would gradually transition to the New Target Treatment Rate contained in Sewer Rate No. 6. Mr. Willman testified that CWA tendered a substantively similar Special Contract to Beech Grove, an unexecuted version of which was entered into evidence at the May 16, 2017 hearing as Attachment JAW-4. A fully executed version of the Beech Grove Special Contract was submitted as a compliance filing on June 5, 2017. The Special Contracts provide that Sewer Rate No. 6 shall apply to the Intervenor Satellite Customers and Beech Grove, but in the event of a conflict between its provisions and those of the Special Contracts, the provision of the Special Contracts shall control.

The terms of these Special Contracts further provide that the Current Contracts shall remain in effect up to and including December 31, 2018, and shall terminate on January 1, 2019. Mr. Skomp testified that this two-year period is necessary to allow the Intervenor Satellite Customers to prepare for the increase in CWA's rates. Additionally, during this time frame, the Fixed Cost charged by CWA under these Current Contracts will remain fixed at their respective 2016 rates. The Commission concludes that these provisions of the Special Contracts are reasonable and will serve the public interest.

Upon termination of the Intervenor Satellite Customers' Current Contracts on January 1, 2019, they will begin to phase-in to full cost of service rates over a succeeding ten-year period, with the final adjustment occurring on January 1, 2029. The evidence before the Commission demonstrates that the phase-in of rates contained in the Special Contracts will prevent rate shock, while still eliminating the Satellite Customer Subsidy over time. Therefore, the Commission finds these provisions to be reasonable, supported by the record, and in the public interest.

Mr. Kilpatrick proposed using the Commission's 30-day filing process for the transition process. The Commission would prefer to have the revenue reconciliation be made as a compliance filing under Cause No. 44685, using the following procedure:

45 days prior to any scheduled rate increase for Satellite Customers, CWA shall file for a rate decrease to the other customer classes. The filing shall include workpapers and revised tariff sheets. Within ten days of the filing, the OUCC and any Intervenor may file an objection. If there is no objection and Commission staff agrees with the calculation, the new rates would go into effect concurrent with the rate increase to Satellite Customers. If the OUCC or any Intervenor objects, CWA will have seven days to respond. The Commission will address the dispute prior to the proposed effective date of the Satellite Customers' rate changes so the rate changes to all customers occur at the same time.

The Settlement Agreement, inclusive of Sewer Rate No. 6 and the Special Contracts, contain various other provisions that were the subject of complex negotiations among the Settling Parties. Based upon the evidence presented, the Commission determines them to be reasonable, just, and in the public interest. Consistent with the Commission's creation of the subdocket proceeding in Cause No. 44685 S2, nothing in this Order shall impact or prejudice Whitestown.

Finally, the parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434 (IURC March 19, 1997).

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

1. The Settlement Agreement, inclusive of Sewer Rate No. 6 and the Special Contracts attached thereto, entered into among CWA, the OUCC, and the Intervenor Satellite Customers, a copy of which is attached to this Order, is approved.

2. Sewer Rate No. 6 shall become applicable to the Intervenor Satellite Customers on January 1, 2019, as provided in the Settlement Agreement, except to the extent the terms of the Special Contracts conflict with Sewer Rate No. 6, in which case the provisions of the applicable Special Contract shall control.

3. Consistent with the findings above, and pursuant to the Termination Agreement entered into between Tri-County and CWA, Tri-County shall become subject to Sewer Rate No. 6 on the first day of the month following the date of this Order, at which time Tri-County's Satellite Agreement immediately shall terminate and have no further force or effect.

4. Consistent with the findings above, and pursuant to the Termination Agreement entered into between HSE and CWA, HSE shall become subject to Sewer Rate No. 6 on the first day of the month following the date of this Order, at which time HSE's Satellite Agreement immediately shall terminate and have no further force or effect, subject to the survival provision of Section 19.06 of HSE's Satellite Agreement.

5. Consistent with the findings above, and pursuant to the Special Contract entered into between Beech Grove and CWA, Beech Grove's Satellite Agreement shall terminate on January 1, 2019, on which date Sewer Rate No. 6 shall become effective as to Beech Grove, except to the extent the terms of the Beech Grove Special Contract conflict with Sewer Rate No. 6, in which event the provisions of the Special Contract shall control. The Beech Grove Special Contract shall terminate on January 1, 2029.

6. Nothing contained in the Settlement Agreement or this Order shall impact or prejudice Whitestown or its current contract. As noted in the Commission's May 16, 2017 Docket Entry, the issues raised by Whitestown will be addressed in Cause No. 44685 S2.



7. CWA shall follow the procedures set forth in this Order to decrease rates for other customer classes when rates for Intervenor Satellite Customers and Beech Grove increase.

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

**ATTERHOLT, HUSTON, AND ZIEGNER CONCUR; FREEMAN AND WEBER  
ABSENT:**

APPROVED: JUL 26 2017

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

  
\_\_\_\_\_  
Mary M. Becerra  
Secretary of the Commission



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF CWA AUTHORITY, INC. FOR )  
REVIEW OF CERTAIN AGREEMENTS FOR )  
WASTEWATER TREATMENT AND DISPOSAL )  
SERVICE WITH VARIOUS SATELLITE ) CAUSE NO. 44685 S1  
CUSTOMERS AND FOR REVIEW OF COST )  
ALLOCATION ISSUES RELATED TO THOSE )  
AGREEMENTS. )

SETTLEMENT AGREEMENT

On September 25, 2015, CWA Authority, Inc. (“CWA”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) in Cause No. 44685 requesting, among other things, authority to increase operating revenues from its rates and charges based on the results of a cost of service study prepared by Black & Veatch and the establishment of a subdocket proceeding to address certain cost allocation issues. On February 2, 2016, the Commission issued a Docket Entry creating a subdocket with this caption under Cause No. 44685-S1 to consider certain cost allocation issues related to CWA's provision of wastewater treatment service to the following communities: the City of Beech Grove; the Ben Davis Conservancy District (“Ben Davis”); the Town of Whitestown; the City of Greenwood (“Greenwood”); Hamilton Southeastern Utilities; the City of Lawrence (“Lawrence”); and the Tri-County Conservancy District (collectively “Satellite Customers”).

The Commission’s February 2, 2016 Docket Entry incorporated (i) Ben Davis’ Motion to Dismiss for Lack of Jurisdiction, Motion for Partial Summary Judgment and Designation of Evidence, and Brief in Support of its Motion for Partial Summary Judgment, all filed on January 22, 2016; (ii) Ben Davis’ Petition to Intervene for Limited Purposes, filed on January 25, 2016; and (iii) CWA’s Motion to Formalize Subdocket and Set Briefing Schedule on Ben Davis’ Motions, and CWA’s Objection to Ben Davis’ Petition to Intervene for Limited Purposes, each filed on January 28, 2016. Greenwood filed a Motion to Dismiss for Lack of Jurisdiction on March 31, 2016, and Lawrence filed a Motion to Dismiss for Lack of Jurisdiction on June 3, 2016. On March 18, 2016, April 11, 2016 and June 13, 2016, CWA filed responses to the respective motions to dismiss/partial summary judgment. On April 1, 2016, Ben Davis filed its Reply and on June 20, 2016, Lawrence filed its Reply.

On December 6, 2016, CWA filed the testimony and exhibits constituting its case-in-chief and a motion for the Commission to take administrative notice of certain documents. On December 28, 2016, the Commission issued a Docket Entry, denying each of Ben Davis’, Greenwood’s and Lawrence’s Motions to Dismiss, as well as Ben Davis’ Motion for Partial Summary Judgment.

Throughout the course of the above-described proceedings in this subdocket, Ben Davis, Greenwood and Lawrence (collectively, the “Intervenor Satellite Customers”) have engaged in negotiations with CWA and the Indiana Office of the Utility Consumer Counselor (“OUCC”) regarding a potential resolution of the issues in this subdocket proceeding through a definitive

settlement agreement, subject to Commission approval. On January 30, 2017, CWA, the Intervenor Satellite Customers and the OUCC (the “Settling Parties”) notified the Presiding Officer that they had reached an agreement in principle with respect to all of the issues in this proceeding, subject to preparation, execution and filing of a written definitive settlement agreement along with evidence in support of the Commission’s approval of that agreement. On that same date, the Intervenor Satellite Customers filed their Motion to Modify Procedural Schedule.

The Settling Parties, solely for purposes of compromise and settlement and having been duly advised by their respective staff, experts and counsel, stipulate and agree that the terms and conditions set forth in this Settlement Agreement represent a fair, just and reasonable resolution of all matters raised in this proceeding, subject to their incorporation by the Commission into a final, non-appealable order without modification or further condition that may be unacceptable to any of the Settling Parties (“Final Order”). If the Commission does not approve this Settlement Agreement, in its entirety and without change, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.

#### **I. Intervenor Satellite Customers Current Contracts and Cost of Service Issues**

1. On or about December 12, 1979, Ben Davis and the City of Indianapolis, Indiana, (the “City”), acting by and through its Department of Public Works, entered into that certain Agreement for Sewage Transportation and Treatment Services (the “Ben Davis Agreement”), as amended. On or about November 13, 1998, Lawrence and the City, acting by and through its Department of Public Works, entered into that certain Agreement for Wastewater Treatment and Disposal Services (the “Lawrence Agreement”), as amended. On or about December 23, 1998, Greenwood and the City, acting by and through its Board of Public Works, entered into that Agreement for Sewage and Wastewater Treatment and Disposal Services (the “Greenwood Agreement”) as amended, and collectively with the Ben Davis Agreement and the Lawrence Agreement, the “Current Contracts.”

2. The Settling Parties acknowledge that CWA requested that each of the Current Contracts be assigned from the City to CWA. The Settling Parties further acknowledge that the Commission pursuant to its Order dated July 13, 2011 in Cause No. 43936 approved such assignment, and service through such Current Contracts to the Intervenor Satellite Customers.

3. CWA’s first base rate case was Cause No. 44305. The Commission issued its final Order in Cause No. 44305 on April 23, 2014, which is identified as CWA’s Administrative Notice Exhibit 2. In that Order, the Commission indicated it was “troubled by the \$11.5 million subsidy that is being imposed on the retail customer classes because the contracted revenues from the Satellite customers do not cover the cost to serve those customers.” The Commission then ordered CWA “to pursue all possible means to renegotiate the Satellite Customer contracts to provide for the recovery of the cost of service from those customers.” (Order at 35)

4. CWA’s second base rate case was Cause No. 44685 in which CWA sought to increase its rates and charges and for establishment of a subdocket proceeding to address certain cost allocation issues. Consistent with the presentation of evidence in its first rate case, CWA filed in Cause No. 44685 a cost of service study prepared by Black & Veatch. The cost of service study showed that the total allocated cost of service for the Satellite Customers was greater than the

revenue collected from those customers under the Current Contracts and the contracts with the other Satellite Customers. That difference or subsidy in the amount of \$14,174,600 had to be re-allocated in the cost of service study to the retail customer classes. (CWA's Administrative Notice Exhibit 5, MCB-2-Schedule 10 at line 5) The Intervenor Satellite Customers disagree with the existence of such difference or subsidy in such amount.

5. The parties to Cause No. 44685, which did not include the Intervenor Satellite Customers, settled that case and filed a settlement agreement with the Commission, together with supporting testimony and exhibits on March 8, 2016. On July 18, 2016, the Commission issued its Order in Cause No. 44685 approving the settlement agreement as modified. (CWA's Administrative Notice Exhibit 3).

6. The settlement agreement in Cause No. 44685 provided that CWA would present evidence in Cause No. 44685-S1 regarding the existence, calculation, amount and cost of service basis of what was defined in the Cause No. 44685 settlement agreement as the "Satellite Customer Subsidy."

