

AN ORDINANCE AUTHORIZING AND APPROVING THE ENTRY INTO AN INTERLOCAL AGREEMENT AUTHORIZING THE CITY OF FORT WAYNE, INDIANA, TO EXERCISE ANY AND ALL POWERS NECESSARY, AND TO ASSUME ALL RESPONSIBILITY FOR, PROVIDING SEWER AND WATER SERVICES TO CUSTOMERS IN AND AROUND THE ALLEN COUNTY REGIONAL WATER & SEWER DISTRICT'S SERVICE AREA.

WHEREAS, Indiana Code ch. 36-1-7 (the "**Interlocal Law**") authorizes the State of Indiana, political subdivisions, and state agencies to enter into interlocal cooperation agreements for the exercise of powers by one entity on behalf of another; and

WHEREAS, the Allen County Regional Water & Sewer District ("**District**") is an Indiana regional district governed by Ind. Code Ch. 13-26-1, which authorizes the District to, among other things, provide sewer and water service to its customers (the "**District's Authority**"); and

WHEREAS, the City of Fort Wayne, Indiana ("**City**") is a political subdivision that owns and operates a municipally owned water and sewer utility by and through its Board of Public Works; and

WHEREAS, the Board of Public Works of the City of Fort Wayne, Indiana, ("**Board**") is a political subdivision that owns and operates a municipally owned water and sewer utility governed by Ind. Code art. 8-1.5 and ch. 36-9-23, which authorize the City to, among other things, provide water and sewer service inside and outside of the City's corporate boundaries (the "**Board's Authority**"); and

WHEREAS, the City and the Board have executed a Utility System Asset Acquisition Agreement ("**Acquisition Agreement**") with the District and desire, pursuant to the Acquisition Agreement, to enter into an Interlocal Agreement, attached hereto as Exhibit "A" ("**Interlocal Agreement**"), with the District upon closing of the transaction contemplated in the Acquisition Agreement; and

WHEREAS, the Interlocal Law requires that any interlocal cooperation agreement be approved and authorized by resolution or ordinance of a participating government entities; and

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, (the "**Governing Body**") desires to authorize the entry into the Interlocal Agreement for the exercise of the District's powers by the City and the Board.

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

SECTION 1. Subject to the closing of the transaction contemplated by the Acquisition Agreement, the Governing Body does hereby authorize and approve the entry by the Board into the Interlocal Agreement to be dated on or about December 15th, 2021 (i.e. the date on which the City and District will effectively close on the purchase described in the Acquisition Agreement), constituting an interlocal cooperation agreement by and among the District, the City, and the Board.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

**COMMON COUNCIL OF THE
CITY OF FORT WAYNE, INDIANA**

By: _____
Member of the Common Council

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Exhibit A

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is entered into this 15th day of December, 2021, by and between the City of Fort Wayne, Indiana (“City”), and the Allen County Regional Water and Sewer District (“District”) (collectively, the “Parties”), and shall be effective as of the Effective Date set forth below.

RECITALS

A. The City and District are governmental entities and political subdivisions within Allen County, State of Indiana.

B. As an Indiana municipality, the City is authorized under Ind. Code §§ 36-9-23-1 and § 8-1.5-1-1, et seq. (the “**City’s Authority**”), to provide sewer and water service inside and outside of its municipal boundaries.

C. The District is an Indiana regional district governed by Ind. Code § 13-26-1-1, et seq., which authorizes the District to, among other things, provide sewer and water service to its customers (the “**District’s Authority**”).

D. Simultaneously herewith, the Parties have closed on the transaction contemplated by a Utility System Asset Acquisition Agreement (“Acquisition Agreement”) whereby the City has purchased all the District’s assets and assumed all ongoing District obligations after closing (“Closing”) on the contemplated transaction.

E. After Closing, the District’s customers will become customers of the City and receive the City’s lower monthly “Outside City” user rates.

F. Simultaneously herewith, the Indiana State Revolving Fund Loan Program (“SRF Program”) has provided the City a low interest loan (“Bonds”) and/or grant to facilitate the transaction and allow the City to reduce user rates for the District’s customers.

