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SPECIAL ORDINANCE NO. S-

AN ORDINANCE CLARIFYING INTENT OF BILL NO. G-09-05-08 (ORDINANCE NO. G-12-09), ADOPTED BY **COMMON COUNCIL OF FORT WAYNE MAY 26, 2009.** AND G-12-02-02 (ORDINANCE NO. G-6-12), ADOPTED BY COMMON COUNCIL OF FORT WAYNE FEBRUARY 28, 2012

WHEREAS, on May 26, 2009, Common Council of Fort Wayne adopted Bill No. G-09-05-08 (Ordinance No. G-12-09), which among other things, approved a five year rate plan that would adjust sewer rates annually on the 1st day of July of each year from July 1, 2009 to July 1, 2013, (hereinafter referred to as "2009 Rate Ordinance");

WHEREAS, on February 28, 2012, Common Council of Fort Wayne adopted Bill No. G-12-02-02 (Ordinance No. G-6-12), which repealed and replaced Chapter 51 of the Fort Wayne Code of Ordinances ("City Code"), as mandated by Indiana Department of Environmental Management ("IDEM") and the United States Environmental Protection Agency ("USEPA"), (hereinafter referred to as "2012 Pretreatment Ordinance");

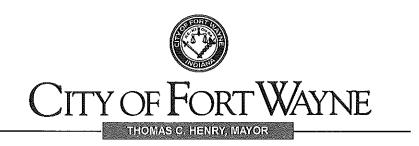
WHEREAS, as stated in the preamble of the 2012 Pretreatment Ordinance, City of Fort Wayne, as Control Authority, was required to "develop, enforce and maintain adequate legal authority in its Sewer Use Ordinance (SUO) to fully implement the pretreatment program" and "within six months after the effective date of its NPDES Permit, to submit to EPA Region 5 and the IDEM pretreatment group, a program modification request to incorporate the pretreatment streamlining revision in 327 IAC 5-16 through 327 IAC 5-21 of Indiana Administrative Code, which became effective on May 3, 2009";

WHEREAS, the adoption of the 2012 Pretreatment Ordinance was for the purpose of complying with the mandates of IDEM and USEPA and was

1 not adopted for the purpose of amending or repealing the sewer rate structure previously adopted by Council in the 2009 Rate Ordinance: 2 3 WHEREAS, to eliminate any interpretation to the contrary, the 4 Common Council has determined to adopt an ordinance to clarify the intent 5 of the 2012 Pretreatment Ordinance. 6 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL 7 OF THE CITY OF FORT WAYNE, INDIANA: 8. **SECTION 1**. The above recitals are incorporated herein by this 9 reference as though fully set forth herein below. 10 **SECTION 2**. Council hereby declares the adoption of the 2012 11 Pretreatment Ordinance was for the purpose of complying with the mandates 12 of IDEM and USEPA to develop, enforce and maintain adequate legal 13 authority in City of Fort Wayne's Sewer Use Ordinance to fully implement a 14 pretreatment program and to incorporate those provisions into the City Code. 15 Notwithstanding any language set forth in the 2012 SECTION 3. 16 Pretreatment Ordinance, Council hereby finds that the adoption of the 2012 17 Pretreatment Ordinance does not amend or repeal the sewer rate structure 18 adopted in the 2009 Rate Ordinance. 19 **SECTION 4**. That this Ordinance shall be in full force and effect from 20 and after its passage and any and all necessary approval by the Mayor. 21 22 23 Council Member 24 APPROVED AS TO FORM AND LEGALITY 25 26 Carol Helton, City Attorney 27 28

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Interoffice Memo

Date: May 23, 2013

To: Common Council Members

From: Lindsey Jackson, Associate City Attorney

RE: AN ORDINANCE CLARIFYING INTENT OF BILL NO. G-09-05-08 (ORDINANCE NO. G-12-09), ADOPTED BY COMMON COUNCIL OF FORT WAYNE MAY 26, 2009, AND BILL NO. G-12-02-02 (ORDINANCE NO. G-6-12), ADOPTED BY COMMON COUNCIL OF FORT WAYNE FEBRUARY 28, 2012

In order to eliminate any interpretation to the contrary, this Ordinance is to clarify Common Council's intent when it adopted Bill No. G-12-02-02 (Ordinance No. G-6-12) ("2012 Pretreatment Ordinance") in reference to sewer rates adopted in G-09-05-8 (Ordinance No. G-12-09) ("2009 Rate Ordinance"). The proper steps required by Indiana Code were not taken to repeal the rates when the 2012 Pretreatment Ordinance was adopted and therefore any attempt to interpret the 2012 Pretreatment Ordinance as a repeal of sewer rates validly adopted in the 2009 Rate Ordinance must fail. Common Council adopted the 2012 Pretreatment Ordinance, which repealed and replaced Chapter 51, as mandated by Indiana Department of Environmental Management ("IDEM") and the United States Environmental Protection Agency ("USEPA"). City of Fort Wayne, as Control Authority, was required to develop, enforce and maintain adequate legal authority in its Sewer Use Ordinance (SUO) to fully implement the pretreatment program. The intent of adopting the 2012 Pretreatment Ordinance was to comply with IDEM and EPA mandates regarding pretreatment, not to change the five year sewer rate plan adopted by the 2009 Rate Ordinance.

cc:

Diane Brown

File