7. CWA's case-in-chief provided evidence in this subdocket with respect to its proposal to eliminate the Satellite Customer Subsidy over a transition period. CWA's evidence generally showed that bringing the Satellite Customers to full cost of service would result in increased costs for some of the Satellite Customers and decreased costs for others. CWA also proposed to eliminate the Satellite Customer Subsidy by cancelling the contracts with the Satellite Customers, moving all Satellite Customers to a single wholesale tariff, i.e., proposed Sewer Rate No. 6, and transitioning those customers who are paying less than full cost of service to full cost of service rates over an 8-year period, with a final uniform wholesale treatment rate taking effect on January 1, 2026.

8. The Settling Parties, as a compromise to their respective litigating positions, now generally agree that a cost of service subsidy exists between CWA's Satellite Customer class and its retail customer classes; and that the retail customer classes are negatively affected by that subsidy. The Intervenor Satellite Customers disagree that they should be included in a separate Satellite Customer class instead of continuing under their respective Current Contracts. They further disagree with CWA, and the OUCC, regarding the termination of the Current Contracts, the amount of the Satellite Customer Subsidy, the inputs required in a cost of service study, the jurisdiction of this Commission over such Current Contracts, and absent this Settlement Agreement would have filed testimony and exhibits opposing CWA's request in Cause No. 44685-S1.

9. The Settling Parties acknowledge and agree that they have filed, or failing Commission approval of this Settlement Agreement are prepared to file, testimony and exhibits in this subdocket on the determination of classes, the cost of service by customer class, cost allocation, and rate design issues that do or would utilize a variety of methodologies, including without limitation cost allocation by rate class. The Settling Parties also acknowledge that absent this Settlement Agreement, the outcome of this Cause is uncertain and would be subject to appeal by one or more of the parties hereto.

10. With the acceptance and approval of this Settlement Agreement, approval of the respective Special Contracts (as described in Article II, Section 3) and approval of Sewer Rate No.

6, the Intervenor Satellite Customers will forgo any further objections to the jurisdiction of the Commission over: the Current Contracts; CWA's rates and charges; and the terms and conditions of sewer service provided by CWA.

11. The Settling Parties have agreed to the terms of this Settlement Agreement as a means to avoid the risk and cost of extended litigation of unique and complex issues of first impression before the Commission.

## **II. Sewer Rate No. 6 and Special Contracts**

1. The Settling Parties agree that the Current Contracts shall remain in effect up to and including December 31, 2018, and shall terminate on January 1, 2019 and be of no further force or effect. Until January 1, 2019, Intervenor Satellite Customers will operate under their Current Contracts; however, the Intervenor Satellite Customers will not be obligated to make additional Fixed Cost payments above what each Intervenor Satellite Customer was billed in 2016, as shown on Exhibit A.

2. Except to the extent modified by the terms of any Special Contracts, the Settling Parties agree that upon such termination of the Current Contracts, the Intervenor Satellite Customers shall be subject to and governed by Sewer Rate No. 6, a copy of which is attached hereto and incorporated herein as Exhibit B.

3. Notwithstanding the previous paragraph, however, Intervenor Satellite Customers will phase-in to the full Satellite Tariff Treatment Rate over a succeeding 10-year period under the terms of the applicable Special Contract, copies of which are attached hereto and incorporated herein as Exhibits C, D and E. As noted above, in its case-in-chief, CWA proposed to eliminate the Satellite Customer Subsidy via a phase-in to be completed over eight years with nine adjustments. In this Settlement Agreement, the Settling Parties agreed that as to the Intervenor Satellite Customers, the Special Contracts would contain a phase-in of ten years consisting of eleven adjustments, with the final adjustment taking place on January 1, 2029, as shown on Exhibit F attached hereto.

4. The Settling Parties, in consultation with their respective cost of service experts (the "Experts") have agreed to use certain revised cost of service allocations in the cost of service model for the pro forma test year in Cause No. 44685, and as a result, have calculated a revised Satellite Customer Subsidy in the amount of \$9,909,400 and a cost of service of \$15,323,000 for the Satellite Customers. The Settling Parties have agreed to a revised Satellite target treatment rate designed to transition to the revised cost of service rate for Satellite Customers (the "New Target Treatment Rate") of \$2.4852/1000 gallons ( $\$15,323,000 / 6,165,602$  1,000 gallons). Following the transition to the New Target Treatment Rate, the Parties acknowledge that the Satellite Customer Subsidy will have been eliminated.

5. The Experts have also determined a phase-in schedule to the New Target Treatment Rate and a second phase-in to the full Satellite Tariff Treatment Rate, which are reflected in the Special Contracts.

6. The Special Contracts also refer to CWA's continued use of the revised cost of service allocation methodology to: (a) include Satellite Customers' actual flow, estimated peak

day flow, and associated pollutant loadings for determining the Satellite Customers' portion of net capital revenue requirements; (b) exclude the Satellite Customers from the allocation of CWA system inflow and infiltration; (c) exclude the Satellite Customers from the allocation of costs attributable to the CWA plant in service collection mains (i.e., collection mains other than consolidating sewers or relief sewers) with diameters less than 66-inches; and (d) exclude the Satellite Customer class from the allocation of costs or reallocation of revenue resulting from the implementation by CWA of a residential rate based on qualification for state or federal income-related assistance, an alternative residential rate or a substantially similar rate. The Settling Parties agree that any future proposed CWA rate increases impacting Sewer Rate No. 6 shall incorporate these four revised allocation methodologies.

7. The Settling Parties acknowledge that the amount of the operating revenues resulting from the reduction to the Satellite Customer Subsidy should be allocated to the Non-Industrial, Self-Reporter, and Surcharge (BOD, TSS & NH3-N) rate classes in order to reduce the agreed upon revenue allocations contained in the Commission's Final Order in Cause No. 44685, and that new rates should be implemented within thirty-five days of entry of the Final Order in this subdocket (subject to the Commission's approval of a compliance filing of CWA's rates and charges for services and all parties reserving any rights under IC 8-1-3-1, et seq.). The reduction shall be based on each class's respective percentage of total revenues from the Non-Industrial, Self-Reporter and Surcharge (BOD, TSS & NH3-N) rate classes allocated to it at the time such reduction is ordered (i.e. Phase 2), as described in the Commission's Final Order in Cause No. 44685.

### **III. Scope and Approval**

1. Neither the making of this Settlement Agreement nor any of its provisions shall constitute in any respect an admission by any Settling Party in this or any other litigation or proceeding. Neither the making of this Settlement Agreement, nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

2. This Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any Settling Party in any other proceeding except as necessary to enforce its terms before the Commission, or any tribunal of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

3. The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby, subject to the agreement of the Settling Parties on the provisions contained herein and in the attached exhibits.

4. The communications and discussions during the negotiations and conferences have been conducted based on the explicit understanding that said communications and discussions are or relate to offers of settlement and therefore are privileged. All prior drafts of this Settlement

Agreement and any settlement proposals and counterproposals also are or relate to offers of settlement and are privileged.

5. This Settlement Agreement is conditioned upon and subject to Commission acceptance and approval of its terms in their entirety, approval of the Special Contracts, and approval of Sewer Rate No. 6 without any change or condition that is unacceptable to any Settling Party.

6. The Settling Parties shall offer supplemental testimony supporting the Commission's approval of this Settlement Agreement and will request that the Commission issue a Final Order incorporating the agreed proposed language of the Settling Parties and accepting and approving the same in accordance with its terms without any modification. Such supportive testimony will be agreed-upon by the Settling Parties and offered into evidence without objection by any Settling Party and the Settling Parties hereby waive cross-examination of each other's witnesses.

7. The Settling Parties will support this Settlement Agreement before the Commission and request that the Commission accept and approve the Settlement Agreement. The Settling Parties further acknowledge that this Settlement Agreement, the Special Contracts, and Sewer Rate No. 6 are a complete, interrelated package, are not severable, and shall be accepted or rejected in their entirety without modification or further conditions that may be unacceptable to any Settling Party. The Settling Parties propose to submit this Settlement Agreement and evidence conditionally, and if the Commission fails to approve this Settlement Agreement in its entirety without any change or imposes condition(s) unacceptable to any adversely affected Settling Party, the Settlement Agreement and supporting evidence may be withdrawn and the Commission will continue to proceed to a decision in the affected proceeding, without regard to the filing of this Settlement Agreement.

8. The Settling Parties acknowledge that the OUCC and Intervenor Satellite Customers have not filed their respective cases-in-chief and cross-answering testimony, nor has CWA filed its rebuttal case. Therefore, provision shall be made for the filing of the remainder of the parties' cases-in-chief, cross-answering testimony, and rebuttal case in the event the Settlement Agreement is not approved by the Commission without modification or further conditions, unless acceptable to the Settling Parties. In such event, the Settling Parties will cooperate in order to develop a schedule under which the OUCC and Intervenor Satellite Customers would file their respective cases-in-chief following the Commission's issuance of such an Order, and Petitioner would file its rebuttal within a reasonable time thereafter.

9. The Settling Parties will work together to prepare an agreed upon proposed order to be submitted in this Cause. The Settling Parties will request Commission acceptance and approval of this Settlement Agreement in its entirety, without any change or condition that is unacceptable to any party to this Settlement Agreement.

10. The Settling Parties will request that the Commission issue a Final Order promptly accepting and approving this Settlement Agreement in accordance with its terms. The Settling Parties also will work cooperatively on news releases or other announcements to the public about this Settlement Agreement.



11. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of any Final Order entered by the Commission approving the Settlement Agreement, the Special Contracts, and Sewer Rate No. 6 in their entirety without change or conditions unacceptable to any Settling Party (or related orders to the extent such orders are specifically and exclusively implementing the provisions hereof) and shall not oppose this Settlement Agreement in the event of any appeal or a request for rehearing, reconsideration or a stay by any person not a party hereto.


Accepted and agreed on this 23<sup>rd</sup> day of March, 2017.

CWA Authority, Inc.

Indiana Office of Utility Consumer  
Counselor



Lauren Toppen  
An Attorney for CWA Authority, Inc.



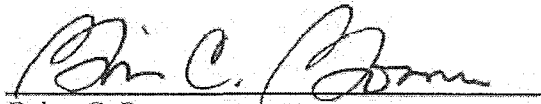
Leja D. Courter  
Deputy Consumer Counselor,  
Indiana Office of Utility Consumer  
Counselor

Ben Davis Conservancy District

City of Lawrence, Indiana

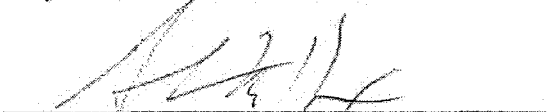


L. Parvin Price  
Barnes & Thornburg LLP  
An Attorney for Ben Davis Conservancy  
District



Brian C. Bosma  
Kroger Gardis & Regas, LLP  
An Attorney for City of Lawrence, Indiana

City of Greenwood, Indiana



Alan M. Hux  
Taft Stettinius & Hollister LLP  
An Attorney for the City of Greenwood,  
Indiana

**EXHIBIT A**  
**INTERVENOR FIXED COST PAYMENTS**

<b>Intervenor</b>	<b>2017 Fixed Cost Payment</b>	<b>2018 Fixed Cost Payment</b>
Greenwood	\$508,899.59	\$508,899.59
Ben Davis	0.00	0.00
Lawrence <sup>1</sup>	\$169,600.00	\$169,600.00

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<sup>1</sup> Lawrence's Fixed Cost payment does not include the Maintenance and Interceptor Fees as described in Sections 8.05 and 8.06 of its Current Contract as those are considered operation and maintenance costs, and shall continue to be paid as provided in the Current Contract.

**EXHIBIT B**

CWA Authority, Inc.  
2020 North Meridian Street  
Indianapolis, Indiana 46202

Original Page No. 106

**SEWER RATE NO. 6  
WHOLESALE SEWAGE DISPOSAL SERVICE**

**AVAILABILITY:**

Wholesale Sewage Disposal Service shall be available to all municipalities, conservancy districts and any other entities that own and operate facilities for the collection of wastewater (“Collection Systems”) from retail customers in geographic areas located adjacent to the Utility’s Sewage Disposal System that transport wastewater to the Utility’s Sewage Disposal System for treatment and disposal, subject to satisfying each of the Special Provisions set forth below (collectively referred to below as “Communities,” and individually “Community”).