G. The District now desires to enter into this Agreement and authorize the City to exercise any and all powers necessary, and to assume all responsibility for, providing sewer and water services to customers in and around the District’s service area (“Service Area”) consistent with the terms and conditions set forth herein.

H. After executing this Agreement, the City will be responsible for all aspects of providing sewer and water service to customers in the Service Area, including all billing, collection, customer service, repairs, maintenance, and other responsibilities of the District.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

ARTICLE I PURPOSE OF AGREEMENT

Section 1.1 Purpose. The purpose of this Agreement is to authorize and grant to the City all authority necessary to extend, operate, and maintain sewer and water facilities within the Service Area. By executing this Agreement, the Parties agree to take all reasonable actions to ensure that the City is the exclusive water and sewer service provider in the Service Area.

Section 1.2 Service Area. For purposes of this Agreement, the Service Area shall be those areas to which: (i) the City is authorized to provide sewer service under Ind. Code § 36-9-23-36 or water service under Ind. Code § 8-1.5-2-3; and (ii) the District is authorized to serve under any current or future orders/directives from the Indiana Department of Environmental Management.

Section 1.3 Powers. In carrying out the purpose of this Agreement, the City may exercise the City's Authority and any power provided to either Party under state or federal law, including, without limitation, the ability to provide both sewer and water service inside and outside the District and all powers related thereto. If, however, the City specifically exercises any of the District's Authority, it must do so in accordance with Ind. Code § 13-26-1-1, et seq.,. Such powers include, but are not necessarily limited to, the power to contract, acquire (either voluntarily or involuntarily) the land rights necessary to facilitate service to the Service Area, use the rights of way and easements owned and controlled by the District, borrow money (i.e. issue bonds or bond anticipation notes), and hire any and all professionals deemed necessary by the City.

Section 1.4 Regionalization of Service. The Parties desire for the City to provide a systematic, regionalized solution for sewer and water service in the Service Area. In executing this Agreement, the Parties hope to facilitate a means by which regionalized water and sewer service can be provided by the City both inside and outside the District.

ARTICLE II TERM AND DURATION

Section 2.1 Effective Date. This Agreement shall be in full force and effect upon: (i) adoption by the Parties of an ordinance and/or resolution approving the Agreement; (ii) execution of the Agreement by both the City and District; (iii) Closing; and (iv) recording of the Agreement as set forth herein.

Section 2.2 Term. Except as otherwise set forth herein, this Agreement shall continue in full force and effect until the Bonds for the City are paid off (and not refunded with a longer maturity) or fifty (50) years from the date of execution of the Agreement, whichever is longer. The Parties may, however, extend the Agreement by mutual agreement.

Section 2.3 Authority to Serve the Service Area. If this Agreement is terminated or expires, the City shall retain the right to provide sewer and water service in the Service Area.

ARTICLE III ADMINISTRATION OF AGREEMENT

Section 3.1 Board of Works and City Council. The City's sewer and water utilities are managed by its Board of Public Works ("BPW") and City Council ("Council"). As to all matters relating to sewer or water system in the Service Area, the BPW shall be responsible for administering this Agreement, day-to-day management of the sewer and water facilities, and ensuring that sewer and water service is provided in an economically and technically feasible manner in the Service Area. The BPW shall specifically be responsible for planning, designing, operating, maintaining, and overseeing construction of any new facilities that are necessary to provide sewer or water service to the Service Area. The BPW is also responsible for making recommendations to the Council regarding the City's rates and charges for service and any issuance of debt. The Council is responsible for approving any adjustments to the rates and charges for service in the District and for any issuance of debt. In meeting their obligations under this Agreement, the BPW and Council shall have all rights, responsibilities, and powers specifically authorized to them, as well as any powers outlined in Indiana Code §13-26-1-1 *et seq.* By executing this Agreement, the District recognizes and assigns all rights, powers, and duties to the BPW and Council for the provision of sewer and water service to the Service Area.