**RATE:**

**1. Variable Treatment Charge**

All Communities receiving Wholesale Sewage Disposal Service shall pay Variable Treatment Charges per 1,000 gallons of \$2.4852 per 1,000 gallons.

**2. Excessive Strength Surcharges**

In addition, all Communities receiving Wholesale Sewage Disposal Service shall pay the Excessive Strength Surcharges shown in the table below:

Excessive Strength Surcharges – per pound	
BOD in excess of 250 mg/l	\$0.4235
SS in excess of 300 mg/l	\$0.1519
NH <sub>3</sub> -N in excess of 20 mg/l	\$0.4562

**3. Rates Subject to Change and Other Riders**

The foregoing rates are subject to change, with Commission approval. In addition, the Environmental Compliance Plan Recovery Mechanism rate from Rider A, and any other changes in rates or charges due to adjustment mechanisms approved by the Commission, shall apply. Notwithstanding Ind. Code § 8-1-2-42, whenever the Utility petitions the Commission for a change in rates or charges that affects its rates or charges under this Sewer Rate No. 6, the Utility shall notify each Community in writing thirty (30) days prior to the filing of the petition of its

**SEWER RATE 6 - WHOLESALE SEWAGE DISPOSAL SERVICE (Cont'd)**

intention to request a change in rates or charges and the estimated amount of the proposed change in rates or charges.

**MONTHLY MINIMUM CAPACITY CHARGE**

Each Community maintaining a metered connection to the Utility's Sewage Disposal System will pay a Monthly Minimum Capacity Charge of \$5,000 per MGD of Average Daily Flow, if the combined Variable Treatment Charge and Excessive Strength Surcharges are less than the Monthly Minimum Capacity Charge.

**CAPACITY AND CONNECTIONS**

The Utility will certify to each Community that a certain specified capacity Average Daily Flow rate and Peak Daily Flow rate is available for the Community (the "Permitted Capacity"). If a Community plans to construct larger or additional connections to the Utility's system or increase flows to the system in a manner that would exceed the certified Permitted Capacity, the Community shall first submit an application to the Utility for review and approval in the form designated by the Utility. If a Community exceeds its Peak Daily Flow on at least five days during a monthly reporting period, the Utility may assess a surcharge in the amount of ten percent (10%) of the monthly Variable Treatment Charge for the Month of exceedance.

"Average Daily Flow" shall mean the total flow as reflected on the previous 12 monthly reports submitted to CWA divided by the number of days covered by those monthly reports.

"Peak Daily Flow" shall mean the total gallons of flow in any 24-hour period which period begins at 12:00 A.M. and ends at 11:59 P.M.

**BILLING AND PAYMENT OF BILLS:**

Each month, the Utility will submit a written statement to the Community based on the number of gallons of wastewater discharged from the Community's Collection System into the Utility's Sewage Disposal System shown on the report submitted by the Community during the preceding calendar Month ("Bill"). The Bill will show the computation of the Variable Treatment Charge and the Excessive Strength Surcharge, if any, for such calendar Month. The computation of the Excessive Strength Surcharge will be applied only to flow streams specifically sampled for an Excessive Strength Surcharge and will be calculated based on the monthly flow volume specific to the sampled and analyzed flow stream. Each Bill shall be in a form and content designated by the Utility. If the Community does not pay the Bill within forty-five (45) days after its date of issue, a late payment charge will be added as provided in Appendix A.

**SEWER RATE 6 - WHOLESALE SEWAGE DISPOSAL SERVICE (Cont'd)**

**SPECIAL PROVISIONS:**

**1. Connection Obligations.**

The Community must have installed, at the Community's sole cost and expense, any connections, including, but not limited to, the connecting sewer mains and tap-in pipes, as well as any pump stations (collectively, the "Connections"), that are necessary or appropriate to connect the Community's Collection System to the Utility's Sewage Disposal System so that the wastewater generated within the Community's service area and designated by the Community to be treated by the Utility will be transported and discharged into the Utility's Sewage Disposal System. The location of such Connections must be depicted on a map the Community provides to the Utility.

**2. Metering Obligations.**

The Community is responsible to install, at the Community's sole cost and expense, all Meters designated as necessary or appropriate by the Utility to record the volume of wastewater transported and discharged into the Utility's Sewage Disposal System from the Community's Collection System. The location of all Meters is subject to the Utility's initial approval. The Community will calibrate the Meters not less than one (1) time every calendar year and at other times upon the reasonable request of the Utility. The Community will notify the Utility when such calibration is complete and maintain all records associated with the calibration for a period of two (2) years. After thirty (30) days' notice to the Community, if the Community does not perform the required calibration, notify the Utility, or maintain a record showing the calibration has been performed, the Utility may cause the calibration to be performed at the Community's cost and expense.

**3. Obligation to Sample and Test.**

The Community is responsible to install at the Community's sole cost and expense, sampling ports ("Sampling Ports") to sample wastewater transported and discharged into the Utility's Sewage Disposal System from the Community's Collection System at locations reasonably designated by the Utility. The Community shall on a frequency determined by the Utility, but no more frequently than monthly, obtain and test samples of the wastewater discharged from the Community's Collection System into the Utility's Sewage Disposal System from each Sampling Port. The tests shall consist of a 24-hour composite sample or other sampling method, as mutually agreed upon by the Community and the Utility. The tests shall determine the pH level, as well as the levels of BOD, TSS, NH<sub>3</sub>-N and any other pollutant parameter, as reasonably requested by the Utility in each wastewater sample. The results of such tests shall be reported to the Utility in writing in a form prescribed by the Utility. All measurements, tests and analysis of the characteristics of the wastewater shall be determined in accordance with the latest edition of "Standards Methods of the Examination of Water and Sewage," as published jointly by the

**SEWER RATE 6 - WHOLESALE SEWAGE DISPOSAL SERVICE (Cont'd)**

American Public Health Association and the Water Pollution Control Federation consistent with 40 CFR Part 136 or by other methods generally accepted under established sanitary engineering practices and approved by the Utility. The Community will be responsible for all costs and expenses associated with the measuring, sampling and testing of the wastewater. However, the Utility may at its sole cost and expense, upon 24 hour notice to the Community, obtain samples of the wastewater being discharged from the Community's Collection System into the Utility's Sewage Disposal System using any of the Sampling Ports, and the same type of sampling and testing methodology as required by the Community, and cause tests of each such sample to be conducted to determine the characteristics of the Community's wastewater.

**4. Additional Connections/Sampling Ports/Meters.**

The Community may install and construct, at the Community's sole cost and expense, additional Connections, Sampling Ports or Meters as the Community's Collection System develops over time, subject to obtaining prior written consent of the Utility. In addition, the Utility shall have the right to require the Community to install or construct additional Connections, Sampling Ports or Meters reasonably required and based solely on the Community's flow in excess of the Permitted Capacity to be transmitted to the Utility. The additional Connections/Sampling Ports/Meters will be a part of the Community's Collection System. The Utility will be afforded access to the work sites as is reasonably necessary for the Utility and its representatives to observe, inspect and test the installation and construction of the Community's Connections, Meters and Sampling Ports. The Community will not permit any wastewater to be discharged from the Community's additional Connections, Meters and Sampling Ports into the Utility's Sewage Disposal System until after the Community has completed the installation and construction of the additional Connections, Meters and Sampling Ports and the Utility has inspected and approved such additional Connections, Meters and Sampling Ports.

**5. Reporting of Metered Volumes and Sample Results.**

The Community will, on or before the last day of each calendar Month, at its sole cost and expense, submit a written report to the Utility in a form specified by the Utility and certified by an appropriate official of the Community as being true, accurate and complete. The written report will contain for the calendar month preceding the calendar month in which the report is delivered, the volumes of wastewater for each metered connection, estimated flow volumes for unmetered connections, and the Excessive Strength Surcharge test results of wastewater discharged from the Community's Collection System into the Utility's Sewage Disposal System. The written report will clearly identify which, if any, flow streams or connections were sampled for Excessive Strength Surcharges, and the results of any such tests.

**6. Plans and Specifications.**

**SEWER RATE 6 - WHOLESALE SEWAGE DISPOSAL SERVICE (Cont'd)**

Each Community receiving Wholesale Sewage Disposal Service as of the effective date of this Sewer Rate No. 6, has submitted plans and specifications for its existing Connections, Meters and Sampling Ports ("Plans and Specifications") to the Utility, and the Utility has approved those Plans and Specifications. For Communities that begin treatment service after January 1, 2017, the Community shall submit Plans and Specifications to the Utility for review and approval at least forty-five (45) days before the scheduled commencement date of the installation and construction.

A Community will submit any proposed modifications, amendments or additions to the Plans and Specifications to the Utility for review and approval at least forty-five (45) days before the scheduled commencement date of the installation and construction of any such improvements or modifications. The Utility will notify the Community in writing of its approval or disapproval of such revisions within thirty (30) days after submission.

At least annually, the Community and the Utility shall meet to discuss and review the Community's plans for wastewater service as a means for the Utility to be prepared for any significant changes in the Community's flows or loadings. This includes discussions related to significant Community wastewater expansions, changes in the number of customers and type, and other system changes that impact the Utility's ability to operate and maintain the Utility's Sewage Disposal System.

**7. Maintenance of Connections, Meters and Sampling Ports.**

The Community, at its sole cost and expense, shall at all times maintain the Connections, Meters and Sampling Ports in good working order, condition and repair. In the event the Community fails to keep the Connections, Meters or Sampling Ports in good working order, condition and repair, the Utility may serve written notice on the Community specifying the maintenance, repair or replacement of the Connections, Meters or Sampling Ports which the Utility reasonably believes appropriate. If the Community fails to address the Utility's concerns and does not begin to perform the repairs, maintenance work or replacements within thirty (30) days of its receipt of that notice, the Utility may arrange for the maintenance, repair or replacement of the Connections, Meters, or Sampling Ports and the Community shall pay all reasonable costs and expenses incurred by the Utility in connection with such maintenance, repair or replacement. If the Utility determines the condition of the Connection, Meters or Sampling Ports poses an immediate threat to public health and safety, the Utility, without prior notice to the Community, may arrange for all corrective work to be performed and the Community shall pay reasonable costs incurred by the Utility in connection with such emergency work.

**8. Maintenance of Community's Collection System.**

The Community will, at its sole cost and expense, maintain the Community's Collection System.

**SEWER RATE 6 - WHOLESALE SEWAGE DISPOSAL SERVICE (Cont'd)**

**9. Right to Inspect.**

In addition to inspecting samples from the Sampling Ports as described in Section 3 of the Special Provisions, the Utility may enter and inspect, and collect samples from, any part of the Community's Collection System. This right of entry and inspection shall extend to public streets, easements and property within which the Community's Collection System is located.

The Utility also shall have, and upon request of the Utility the Community shall use its best efforts to obtain for the Utility's use, the right to enter upon private property to inspect the waste discharge of the Community's industrial customers, including on-site inspection of pretreatment and sewer facilities, observation, measurement, sampling, testing, and access to (with the right to copy) all pertinent compliance records located on the premises of the Community's industrial customers.