Section 3.2 Reduced User Rates for District Customers and Low Interest Loans and Grants. After closing on the acquisition, the Parties contemplate that the monthly user rate for most of the customers within the District will be reduced in 2022 from \$121.75 to \$80.12 per month. The Parties anticipate the payment of the principal and interest on the Bonds will be made from revenues generated by ratepayers in the District.

Section 3.3 Exclusive Right to Serve. Consistent with Section 1.3 above, and to ensure that the City has sufficient revenues to meet its financial obligations to provide service in the most economically feasible manner, the Parties desire that the City be the exclusive provider within the Service Area.

Section 3.4 Schedule, Agenda, and Minutes for Meetings of the BOW and Council. The BPW and Council shall follow Indiana law with respect to holding public meetings, establishing agendas for such meetings, and maintaining minutes of the same.

ARTICLE IV BUDGET AND FINANCE MATTERS

Section 4.1 Budget for Sewer and Water Service in the District's Service Area. The BPW and Council shall be responsible for periodically reviewing the rates and charges for sewer and/or water service. Such review shall include an analysis of the costs of providing sewer and water service, as well as all wages, benefits and taxes, supplies, contingencies, professional fees, and all other costs of operating, maintaining, and acquiring equipment and facilities for the provision of sewer and/or water service to the Service Area.

Section 4.2 **Delegation of Fiscal Authority.** The BPW and Council will be responsible for administering the terms of this Agreement, including the collection of revenues and the payment of expenses related to sewer or water service in the Service Area.

Section 4.3 **Transition Period.** Immediately prior to and after execution of this Agreement, the Parties agree to cooperate to ensure that service is adequately provided during the transition to the City becoming the direct provider of services to the Service Area. The City recognizes, however, that the District will no longer have employees to assist in said transition.

ARTICLE V

OPERATION AND MAINTENANCE

Section 5.1 **Operation of Sewer and Water Facilities.** The City shall have sole and exclusive authority (and responsibility) to operate sewer and water facilities for the provision of sewer and water service to the public in compliance with all legal requirements and applicable agreements within the Service Area. The operation of the sewer and water systems (and provision of service) shall include, but not be limited to, the following:

(a) Providing or obtaining: (i) all personnel and associated wages, salaries, and benefits; (ii) all materials, including, but not limited to, fuel and vehicle expense, and other consumables; (iii) all necessary inventory to operate and properly maintain the sewer and water systems at the level required by this agreement and applicable laws, rules, and regulations; (iv) all necessary utilities; and (v) any other services or materials necessary to operate and maintain the sewer and water systems in accordance with all permits, all applicable legal requirements and any contractual obligations associated with the sewer and water systems and/or good business practices.

(b) Providing all personnel, materials, and services necessary to support the operation and maintenance of the sewer and water systems in the manner required by this Agreement including, but not limited to, the following functions: day-to-day management, administration, billing and collections, purchasing, reporting, janitorial, security, and upkeep of the building, grounds, and facilities of the sewer and water systems.

(c) Providing all personnel, materials, and services necessary to adequately maintain the sewer and water systems, including, but not limited to, structures, pump stations, equipment, mechanical, electrical, instrumentation, communication, and computer systems to assure efficiency, long-term reliability, and conservation of capital investment.

(d) Providing timely recording and reporting of the sewer and water systems' operating parameters, maintenance plans, and activities, as is otherwise necessary for management of the sewer and water systems.

(e) Preparing, in a timely manner, any oral or written report(s) required pursuant to all permits and legal requirements and submitting them to the appropriate governmental authorities.

(f) Monitoring and inspecting the sewer and water systems to determine needed capital improvements.

(g) Providing all personnel, materials, and services necessary to ensure compliance with the Agreement.

(h) Hiring of professional services, including, but not limited to, engineers, accountants, and attorneys to perform work that the City deems necessary for the provision of service to the Service Area.

(i) Any and all other powers granted to the City under Indiana law to provide sewer and water service within the Service Area.

Section 5.2 District Liability. Upon Closing, the City shall be responsible for all aspects of providing service to the District's customers and any liabilities arising therefrom.