**10. Further Obligations Regarding Discharges.**

All wastewater transported or discharged from the Community's Collection System into the Utility's Sewage Disposal System shall be substantially free from any sand, gravel, street waste, leaves, paper, cyanide, coal tar, oil, grease, acids, dry cleaning fluids, or any other foreign material or industrial wastes, and not contain materials, substances or discharges prohibited by the Sewage Restrictions set forth in Rule 16 of the Utility's Terms and Conditions for Sewage Disposal Service Within Marion County (hereinafter "Prohibited Materials"). Upon discovery or notice that Prohibited Materials in excess of what is considered reasonable are being transported or discharged from the Community's Collection System into the Utility's Sewage Disposal System, and upon notice from the Utility, the Community shall: (i) use reasonable efforts and diligence to identify the source of the Prohibited Materials; (ii) notify the source of the Prohibited Materials to immediately cease the discharge of Prohibited Materials into the Community's Collection System within twenty-four (24) hours after identifying the source of the Prohibited Materials; and (iii) disconnect the source of the Prohibited Materials from the Community's Collection System within forty-eight (48) hours after identification, if the source fails to stop discharging Prohibited Materials into the Community's Collection System within twenty-four (24) hours after the Community's request therefore. The Community also will pay all fines, penalties, costs and expenses that are incurred by the Utility in connection with or as a result of Prohibited Materials being discharged from the Community's Collection System into the Utility's Sewage Disposal System, including, without limitation, all fines levied by the State of Indiana or the EPA. The Community is further responsible for and will pay the Utility upon demand for all damages to the Utility's Sewage Disposal System caused by or resulting from the discharge of any material or waste into the Utility's Sewage Disposal System from the Community's Collection System which causes interference, pass-through, obstruction, damage or any other impairment to the Utility's Sewage Disposal System. The Community also will pay all costs and expenses incurred by the Utility to clean or repair the Utility's Sewage Disposal System and any penalty, fine or cost of compliance with injunctions or other orders of a court or



**SEWER RATE 6 - WHOLESALE SEWAGE DISPOSAL SERVICE (Cont'd)**

governmental authority imposed against the Utility as a result of any such interference, pass-through, obstruction, damage or impairment, and all other costs and expenses incurred by the Utility as a result of any such interference, pass through, obstruction, damage or impairment, including, but not limited to, expert, consultant, and attorneys' fees.

**11. Compliance with Pretreatment Standards.**

If the Community does not have a United States Environmental Protection Agency delegated and approved pretreatment program or one implemented by the Indiana Department of Environmental Management, pursuant to 40 CFR Part 403, the Utility is obligated to implement an industrial pretreatment permitting program for industrial users that discharge flows to the Utility's facilities for treatment.

To the extent implementation of a pretreatment program is necessary for industrial customers within a Community, the Community will maintain in full force and effect a Sewer Use Ordinance providing that industrial users of the Community's system will comply with any and all pretreatment requirements set forth by the Utility and as required by any applicable federal or state statute or rule, and those currently established in 40 CFR Chapter I, Parts 405-471, the pretreatment standards set forth in 327 IAC 5-16 *et seq.*, as well as any rules and regulations adopted by Resolution of the Utility's Board in furtherance of those pretreatment standards. In addition, the Utility may require an annual certification from the Community certifying its compliance with pretreatment requirements, including results of surveys to determine whether industrial users discharge into the Community's system.

## EXHIBIT C

### **SPECIAL CONTRACT BETWEEN CWA AUTHORITY, INC. AND [INTERVENOR] FOR SEWAGE AND WASTEWATER TREATMENT AND DISPOSAL SERVICES**

This Special Contract ("Special Contract") is executed on March <sup>22</sup>, 2017, by and between CWA Authority, Inc. ("CWA") and Ben Davis Conservancy District ("Intervenor") (hereinafter, CWA and Intervenor may be referred to collectively as the "Parties").

#### RECITALS

WHEREAS, CWA is an Indiana nonprofit corporation created pursuant to an Interlocal Cooperation Agreement entered into by the City of Indianapolis, Indiana (the "City"), the Sanitary District of the City, and Citizens Energy Group in accordance with the Interlocal Cooperation Act;

WHEREAS, Intervenor is a conservancy district;

WHEREAS, Intervenor and the City, acting by and through its Board of Public Works, entered into that certain Agreement between the City of Indianapolis and the Intervenor dated December 17, 1979, as thereafter amended (the "Current Contract"), whereby the City agreed to provide sewage and wastewater transportation, treatment and disposal services to Intervenor pursuant to the terms of the Current Contract;

WHEREAS, the Current Contract was assigned to CWA pursuant to the Indiana Utility Regulatory Commission's (the "Commission") Order dated July 13, 2011 in Cause No. 43936;

WHEREAS, at the request of CWA, the Commission created a subdocket (Cause No. 44685-S1) to review certain agreements for wastewater transportation, treatment and disposal services (including but not limited to the Current Contract) with the Intervenor and various other satellite customers. Such subdocket was designed for review of cost allocation issues related to those agreements and the establishment of rates for the Intervenor and other satellite customers;

WHEREAS, in its case-in-chief filed in Cause No. 44685-S1, CWA sought termination of the Current Contract; transition of all satellite customers to a new Sewer Rate No. 6; a determination of the existence of a subsidy benefitting Intervenor; and an increase in rates charged by CWA to Intervenor in Cause No. 44685 over an 8-year transition period;

WHEREAS, as a compromise, Intervenor and CWA have agreed to terminate the Current Contract effective December 31, 2018 pursuant to a Settlement Agreement dated March <sup>3</sup>, 2017 and this Special Contract;

WHEREAS, CWA filed with the Commission for its approval Sewer Rate No. 6, which sets forth certain rates and charges and terms and conditions for wholesale sewage disposal service to become effective with regard to Intervenor on January 1, 2019;

WHEREAS, CWA, Ben Davis Conservancy District, the City of Greenwood, Indiana, the City of Lawrence, Indiana, and the Indiana Office of the Utility Consumer Counselor have

reached a settlement of all issues in Cause No. 44685-S1 and filed a Settlement Agreement with the Commission for its approval;

WHEREAS, in connection with the settlement of Cause No. 44685-S1, the Parties desire to set forth additional, or in some cases alternative, terms and conditions from those set forth in Sewer Rate No. 6, whereby CWA will continue to provide sewage and wastewater transportation, treatment and disposal services to Intervenor, subject to the Commission's approval of this Special Contract, Sewer Rate No. 6 and the Settlement Agreement; and

WHEREAS, an integral element of the settlement of Cause No. 44685-S1, and the avoidance of any appeal of rulings in such subdocket, is the approval by the Commission of this Special Contract.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Parties agree as follows:

#### AGREEMENT

1. Definitions. The following terms, when used in this Special Contract with initial capital letters, shall have the following meanings:

“Act” shall mean the Public Service Commission Act of Indiana, IC 8-1-2 *et seq.*, as amended.

“Average Daily Flow” shall mean the total flow as reflected on the previous 12 monthly reports submitted to CWA divided by the number of days covered by those monthly reports.

“Beech Grove” shall mean the City of Beech Grove, Indiana.

“Ben Davis” shall mean Ben Davis Conservancy District.

“Commission” shall mean the Indiana Utility Regulatory Commission.

“Connection Charges” shall mean system development fees or capacity fees (i.e., per home, EDU, etc.).

“City” shall mean the Consolidated City of Indianapolis, Indiana, acting by and through its Board of Public Works.

“Current Contract” shall mean that certain agreement by and between Intervenor and the City, originally dated December 17, 1979, as assigned to CWA pursuant to the Commission's Order dated July 13, 2011 in Cause No. 43936.

“Effective Date” shall be the date upon which the Commission approves this Special Contract by a Final Order in Cause No. 44685-S1.

“Fixed Costs” has the meaning ascribed to it in Section 4 A of this Special Contract.

“Greenwood” shall mean the City of Greenwood, Indiana.

“Hamilton Southeastern” shall mean Hamilton Southeastern Utilities, Inc.

“Lawrence” shall mean the City of Lawrence, Indiana.

“New Target Treatment Rate” shall mean the revised Satellite target treatment rate of \$2.4852/1000 gallons taking effect for Intervenor on January 1, 2025. Intervenor shall transition from its Current Contract treatment rate to the New Target Treatment Rate in seven (7) annual steps, starting January 1, 2019 as shown in Section 4 B of this Special Contract.

“OUCC” shall mean the Indiana Office of Utility Consumer Counselor.

“Peak Daily Flow” shall mean the total gallons of flow in any 24-hour period which period begins at 12:00 A.M. and ends at 11:59 P.M.

“Permitted Capacity” shall mean the capacity Average Daily Flow and Peak Daily Flow rate available to the Intervenor as specified in Section 5 of this Special Contract.

“Phase One” shall mean the time period of January 1, 2019 through January 1, 2025.

“Phase Two” shall mean the time period of January 1, 2025 through January 1, 2029.

“Satellite Customers” shall mean Beech Grove, Ben Davis, Whitestown, Greenwood, Hamilton Southeastern, Lawrence and Tri-County.

“Satellite Tariff Treatment Rate” shall mean the Treatment Charge reflected in Sewer Rate No. 6 at January 1, 2026, as adjusted from time to time by Commission Order.

“Settlement Agreement” shall mean that certain Settlement Agreement by and among CWA, Ben Davis, Greenwood, Lawrence and the OUCC dated March 23, 2017.

“Sewer Rate No. 6” shall mean that certain “Sewer Rate No. 6 – Wholesale Sewage Disposal Service,” as approved by the Commission, as may be adjusted or amended from time to time, attached hereto as Exhibit 1.

“Special Contract” shall mean this Special Contract by and between CWA and Intervenor for Sewage and Wastewater Treatment and Disposal Services.

“Tri-County” shall mean Tri-County Conservancy District.

“Whitestown” shall mean the Town of Whitestown, Indiana.

2. Incorporation. The Recitals are incorporated herein and made a part hereof as if restated in full.

3. Term. This Special Contract shall commence on the Effective Date and shall terminate on January 1, 2029.

4. Rates.

A. Current Contract. The Current Contract shall remain in effect up to and including December 31, 2018; provided, however, that the Fixed Costs in the Current Contract will be fixed at \$0.00 per year through December 31, 2018. The Current Contract shall terminate and be of no further force or effect on January 1, 2019, and upon such termination, Wholesale Sewage Disposal Service provided by CWA to Intervenor shall be pursuant to Sewer Rate No. 6, except as otherwise provided by this Special Contract.

B. Phase One. Effective January 1, 2019 through January 1, 2025, Intervenor shall transition from the treatment rate under the Current Contract to the New Target Treatment Rate in seven (7) annual steps, the first step of which taking effect on January 1, 2019, and the full New Target Treatment Rate taking effect on January 1, 2025, as follows:

Effective January 1, 2019	<b>\$0.9718 per 1,000 gallons</b>
Effective January 1, 2020	<b>\$1.1721 per 1,000 gallons</b>
Effective January 1, 2021	<b>\$1.4148 per 1,000 gallons</b>
Effective January 1, 2022	<b>\$1.7070 per 1,000 gallons</b>
Effective January 1, 2023	<b>\$2.0260 per 1,000 gallons</b>
Effective January 1, 2024	<b>\$2.2556 per 1,000 gallons</b>
Effective January 1, 2025	<b>\$2.4852 per 1,000 gallons</b>

During Phase One, any Commission-approved rate increase shall not apply to Intervenor or impact the rates set forth in this subsection.

C. Phase Two. Effective January 1, 2025 through January 1, 2029, Intervenor shall transition from the Phase One rates to the Satellite Tariff Treatment Rate in four (4) proportional annual steps. The first step will take effect on January 1, 2026, and the then-current Satellite Tariff Treatment Rate will take effect on January 1, 2029. Any Satellite Tariff Treatment Rate increases approved by the Commission during Phase Two shall be incorporated into the Phase Two rate schedule, which shall be recalculated using the revised cost of service study methodology described in the Settlement Agreement. During and after Phase Two, except as otherwise provided in Section 6 below, Intervenor will be subject to any tracker-like mechanisms applicable to Satellite Customers and approved by the Commission for CWA, including but not limited to the Environmental Compliance Plan Recovery Mechanism (“ECPRM”) authorized by IC 8-1-28 and the Commission’s Order in Cause No. 44053 and the System Integrity Adjustment (“SIA”) authorized by IC 8-1-31.5.

D. Other Rates and Charges. During the term of this Special Contract, (i) Intervenor shall be subject to extra strength and excess capacity surcharges, as provided for in Sewer Rate No. 6; (ii) Intervenor shall not be subject to any Connection Charges under Sewer Rate No. 6; (iii) during Phase Two, any rate increase under Sewer Rate No. 6 shall take effect no sooner than 35 days after Commission approval; and (iv) CWA will provide 30 days written notice to Intervenor prior to initiating any requests before the Commission to change any rate, charge, tracker or other fees.

5. Permitted Capacity. Intervenor shall be allotted Permitted Capacity in the amount of 4 MGD for Average Daily Flow and 10 MGD for Peak Daily Flow. Intervenor is authorized to issue letters certifying wasteload allocations under 327 IAC 3-2-2(c)(6), subject to the Permitted Capacity limitations set forth herein. Intervenor may apply for additional capacity beyond the Permitted Capacity by submitting a written application to CWA. CWA will evaluate and model any such request to determine if additional flows can be accommodated by the CWA collection system without the need for system improvements. If so, CWA shall approve such additional capacity request. If CWA collection system improvements are required to accommodate Intervenor's additional flow request, CWA may require from Intervenor co-funding of system improvements based on a ratio of the community's wet weather peak flow versus the total wet weather peak flow in the impacted sections of the CWA collection system. CWA will not charge Intervenor any Connection Charges for any new connections to Intervenor's collection systems.

6. Revised Cost of Service Allocation Methodology. The Phase One rates set forth in this Special Contract reflect the use of a revised cost of service allocation methodology as prescribed in the Settlement Agreement filed in Cause No. 44685-S1.

7. Regulatory Approval and Authority. This Special Contract is expressly conditioned upon the Commission's approval and acceptance in such form and substance as shall be acceptable to CWA and Intervenor, without any change or condition unacceptable to either CWA or Intervenor. CWA and Intervenor shall use their best efforts to secure Commission approval and acceptance of this Special Contract at the earliest practicable date. In the event the Commission does not approve this Special Contract in its entirety, either CWA or Intervenor may withdraw from this Special Contract and the Settlement Agreement by giving the other Party not less than 10 days' written notice stating that Party's intention to withdraw from this Special Contract. In the event that a Party withdraws from this Special Contract, this Special Contract shall be null and void as of the date of such withdrawal and the terms and conditions of the Current Contract shall apply. Solely for purpose of compromise, and with the expectation that the Commission will approve this Special Contract and the Settlement Agreement in their entirety, the Parties expressly acknowledge the Commission has jurisdiction over this Special Contract and may propose to change this Special Contract in the future if any of its provisions are found at such time to adversely affect the public interest, or become inconsistent with the purposes of the Act, as amended, following notice to the Parties to this Special Contract, and a hearing, as provided by the Act.

8. Conflict with Sewer Rate No. 6. Sewer Rate No. 6 shall apply to Intervenor, however, in the event of a conflict between the provisions of this Special Contract and the provisions of Sewer Rate No. 6, then the provisions of this Special Contract shall control.

9. Notice. Except as otherwise provided in this Special Contract, notice to Intervenor under this Special Contract shall be sent by certified or registered United States mail, first class, postage prepaid, return receipt requested as follows:

Ben Davis Conservancy District  
703 S. Tibbs Avenue  
Indianapolis, IN 46241

with a copy to:

L. Parvin Price, Esq.  
Barnes & Thornburg LLP  
11 S. Meridian Street  
Indianapolis, IN 46204-3535

Except as otherwise provided in this Special Contract, notice to CWA under this Special Contract shall be sent by certified or registered United States mail, first class, postage prepaid, return receipt requested as follows:

CWA Authority, Inc.  
2020 North Meridian Street  
Indianapolis, Indiana 46202

With a copy to:

Legal Department  
CWA Authority, Inc.  
2020 North Meridian Street  
Indianapolis, Indiana 46202

Notice under this Special Contract may alternatively be given to Intervenor or CWA by personally delivering a copy of the notice to the applicable address specified in this Section 9. Notice provided in accordance with this Section 9 shall be deemed given under this Special Contract as of the date of receipt of such notice. Intervenor and CWA may, from time to time, designate a different person to whom notice under this Section 9 may be given. Any such designation shall be in writing and given in the manner provided in this Section 9.

10. Miscellaneous

A. Agreement to be Construed as a Whole. The language of this Special Contract shall be construed as a whole according to its fair meaning and in accordance with its purpose and without regard to who may have drafted any particular provision herein. The Parties agree and acknowledge that both Parties took part in drafting this Special Contract. All of the terms and conditions of this Special Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

B. Sole Purpose. This Special Contract and the rates, charges, terms and conditions contained herein are applicable only to the sewage disposal services furnished by CWA and as requested by Intervenor under this Special Contract and Sewer Rate No. 6. Nothing in this Special Contract shall be interpreted as establishing an all requirements contract, with the exception of the terms of the Monthly Minimum Capacity Charge as specifically provided in Sewer Rate No. 6 related to metered connections.

C. Good Faith Efforts. The Parties agree that each Party shall in good faith take all reasonable actions necessary to permit such Party to fulfill its obligations under this Special Contract. Where the consent, agreement or approval of either Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, conditioned or delayed. Where either Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. The Parties further acknowledge that CWA will not object to Intervenor's exercising its right to seek approval of alternative sewage treatment solutions in the future, including constructing its own treatment facilities or connecting to treatment facilities other than that owned by CWA.

D. Entire Agreement. This Special Contract contains the entire understanding between the Parties as to all matters referred to herein. No other representations, covenants, undertakings or prior or contemporaneous agreements, whether oral or written, regarding any matters that are not specifically contained and incorporated in this Special Contract, shall be deemed to have any effect or binding impact upon the Parties. The Parties acknowledge that they have not been coerced to enter into this Special Contract.

E. Governing Law. This Special Contract shall be governed by and construed in accordance with the laws of the State of Indiana.

F. Warranties and Representations. All Parties represent and warrant, and shall be estopped to deny, each of the following:

(a) that the signatory is legally competent and duly authorized to execute this Special Contract on behalf of the Party;

(b) that they have had a reasonable opportunity to review and consider this Special Contract and that they have read and understood the terms of this Special Contract;

(c) that they have been provided an opportunity to consult with an attorney of their own choosing prior to executing this Special Contract;

(d) that in executing this Special Contract, they are not relying on any statement, representation, or promise of any other party or the counsel of any other party other than as expressly set forth in this Special Contract;

(e) that they have not executed this Special Contract in reliance upon any promises, representations, warranties, or statements except as specifically set forth in this



Special Contract, the Settlement Agreement, and Sewer Rate No. 6. The Parties acknowledge that this Special Contract, the Settlement Agreement, and Sewer Rate No. 6 are intended to be an integrated settlement; and

(f) the provisions of Sections 5 and 10 B, C, F (f) and G shall continue in full force and effect beyond the term, or termination, of this Special Contract; provided that Intervenor shall no longer be allotted the Permitted Capacity under Section 5 to the extent Intervenor implements an alternative sewage treatment solution as provided for in Section 10 C. In such case, the Permitted Capacity shall be reduced by a like amount or otherwise renegotiated in good faith.

G. Binding Effect. This Special Contract shall be binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, successors and assigns.

H. Counterparts. This Special Contract may be executed by the Parties in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Facsimile or PDF signatures shall have the same force and effect as if in original ink.

I. Miscellaneous Issues. The Parties acknowledge that there are certain unique issues that have not been addressed by this Special Contract. The Parties agree to negotiate in good faith to reach an agreement on such issues by an amendment and to file that amendment with the Commission for its approval.

IN WITNESS HEREOF, the Parties have executed and delivered this Special Contract as of the date first set forth above.

**[Signature Pages Follow]**

CWA Authority, Inc.

Date: 3/23/17

By: Jeffrey A. Willman

Printed: Jeffrey A. Willman

Title: Vice President Water Operations

jt

**Intervenor**

**BEN DAVIS CONSERVANCY DISTRICT**

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

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

Printed: \_\_\_\_\_

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

EXHIBIT 1

SEWER RATE NO. 6

**EXHIBIT D**

**SPECIAL CONTRACT  
BETWEEN CWA AUTHORITY, INC. AND [INTERVENOR]  
FOR SEWAGE AND WASTEWATER TREATMENT AND DISPOSAL SERVICES**

This Special Contract ("Special Contract") is executed on March <sup>22</sup>22, 2017, by and between CWA Authority, Inc. ("CWA") and the City of Greenwood, Indiana ("Intervenor") (hereinafter, CWA and Intervenor may be referred to collectively as the "Parties").

**RECITALS**

WHEREAS, CWA is an Indiana nonprofit corporation created pursuant to an Interlocal Cooperation Agreement entered into by the City of Indianapolis, Indiana (the "City"), the Sanitary District of the City, and Citizens Energy Group in accordance with the Interlocal Cooperation Act;

WHEREAS, Intervenor is a municipal corporation;

WHEREAS, Intervenor and the City, acting by and through its Board of Public Works, entered into that certain Agreement between the City of Indianapolis and the Intervenor dated December 23, 1998, as thereafter amended (the "Current Contract"), whereby the City agreed to provide sewage and wastewater transportation, treatment and disposal services to Intervenor pursuant to the terms of the Current Contract;

WHEREAS, the Current Contract was assigned to CWA pursuant to the Indiana Utility Regulatory Commission's (the "Commission") Order dated July 13, 2011 in Cause No. 43936;

WHEREAS, at the request of CWA, the Commission created a subdocket (Cause No. 44685-S1) to review certain agreements for wastewater transportation, treatment and disposal services (including but not limited to the Current Contract) with the Intervenor and various other satellite customers. Such subdocket was designed for review of cost allocation issues related to those agreements and the establishment of rates for the Intervenor and other satellite customers;

WHEREAS, in its case-in-chief filed in Cause No. 44685-S1, CWA sought termination of the Current Contract; transition of all satellite customers to a new Sewer Rate No. 6; a determination of the existence of a subsidy benefitting Intervenor; and an increase in rates charged by CWA to Intervenor in Cause No. 44685 over an 8-year transition period;

WHEREAS, as a compromise, Intervenor and CWA have agreed to terminate the Current Contract effective December 31, 2018 pursuant to a Settlement Agreement dated March <sup>23</sup>23, 2017 and this Special Contract;

WHEREAS, CWA filed with the Commission for its approval Sewer Rate No. 6, which sets forth certain rates and charges and terms and conditions for wholesale sewage disposal service to become effective with regard to Intervenor on January 1, 2019;

WHEREAS, CWA, Ben Davis Conservancy District, the City of Greenwood, Indiana, the City of Lawrence, Indiana, and the Indiana Office of the Utility Consumer Counselor have

reached a settlement of all issues in Cause No. 44685-S1 and filed a Settlement Agreement with the Commission for its approval;

WHEREAS, in connection with the settlement of Cause No. 44685-S1, the Parties desire to set forth additional, or in some cases alternative, terms and conditions from those set forth in Sewer Rate No. 6, whereby CWA will continue to provide sewage and wastewater transportation, treatment and disposal services to Intervenor, subject to the Commission's approval of this Special Contract, Sewer Rate No. 6 and the Settlement Agreement; and

WHEREAS, an integral element of the settlement of Cause No. 44685-S1, and the avoidance of any appeal of rulings in such subdocket, is the approval by the Commission of this Special Contract.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Parties agree as follows:

#### AGREEMENT

1. Definitions. The following terms, when used in this Special Contract with initial capital letters, shall have the following meanings:

"Act" shall mean the Public Service Commission Act of Indiana, IC 8-1-2 *et seq.*, as amended.

"Average Daily Flow" shall mean the total flow as reflected on the previous 12 monthly reports submitted to CWA divided by the number of days covered by those monthly reports.

"Beech Grove" shall mean the City of Beech Grove, Indiana.

"Ben Davis" shall mean Ben Davis Conservancy District.

"Commission" shall mean the Indiana Utility Regulatory Commission.

"Connection Charges" shall mean system development fees or capacity fees (i.e., per home, EDU, etc.).

"City" shall mean the Consolidated City of Indianapolis, Indiana, acting by and through its Board of Public Works.

"Current Contract" shall mean that certain agreement by and between Intervenor and the City, originally dated December 23, 1998, as assigned to CWA pursuant to the Commission's Order dated July 13, 2011 in Cause No. 43936.