Section 5.3 District Costs. The City recognizes that after the Closing the District will have no source of revenue, but the District will have nominal costs associated with remaining in existence. These costs include but are not limited to Ind. Code § 13-26-4-7, legal expenses, audits and other administrative costs. In addition, the City may request the District to take action from time to time related financing, grants, or other action outside the current service area. The City agrees to be responsible for all costs associated with the foregoing.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.1 Application of Indiana Law. This Agreement and the respective rights of the Parties shall be subject to Indiana law.

Section 6.2 Severability Provision. If any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such provisions shall be severed from the remainder of this Agreement and the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

Section 6.3 Effective Date. This Agreement shall be approved upon the adoption by the BPW, Council, and the District of an appropriate ordinance or resolution approving this Agreement, as well as the approval and execution of this Agreement by each entity. After approval and execution, this Agreement shall be recorded with the Allen County Recorder on or before December 31, 2021, and the Effective Date of this Agreement shall be the date of recordation. Within sixty (60) days of the Effective Date, this Agreement shall be recorded with the Indiana State Board of Accounts for audit purposes as required by I.C. § 36-1-7-6.

Section 6.4 Modification in Writing. The Parties hereto may, from time to time, alter, change, or amend the terms and conditions of this Agreement by an amendment in writing making specific reference to the document as an amendment to this Agreement, approved and executed by each of the Parties hereto in the same manner as this Agreement. Any amendment or modification of this Agreement shall take effect immediately upon the approval of the last unit

to approve such amendment or modification, or at such other time as is specifically designated in the amendment or modification.

Section 6.5 Execution and Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 6.6 Entire Agreement. This Agreement sets forth the entire Agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties pertaining to the subject matter hereof.

Section 6.7 Authority of Parties. Each party and signatory hereto has the authority to enter into this Agreement and at all times has full authority to perform this Agreement. No further approval or consent by any other person or authority is required.

Section 6.8 Captions. The captions to this Agreement are substantive in nature and shall be considered in the interpretation of this Agreement.

Section 6.9 Notices. All notices, consents, and other communications (collectively, "Notices") shall be given to the City and District in writing to the addresses set forth below:

City: Fort Wayne City Utilities
200 E. Berry Street
Fort Wayne, IN 46802
Attn: Kumar Menon, Director of City Utilities

With Copy To: Bose McKinney & Evans LLP
111 Monument Circle, Ste. 2700
Indianapolis, IN 46204
Attn: J. Christopher Janak

District: Allen County Regional District
200 E. Berry St.
Fort Wayne, IN 46802

With Copy To: Carson LLP
301 W. Jefferson Blvd., Suite 200
Fort Wayne, IN 46802
Attn: Andrew Boxberger

Either party may change its address for Notices by given written notice to the other party in accordance with this provision.

Section 6.10 Incorporation of Recitals. The Recitals are hereby incorporated into this Agreement.

[Signature Pages Follow]

**CITY OF FORT WAYNE, INDIANA, BY
AND THROUGH ITS BOARD OF PUBLIC
WORKS**

BY: _____
Shan Gunawardena, Chair

BY: _____
Kumar Menon, Member

BY: _____
Chris Guerrero, Member

ATTEST: _____
Michelle Fulk-Vondran, Clerk

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Shan Gunawardena, Kumar Menon, and Chris Guerrero, by me known and by me known to be the members of the Board of Public Works for the City of Fort Wayne, Indiana, who acknowledged the execution of the foregoing "Interlocal Agreement".

Witness my hand and Notarial Seal as of this ____ day of _____, 2021.

My Commission Expires: _____
Notary Public

My County of Residence: _____
(Printed Signature)

**ALLEN COUNTY REGIONAL WATER
AND SEWER DISTRICT**

By: _____

Printed: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known and by me known to be the _____ of the Allen County Regional Water and Sewer District, who acknowledged the execution of the foregoing "Interlocal Agreement".

Witness my hand and Notarial Seal as of this ____ day of _____, 2021.

My Commission Expires: _____

Notary Public

My County of Residence: _____

(Printed Signature)

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

J. Christopher Janak

This instrument was prepared by: J. Christopher Janak, Attorney at Law, Bose McKinney & Evans, LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204.

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