"Effective Date" shall be the date upon which the Commission approves this Special Contract by a Final Order in Cause No. 44685-S1.

"Fixed Costs" has the meaning ascribed to it in Section 4 A of this Special Contract.

"Greenwood" shall mean the City of Greenwood, Indiana.

“Hamilton Southeastern” shall mean Hamilton Southeastern Utilities, Inc.

“Lawrence” shall mean the City of Lawrence, Indiana.

“New Target Treatment Rate” shall mean the revised Satellite target treatment rate of \$2.4852/1000 gallons taking effect for Intervenor on January 1, 2025. Intervenor shall transition from its Current Contract treatment rate to the New Target Treatment Rate in seven (7) annual steps, starting January 1, 2019 as shown in Section 4 B of this Special Contract.

“OUCC” shall mean the Indiana Office of Utility Consumer Counselor.

“Peak Daily Flow” shall mean the total gallons of flow in any 24-hour period which period begins at 12:00 A.M. and ends at 11:59 P.M.

“Permitted Capacity” shall mean the capacity Average Daily Flow and Peak Daily Flow rate available to the Intervenor as specified in Section 5 of this Special Contract.

“Phase One” shall mean the time period of January 1, 2019 through January 1, 2025.

“Phase Two” shall mean the time period of January 1, 2025 through January 1, 2029.

“Satellite Customers” shall mean Beech Grove, Ben Davis, Whitestown, Greenwood, Hamilton Southeastern, Lawrence and Tri-County.

“Satellite Tariff Treatment Rate” shall mean the Treatment Charge reflected in Sewer Rate No. 6 at January 1, 2026, as adjusted from time to time by Commission Order.

“Settlement Agreement” shall mean that certain Settlement Agreement by and among CWA, Ben Davis, Greenwood, Lawrence and the OUCC dated March 23, 2017.

“Sewer Rate No. 6” shall mean that certain “Sewer Rate No. 6 – Wholesale Sewage Disposal Service,” as approved by the Commission, as may be adjusted or amended from time to time, attached hereto as Exhibit 1.

“Special Contract” shall mean this Special Contract by and between CWA and Intervenor for Sewage and Wastewater Treatment and Disposal Services.

“Tri-County” shall mean Tri-County Conservancy District.

“Whitestown” shall mean the Town of Whitestown, Indiana.

2. Incorporation. The Recitals are incorporated herein and made a part hereof as if restated in full.

3. Term. This Special Contract shall commence on the Effective Date and shall terminate on January 1, 2029.

4. Rates.

A. Current Contract. The Current Contract shall remain in effect up to and including December 31, 2018; provided, however, that the Fixed Costs in the Current Contract will be fixed at \$508,899.59 per year through December 31, 2018. The Current Contract shall terminate and be of no further force or effect on January 1, 2019, and upon such termination, Wholesale Sewage Disposal Service provided by CWA to Intervenor shall be pursuant to Sewer Rate No. 6, except as otherwise provided by this Special Contract.

B. Phase One. Effective January 1, 2019 through January 1, 2025, Intervenor shall transition from the treatment rate under the Current Contract to the New Target Treatment Rate in seven (7) annual steps, the first step of which taking effect on January 1, 2019, and the full New Target Treatment Rate taking effect on January 1, 2025, as follows:

Effective January 1, 2019	<b>\$0.9718 per 1,000 gallons</b>
Effective January 1, 2020	<b>\$1.1721 per 1,000 gallons</b>
Effective January 1, 2021	<b>\$1.4148 per 1,000 gallons</b>
Effective January 1, 2022	<b>\$1.7070 per 1,000 gallons</b>
Effective January 1, 2023	<b>\$2.0260 per 1,000 gallons</b>
Effective January 1, 2024	<b>\$2.2556 per 1,000 gallons</b>
Effective January 1, 2025	<b>\$2.4852 per 1,000 gallons</b>

During Phase One, any Commission-approved rate increase shall not apply to Intervenor or impact the rates set forth in this subsection.

C. Phase Two. Effective January 1, 2025 through January 1, 2029, Intervenor shall transition from the Phase One rates to the Satellite Tariff Treatment Rate in four (4) proportional annual steps. The first step will take effect on January 1, 2026, and the then-current Satellite Tariff Treatment Rate will take effect on January 1, 2029. Any Satellite Tariff Treatment Rate increases approved by the Commission during Phase Two shall be incorporated into the Phase Two rate schedule, which shall be recalculated using the revised cost of service study methodology described in the Settlement Agreement. During and after Phase Two, except as otherwise provided in Section 6 below, Intervenor will be subject to any tracker-like mechanisms applicable to Satellite Customers and approved by the Commission for CWA, including but not limited to the Environmental Compliance Plan Recovery Mechanism (“ECPRM”) authorized by IC 8-1-28 and the Commission’s Order in Cause No. 44053 and the System Integrity Adjustment (“SIA”) authorized by IC 8-1-31.5.



D. Other Rates and Charges. During the term of this Special Contract, (i) Intervenor shall be subject to extra strength and excess capacity surcharges, as provided for in Sewer Rate No. 6; (ii) Intervenor shall not be subject to any Connection Charges under Sewer Rate No. 6; (iii) during Phase Two, any rate increase under Sewer Rate No. 6 shall take effect no sooner than 35 days after Commission approval; and (iv) CWA will provide 30 days written notice to Intervenor prior to initiating any requests before the Commission to change any rate, charge, tracker or other fees.

5. Permitted Capacity. Intervenor shall be allotted Permitted Capacity in the amount of 16 MGD for Average Daily Flow and 40 MGD for Peak Daily Flow. Intervenor is authorized to issue letters certifying wasteload allocations under 327 IAC 3-2-2(c)(6), subject to the Permitted Capacity limitations set forth herein. Intervenor may apply for additional capacity beyond the Permitted Capacity by submitting a written application to CWA. CWA will evaluate and model any such request to determine if additional flows can be accommodated by the CWA collection system without the need for system improvements. If so, CWA shall approve such additional capacity request. If CWA collection system improvements are required to accommodate Intervenor's additional flow request, CWA may require from Intervenor co-funding of system improvements based on a ratio of the community's wet weather peak flow versus the total wet weather peak flow in the impacted sections of the CWA collection system. CWA will not charge Intervenor any Connection Charges for any new connections to Intervenor's collection systems.

6. Revised Cost of Service Allocation Methodology. The Phase One rates set forth in this Special Contract reflect the use of a revised cost of service allocation methodology as prescribed in the Settlement Agreement filed in Cause No. 44685-S1.

7. Regulatory Approval and Authority. This Special Contract is expressly conditioned upon the Commission's approval and acceptance in such form and substance as shall be acceptable to CWA and Intervenor, without any change or condition unacceptable to either CWA or Intervenor. CWA and Intervenor shall use their best efforts to secure Commission approval and acceptance of this Special Contract at the earliest practicable date. In the event the Commission does not approve this Special Contract in its entirety, either CWA or Intervenor may withdraw from this Special Contract and the Settlement Agreement by giving the other Party not less than 10 days' written notice stating that Party's intention to withdraw from this Special Contract. In the event that a Party withdraws from this Special Contract, this Special Contract shall be null and void as of the date of such withdrawal and the terms and conditions of the Current Contract shall apply. Solely for purpose of compromise, and with the expectation that the Commission will approve this Special Contract and the Settlement Agreement in their entirety, the Parties expressly acknowledge the Commission has jurisdiction over this Special Contract and may propose to change this Special Contract in the future if any of its provisions are found at such time to adversely affect the public interest, or become inconsistent with the purposes of the Act, as amended, following notice to the Parties to this Special Contract, and a hearing, as provided by the Act.

8. Conflict with Sewer Rate No. 6. Sewer Rate No. 6 shall apply to Intervenor, however, in the event of a conflict between the provisions of this Special Contract and the provisions of Sewer Rate No. 6, then the provisions of this Special Contract shall control.

9. Notice. Except as otherwise provided in this Special Contract, notice to Intervenor under this Special Contract shall be sent by certified or registered United States mail, first class, postage prepaid, return receipt requested as follows:

Office of Corporate Counsel  
City of Greenwood, Indiana  
300 S. Madison Avenue  
Greenwood, IN 46142

with a copy to:

Alan M. Hux, Esq.  
Taft Stettinus & Hollister LLP  
One Indiana Square, Ste. 3500  
Indianapolis, IN 46204-2023

Except as otherwise provided in this Special Contract, notice to CWA under this Special Contract shall be sent by certified or registered United States mail, first class, postage prepaid, return receipt requested as follows:

CWA Authority, Inc.  
2020 North Meridian Street  
Indianapolis, Indiana 46202

With a copy to:

Legal Department  
CWA Authority, Inc.  
2020 North Meridian Street  
Indianapolis, Indiana 46202

Notice under this Special Contract may alternatively be given to Intervenor or CWA by personally delivering a copy of the notice to the applicable address specified in this Section 9. Notice provided in accordance with this Section 9 shall be deemed given under this Special Contract as of the date of receipt of such notice. Intervenor and CWA may, from time to time, designate a different person to whom notice under this Section 9 may be given. Any such designation shall be in writing and given in the manner provided in this Section 9.

10. Miscellaneous

A. Agreement to be Construed as a Whole. The language of this Special Contract shall be construed as a whole according to its fair meaning and in accordance with its purpose and without regard to who may have drafted any particular provision herein. The Parties agree and acknowledge that both Parties took part in drafting this Special Contract. All of the terms and conditions of this Special Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

B. Sole Purpose. This Special Contract and the rates, charges, terms and conditions contained herein are applicable only to the sewage disposal services furnished by CWA and as requested by Intervenor under this Special Contract and Sewer Rate No. 6. Nothing in this Special Contract shall be interpreted as establishing an all requirements contract, with the exception of the terms of the Monthly Minimum Capacity Charge as specifically provided in Sewer Rate No. 6 related to metered connections.

C. Good Faith Efforts. The Parties agree that each Party shall in good faith take all reasonable actions necessary to permit such Party to fulfill its obligations under this Special Contract. Where the consent, agreement or approval of either Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, conditioned or delayed. Where either Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. The Parties further acknowledge that CWA will not object to Intervenor's exercising its right to seek approval of alternative sewage treatment solutions in the future, including constructing its own treatment facilities or connecting to treatment facilities other than that owned by CWA.

D. Entire Agreement. This Special Contract contains the entire understanding between the Parties as to all matters referred to herein. No other representations, covenants, undertakings or prior or contemporaneous agreements, whether oral or written, regarding any matters that are not specifically contained and incorporated in this Special Contract, shall be deemed to have any effect or binding impact upon the Parties. The Parties acknowledge that they have not been coerced to enter into this Special Contract.

E. Governing Law. This Special Contract shall be governed by and construed in accordance with the laws of the State of Indiana.

F. Warranties and Representations. All Parties represent and warrant, and shall be estopped to deny, each of the following:

(a) that the signatory is legally competent and duly authorized to execute this Special Contract on behalf of the Party;

(b) that they have had a reasonable opportunity to review and consider this Special Contract and that they have read and understood the terms of this Special Contract;

(c) that they have been provided an opportunity to consult with an attorney of their own choosing prior to executing this Special Contract;

(d) that in executing this Special Contract, they are not relying on any statement, representation, or promise of any other party or the counsel of any other party other than as expressly set forth in this Special Contract;

(e) that they have not executed this Special Contract in reliance upon any promises, representations, warranties, or statements except as specifically set forth in this

Special Contract, the Settlement Agreement, and Sewer Rate No. 6. The Parties acknowledge that this Special Contract, the Settlement Agreement, and Sewer Rate No. 6 are intended to be an integrated settlement; and

(f) the provisions of Sections 5 and 10 B, C, F (f) and G shall continue in full force and effect beyond the term, or termination, of this Special Contract; provided that Intervenor shall no longer be allotted the Permitted Capacity under Section 5 to the extent Intervenor implements an alternative sewage treatment solution as provided for in Section 10 C. In such case, the Permitted Capacity shall be reduced by a like amount or otherwise renegotiated in good faith.

G. Binding Effect. This Special Contract shall be binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, successors and assigns.

H. Counterparts. This Special Contract may be executed by the Parties in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Facsimile or PDF signatures shall have the same force and effect as if in original ink.

I. Miscellaneous Issues. The Parties acknowledge that there are certain unique issues that have not been addressed by this Special Contract. The Parties agree to negotiate in good faith to reach an agreement on such issues by an amendment and to file that amendment with the Commission for its approval.

IN WITNESS HEREOF, the Parties have executed and delivered this Special Contract as of the date first set forth above.

**[Signature Pages Follow]**

Date:

3/23/17

CWA Authority, Inc.

By:

Jeffrey A. Willman

Printed:

Jeffrey A. Willman

Title:

Vice President Water operations

JT

**Intervenor**

**CITY OF GREENWOOD, INDIANA**

Date: 3/23/17

By: Mark W. Meyer

Printed: Mark W. Meyer

Title: Mayor

EXHIBIT 1

SEWER RATE NO. 6

**EXHIBIT E**

**SPECIAL CONTRACT  
BETWEEN CWA AUTHORITY, INC. AND [INTERVENOR]  
FOR SEWAGE AND WASTEWATER TREATMENT AND DISPOSAL SERVICES**

This Special Contract (“Special Contract”) is executed on March 23, 2017, by and between CWA Authority, Inc. (“CWA”) and the City of Lawrence, Indiana (“Intervenor”) (hereinafter, CWA and Intervenor may be referred to collectively as the “Parties”).

**RECITALS**

WHEREAS, CWA is an Indiana nonprofit corporation created pursuant to an Interlocal Cooperation Agreement entered into by the City of Indianapolis, Indiana (the “City”), the Sanitary District of the City, and Citizens Energy Group in accordance with the Interlocal Cooperation Act;

WHEREAS, Intervenor is a municipality and political subdivision established under the laws of the State of Indiana;

WHEREAS, Intervenor and the City, acting by and through its Board of Public Works, entered into that certain Agreement for Wastewater Treatment and Disposal Service between the City of Indianapolis and the Intervenor dated November 13, 1998, as thereafter amended (the “Current Contract”), whereby the City agreed to provide sewage and wastewater transportation, treatment and disposal services to Intervenor pursuant to the terms of the Current Contract;

WHEREAS, the Current Contract was assigned to CWA pursuant to the Indiana Utility Regulatory Commission’s (the “Commission”) Order dated July 13, 2011 in Cause No. 43936;

WHEREAS, at the request of CWA, the Commission created a subdocket (Cause No. 44685-S1) to review certain agreements for wastewater transportation, treatment and disposal services (including but not limited to the Current Contract) with the Intervenor and various other satellite customers. Such subdocket was designed for review of cost allocation issues related to those agreements and the establishment of rates for the Intervenor and other satellite customers;

WHEREAS, in its case-in-chief filed in Cause No. 44685-S1, CWA sought termination of the Current Contract; transition of all satellite customers to a new Sewer Rate No. 6; a determination of the existence of a subsidy benefitting Intervenor; and an increase in rates charged by CWA to Intervenor in Cause No. 44685 over an 8-year transition period;

WHEREAS, as a compromise, Intervenor and CWA have agreed to terminate the Current Contract effective December 31, 2018 pursuant to a Settlement Agreement dated March 23, 2017 and this Special Contract;

WHEREAS, CWA filed with the Commission for its approval Sewer Rate No. 6, which sets forth certain rates and charges and terms and conditions for wholesale sewage disposal service to become effective with regard to Intervenor on January 1, 2019;

WHEREAS, CWA, Ben Davis Conservancy District, the City of Greenwood, Indiana, the City of Lawrence, Indiana, and the Indiana Office of the Utility Consumer Counselor have



reached a settlement of all issues in Cause No. 44685-S1 and filed a Settlement Agreement with the Commission for its approval;

WHEREAS, in connection with the settlement of Cause No. 44685-S1, the Parties desire to set forth additional, or in some cases alternative, terms and conditions from those set forth in Sewer Rate No. 6, whereby CWA will continue to provide sewage and wastewater transportation, treatment and disposal services to Intervenor, subject to the Commission's approval of this Special Contract, Sewer Rate No. 6 and the Settlement Agreement; and

WHEREAS, an integral element of the settlement of Cause No. 44685-S1, and the avoidance of any appeal of rulings in such subdocket, is the approval by the Commission of this Special Contract.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Parties agree as follows:

#### AGREEMENT

1. Definitions. The following terms, when used in this Special Contract with initial capital letters, shall have the following meanings:

“Act” shall mean the Public Service Commission Act of Indiana, IC 8-1-2 *et seq.*, as amended.

“Average Daily Flow” shall mean the total flow as reflected on the previous 12 monthly reports submitted to CWA divided by the number of days covered by those monthly reports.

“Beech Grove” shall mean the City of Beech Grove, Indiana.

“Ben Davis” shall mean Ben Davis Conservancy District.

“Commission” shall mean the Indiana Utility Regulatory Commission.

“Connection Charges” shall mean system development fees or capacity fees (i.e., per home, EDU, etc.).

“City” shall mean the Consolidated City of Indianapolis, Indiana, acting by and through its Board of Public Works.

“Current Contract” shall mean that certain Agreement for Wastewater Treatment and Disposal by and between Intervenor and the City, originally dated November 13, 1998, as assigned to CWA pursuant to the Commission's Order dated July 13, 2011 in Cause No. 43936.

“Effective Date” shall be the date upon which the Commission approves this Special Contract by a Final Order in Cause No. 44685-S1.

“Fixed Costs” shall mean the costs paid by Intervenor pursuant to Section 8.04 of the Current Contract as limited in Section 4 A of this Special Contract.

“Greenwood” shall mean the City of Greenwood, Indiana.

“Hamilton Southeastern” shall mean Hamilton Southeastern Utilities, Inc.

“Lawrence” shall mean the City of Lawrence, Indiana.

“New Target Treatment Rate” shall mean the revised Satellite target treatment rate of \$2.4852/1000 gallons taking effect for Intervenor on January 1, 2025. Intervenor shall transition from its Current Contract treatment rate to the New Target Treatment Rate in seven (7) annual steps, starting January 1, 2019 as shown in Section 4 B of this Special Contract.

“OUCC” shall mean the Indiana Office of Utility Consumer Counselor.

“Peak Daily Flow” shall mean the total gallons of flow in any 24-hour period which period begins at 12:00 A.M. and ends at 11:59 P.M.

“Permitted Capacity” shall mean the capacity Average Daily Flow and Peak Daily Flow rate available to the Intervenor as specified in Section 5 of this Special Contract.

“Phase One” shall mean the time period of January 1, 2019 through January 1, 2025.

“Phase Two” shall mean the time period of January 1, 2025 through January 1, 2029.

“Satellite Customers” shall mean Beech Grove, Ben Davis, Whitestown, Greenwood, Hamilton Southeastern, Lawrence and Tri-County.

“Satellite Tariff Treatment Rate” shall mean the Treatment Charge reflected in Sewer Rate No. 6 at January 1, 2026, as adjusted from time to time by Commission Order.

“Settlement Agreement” shall mean that certain Settlement Agreement by and among CWA, Ben Davis, Greenwood, Lawrence and the OUCC dated March 23, 2017.

“Sewer Rate No. 6” shall mean that certain “Sewer Rate No. 6 – Wholesale Sewage Disposal Service,” as approved by the Commission, as may be adjusted or amended from time to time, attached hereto as Exhibit 1.

“Special Contract” shall mean this Special Contract by and between CWA and Intervenor for Sewage and Wastewater Treatment and Disposal Services.

“Tri-County” shall mean Tri-County Conservancy District.

“Whitestown” shall mean the Town of Whitestown, Indiana.

2. Incorporation. The Recitals are incorporated herein and made a part hereof as if restated in full.

3. Term. This Special Contract shall commence on the Effective Date and shall terminate on January 1, 2029.

4. Rates.

A. Current Contract. The Current Contract shall remain in effect up to and including December 31, 2018; provided, however, that the Fixed Costs in the Current Contract will be fixed at \$169,600.00 per year through December 31, 2018. The Current Contract shall terminate and be of no further force or effect on January 1, 2019, and upon such termination, Wholesale Sewage Disposal Service provided by CWA to Intervenor shall be pursuant to Sewer Rate No. 6, except as otherwise provided by this Special Contract.

B. Phase One. Effective January 1, 2019 through January 1, 2025, Intervenor shall transition from the treatment rate under the Current Contract to the New Target Treatment Rate in seven (7) annual steps, the first step of which taking effect on January 1, 2019, and the full New Target Treatment Rate taking effect on January 1, 2025, as follows:

Effective January 1, 2019	<b>\$0.9718 per 1,000 gallons</b>
Effective January 1, 2020	<b>\$1.1721 per 1,000 gallons</b>
Effective January 1, 2021	<b>\$1.4148 per 1,000 gallons</b>
Effective January 1, 2022	<b>\$1.7070 per 1,000 gallons</b>
Effective January 1, 2023	<b>\$2.0260 per 1,000 gallons</b>
Effective January 1, 2024	<b>\$2.2556 per 1,000 gallons</b>
Effective January 1, 2025	<b>\$2.4852 per 1,000 gallons</b>

During Phase One, any Commission-approved rate increase shall not apply to Intervenor or impact the rates set forth in this subsection.

C. Phase Two. Effective January 1, 2025 through January 1, 2029, Intervenor shall transition from the Phase One rates to the Satellite Tariff Treatment Rate in four (4) proportional annual steps. The first step will take effect on January 1, 2026, and the then-current Satellite Tariff Treatment Rate will take effect on January 1, 2029. Any Satellite Tariff Treatment Rate increases approved by the Commission during Phase Two shall be incorporated into the Phase Two rate schedule, which shall be recalculated using the revised cost of service study methodology described in the Settlement Agreement. During and after Phase Two, except as otherwise provided in Section 6 below, Intervenor will be subject to any tracker-like mechanisms applicable to Satellite Customers and approved by the Commission for CWA, including but not limited to the Environmental Compliance Plan Recovery Mechanism (“ECPRM”) authorized by IC 8-1-28 and the Commission’s Order in Cause No. 44053 and the System Integrity Adjustment (“SIA”) authorized by IC 8-1-31.5.

D. Other Rates and Charges. During the term of this Special Contract, (i) Intervenor shall be subject to extra strength and excess capacity surcharges, as provided for in Sewer Rate No. 6; (ii) Intervenor shall not be subject to any Connection Charges under Sewer Rate No. 6; (iii) during Phase Two, any rate increase under Sewer Rate No. 6 shall take effect no sooner than 35 days after Commission approval; and (iv) CWA will provide 30 days written notice to Intervenor prior to initiating any requests before the Commission to change any rate, charge, tracker or other fees.

5. Permitted Capacity. Intervenor shall be allotted Permitted Capacity in the amount of 8 MGD for Average Daily Flow and 20 MGD for Peak Daily Flow. Intervenor is authorized to issue letters certifying wasteload allocations under 327 IAC 3-2-2(c)(6), subject to the Permitted Capacity limitations set forth herein. Intervenor may apply for additional capacity beyond the Permitted Capacity by submitting a written application to CWA. CWA will evaluate and model any such request to determine if additional flows can be accommodated by the CWA collection system without the need for system improvements. If so, CWA shall approve such additional capacity request. If CWA collection system improvements are required to accommodate Intervenor's additional flow request, CWA may require from Intervenor co-funding of system improvements based on a ratio of the community's wet weather peak flow versus the total wet weather peak flow in the impacted sections of the CWA collection system. CWA will not charge Intervenor any Connection Charges for any new connections to Intervenor's collection systems.

6. Revised Cost of Service Allocation Methodology. The Phase One rates set forth in this Special Contract reflect the use of a revised cost of service allocation methodology as prescribed in the Settlement Agreement filed in Cause No. 44685-S1.

7. Regulatory Approval and Authority. This Special Contract is expressly conditioned upon the Commission's approval and acceptance in such form and substance as shall be acceptable to CWA and Intervenor, without any change or condition unacceptable to either CWA or Intervenor. CWA and Intervenor shall use their best efforts to secure Commission approval and acceptance of this Special Contract at the earliest practicable date. In the event the Commission does not approve this Special Contract in its entirety, either CWA or Intervenor may withdraw from this Special Contract and the Settlement Agreement by giving the other Party not less than 10 days' written notice stating that Party's intention to withdraw from this Special Contract. In the event that a Party withdraws from this Special Contract, this Special Contract shall be null and void as of the date of such withdrawal and the terms and conditions of the Current Contract shall apply. Solely for purpose of compromise, and with the expectation that the Commission will approve this Special Contract and the Settlement Agreement in their entirety, the Parties expressly acknowledge the Commission has jurisdiction over this Special Contract and may propose to change this Special Contract in the future if any of its provisions are found at such time to adversely affect the public interest, or become inconsistent with the purposes of the Act, as amended, following notice to the Parties to this Special Contract, and a hearing, as provided by the Act.

8. Conflict with Sewer Rate No. 6. Sewer Rate No. 6 shall apply to Intervenor, however, in the event of a conflict between the provisions of this Special Contract and the provisions of Sewer Rate No. 6, then the provisions of this Special Contract shall control.

9. Notice. Except as otherwise provided in this Special Contract, notice to Intervenor under this Special Contract shall be sent by certified or registered United States mail, first class, postage prepaid, return receipt requested as follows:

Office of the Mayor  
City of Lawrence, Indiana  
9001 East 59<sup>th</sup> Street  
Lawrence, IN 46216

with a copy to:  
Brian C. Bosma, Esq.  
Kroger, Gardis & Regas, LLP  
111 Monument Circle, Ste. 900  
Indianapolis, IN 46204

Except as otherwise provided in this Special Contract, notice to CWA under this Special Contract shall be sent by certified or registered United States mail, first class, postage prepaid, return receipt requested as follows:

CWA Authority, Inc.  
2020 North Meridian Street  
Indianapolis, Indiana 46202

With a copy to:

Legal Department  
CWA Authority, Inc.  
2020 North Meridian Street  
Indianapolis, Indiana 46202

Notice under this Special Contract may alternatively be given to Intervenor or CWA by personally delivering a copy of the notice to the applicable address specified in this Section 9. Notice provided in accordance with this Section 9 shall be deemed given under this Special Contract as of the date of receipt of such notice. Intervenor and CWA may, from time to time, designate a different person to whom notice under this Section 9 may be given. Any such designation shall be in writing and given in the manner provided in this Section 9.

10. Miscellaneous

A. Agreement to be Construed as a Whole. The language of this Special Contract shall be construed as a whole according to its fair meaning and in accordance with its purpose and without regard to who may have drafted any particular provision herein. The Parties agree and acknowledge that both Parties took part in drafting this Special Contract. All of the terms and conditions of this Special Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

B. Sole Purpose. This Special Contract and the rates, charges, terms and conditions contained herein are applicable only to the sewage disposal services furnished by CWA and as requested by Intervenor under this Special Contract and Sewer Rate No. 6. Nothing in this Special Contract shall be interpreted as establishing an all requirements contract, with the exception of the terms of the Monthly Minimum Capacity Charge as specifically provided in Sewer Rate No. 6 related to metered connections.

C. Good Faith Efforts. The Parties agree that each Party shall in good faith take all reasonable actions necessary to permit such Party to fulfill its obligations under this Special Contract. Where the consent, agreement or approval of either Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, conditioned or delayed. Where either Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. The Parties further acknowledge that CWA will not object to Intervenor's exercising its right to seek approval of alternative sewage treatment solutions in the future, including constructing its own treatment facilities or connecting to treatment facilities other than that owned by CWA.

D. Entire Agreement. This Special Contract contains the entire understanding between the Parties as to all matters referred to herein. No other representations, covenants, undertakings or prior or contemporaneous agreements, whether oral or written, regarding any matters that are not specifically contained and incorporated in this Special Contract, shall be deemed to have any effect or binding impact upon the Parties. The Parties acknowledge that they have not been coerced to enter into this Special Contract.

E. Governing Law. This Special Contract shall be governed by and construed in accordance with the laws of the State of Indiana.

F. Warranties and Representations. All Parties represent and warrant, and shall be estopped to deny, each of the following:

(a) that the signatory is legally competent and duly authorized to execute this Special Contract on behalf of the Party;

(b) that they have had a reasonable opportunity to review and consider this Special Contract and that they have read and understood the terms of this Special Contract;

(c) that they have been provided an opportunity to consult with an attorney of their own choosing prior to executing this Special Contract;

(d) that in executing this Special Contract, they are not relying on any statement, representation, or promise of any other party or the counsel of any other party other than as expressly set forth in this Special Contract;

(e) that they have not executed this Special Contract in reliance upon any promises, representations, warranties, or statements except as specifically set forth in this

Special Contract, the Settlement Agreement, and Sewer Rate No. 6. The Parties acknowledge that this Special Contract, the Settlement Agreement, and Sewer Rate No. 6 are intended to be an integrated settlement; and

(f) the provisions of Sections 5 and 10 B, C, F (f) and G shall continue in full force and effect beyond the term, or termination, of this Special Contract; provided that Intervenor shall no longer be allotted the Permitted Capacity under Section 5 to the extent Intervenor implements an alternative sewage treatment solution as provided for in Section 10 C. In such case, the Permitted Capacity shall be reduced by a like amount or otherwise renegotiated in good faith.

G. Binding Effect. This Special Contract shall be binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, successors and assigns.

H. Counterparts. This Special Contract may be executed by the Parties in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Facsimile or PDF signatures shall have the same force and effect as if in original ink.

I. Special Matters. The Parties acknowledge that CWA and Intervenor have established several informal metering and offset arrangements which the parties desire to ratify, confirm and formalize in this subsection. These arrangements include the following:

- i. Kroger Complex. Intervenor provides drinking water to the sewer customers located at the Kroger Complex at 82<sup>nd</sup> and Fall Creek Road, Lawrence, Indiana (“Kroger Complex”) as illustrated in Exhibit 2. The Parties agree there is no suitable location for a sewage flow meter for the discharge from these properties. Intervenor shall continue to provide CWA with water usage readings for the Kroger Complex on a monthly basis, and CWA shall continue to bill Intervenor for sewage flow for the Kroger Complex based on these water meter readings, subject to CWA’s reasonable requests to confirm such readings.
- ii. Glick Addition. The Parties acknowledge that 22 homes in the Glick Addition located on the South side of 46<sup>th</sup> Street between Post Road and Mitthoeffer Road, as illustrated in Exhibit 3, are unmetered, and the flow from these properties does not support the cost of installing and monitoring a meter. In lieu of a meter, the flow from this Glick Addition shall be calculated and billed based on Equivalent Dwelling Units (EDUs). Each EDU shall be deemed to have a daily flow of 310 gallons. The monthly flow volume for this Glick Addition will be calculated and added to the monthly metered flows on the monthly invoice for Lawrence.

IN WITNESS HEREOF, the Parties have executed and delivered this Special Contract as of the date first set forth above.

Date: 3/23/2017

CWA Authority, Inc.

By: Jeffrey A. Willman

Printed: Jeffrey A. Willman

Title: Vice President Water Operations


RT



**Intervenor**

**CITY OF LAWRENCE, INDIANA**

Date: 3/17/2017

By:   
Steven Collier, Mayor

**LAWRENCE UTILITY SERVICE BOARD**

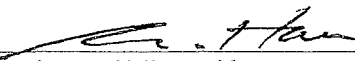
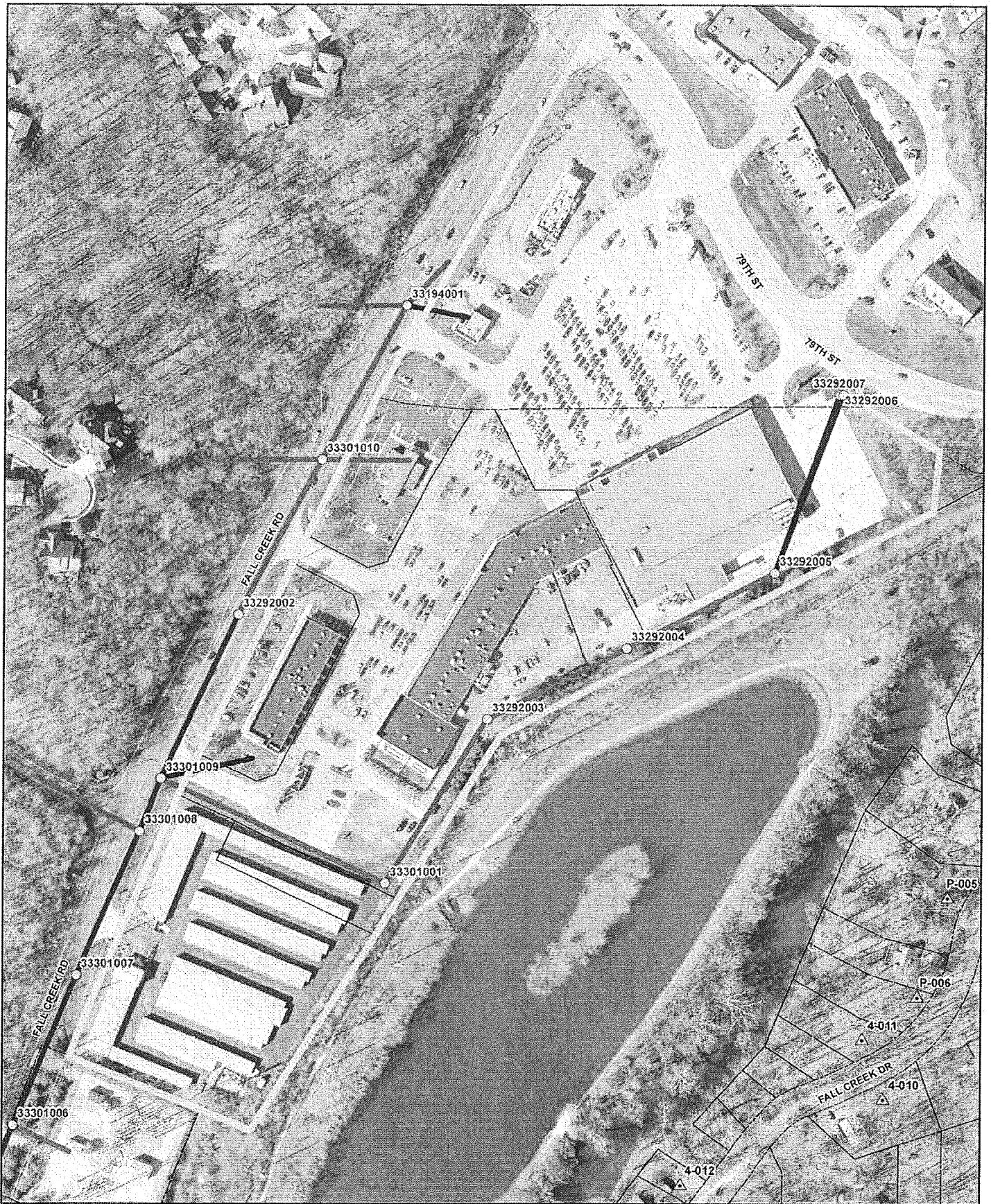
By:   
Steven Hall, President

EXHIBIT 1


SEWER RATE NO. 6

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# CITY OF LAWRENCE SANITARY SEWER SYSTEM EXHIBIT 2 - KROGER COMPLEX

1 inch = 200 feet





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**CITY OF LAWRENCE  
 SANITARY SEWER SYSTEM  
 EXHIBIT 3 - GLICK ADDITION**

1 inch = 150 feet

EXHIBIT F

# 44685-S1 Proposed

## Rate Phase-In Schedule

