

1 **BILL NO. S-22-06-05**

2 SPECIAL ORDINANCE NO. S-_____

3
4 AN ORDINANCE approving POTABLE WATER
5 CONTRACT between the Town of Grabill, Indiana and
6 the City of Fort Wayne, Indiana, by and through its
Board of Public Works.

7
8 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON**
9 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

10 **SECTION 1.** That the POTABLE WATER CONTRACT (attached
11 hereto and marked Exhibit A) by and between the Town of Grabill and the City of
12 Fort Wayne, Indiana, by and through its Board of Public Works, is hereby ratified,
13 and affirmed and approved in all respects.

14 A copy of said Contract is on file with the Office of the City Clerk and made
15 available for public inspection, according to law.

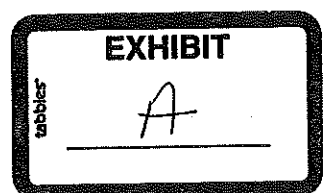
16 **SECTION 2.** That this Ordinance shall be in full force and effect
17 from and after its passage and any and all necessary approval by the Mayor.
18

19
20 _____
21 Council Member

22 APPROVED AS TO FORM AND LEGALITY

23
24 _____
25 Malak Heiny, City Attorney
26
27
28
29
30

**POTABLE WATER CONTRACT
BETWEEN
THE CITY OF FORT WAYNE, INDIANA
AND
THE TOWN OF GRABILL, INDIANA**



**POTABLE WATER CONTRACT
BETWEEN
THE CITY OF FORT WAYNE, INDIANA
AND
THE TOWN OF GRABILL, INDIANA**

THIS POTABLE WATER CONTRACT (hereinafter referred to as “Contract”) entered into this 23rd day of May, 2022, by and between the **CITY OF FORT WAYNE, INDIANA**, an Indiana municipal corporation, (“Fort Wayne”) and the **TOWN OF GRABILL, INDIANA**, an Indiana municipal corporation (“Grabill”).

WITNESSETH THAT:

WHEREAS, Fort Wayne owns and operates water production, treatment, transmission, and distribution facilities that it uses to provide potable water to its Users; and

WHEREAS, Grabill also owns and operates water production, treatment, transmission, and distribution facilities, but its water production and treatment facilities are approaching the end of their useful life and design capacity; and

WHEREAS, Fort Wayne has, and during the term of this Contract will have, sufficient production, treatment, and transmission capacity to provide potable water (“Water”) to Grabill consistent with the terms and conditions of this Contract; and

WHEREAS, the parties desire to enter this Contract under which Grabill will abandon its water production and treatment facilities and take all its Water from Fort Wayne pursuant to the terms and conditions hereof;

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

- I. DEFINITIONS.** The following definitions shall apply unless otherwise specifically stated:
- A. Connection Point.** The point of joinder of the Grabill-owned water system to the Fort Wayne-owned water system which provides for the conveyance of Water from Fort Wayne to Grabill for distribution, storage, and sale by Grabill.

- B. **Monitoring.** The analysis of potable Water without taking a sample of the Water. Examples include, but are not limited to, pH, conductivity, temperature, and flow rates.
 - C. **Sampling.** The taking of an actual portion of the Water for analysis.
 - D. **Grabill Service Area.** The area in which Grabill may provide potable water as diagramed in attached **Exhibit 1.**
 - E. **Potable Water System.** The network of piping and appurtenances which may be used to distribute, store, and consume Water.
 - F. **User.** Any domestic or non-domestic consumer of Water.
 - G. **Water Plant.** The assemblage of devices, structures, and equipment used to treat Water.
 - H. **Water Utility.** The combined facilities and systems used collectively to collect, transport, store, pump and treat Water.
- A. **II. EFFECTIVE DATE; COMMENCEMENT DATE; TERM.**
- A. **Effective Date.** This Contract shall become effective upon final approval by the Fort Wayne Common Council and by the Grabill Common Council (the “Effective Date”), subject to the approval by other local, state and federal agencies having jurisdiction over this Contract.
 - B. **Term of Contract, Renewals.**
 - 1. **Original Term; Contract Commencement Date.** While this Contract is effective as of the Effective Date, the Term of this Contract shall commence on the date Fort Wayne first delivers Water to Grabill at the Connection Point for the purpose of Grabill’s distribution and sale of such Water to its Users (the “Contract Commencement Date”) and continue for a period of thirty-five (35) consecutive years thereafter unless earlier terminated hereunder (the “Original Term”). The Original Term and all Renewal Terms (as hereinafter defined) shall be collectively referred to as the “Term”. The parties anticipate that Fort Wayne will first deliver Water to Grabill beginning on July 1, 2023, and such date shall serve as the Contract Commencement Date absent an agreement or memorandum executed by Grabill and Fort Wayne to the contrary.

2. **Renewal Terms.** This Contract shall automatically renew for consecutive five (5) year terms following the expiration of the Original Term (each a “Renewal Term”) unless either party notifies the other of its desire to terminate the Contract not less than twenty-four (24) months prior to the expiration of the then current Renewal Term. Failure of either party to notify at least twenty-four (24) months prior automatically renews this Contract for the next succeeding Renewal Term. Notice shall be in accordance with Section XV, and shall clearly state the intent of the party is to not continue the Contract after the conclusion of the then current Renewal Term.

III. GRABILL SERVICE AREA.

- A. **Description of Grabill Service Area.** The Grabill Service Area is the geographic area in which Grabill may be the provider of Water. The Grabill Service Area is diagrammed in attached Exhibit 1, which Exhibits are attached hereto and made a part hereof.
- B. **Modification of Service Area.** The Grabill Service Area may be amended, modified, and changed from time to time during the term of this Contract upon execution of a new agreement or addendum by Fort Wayne and Grabill.
- C. **Fort Wayne Facilities.** Notwithstanding Section III(A) hereof, Fort Wayne may locate its water facilities in the Grabill Service Area as long as no properties or Users within the Grabill Service Area are directly served by Fort Wayne unless approved by Grabill in writing.
- D. **Grabill Limited to Serving in Service Area.** Grabill shall not expand its water facilities outside the Grabill Service Area for the purpose of directly serving Users without the prior written approval of Fort Wayne; provided, however, Grabill is allowed to continue to serve customers outside its Service Area that are connected prior to the Contract Commencement Date.
- E. **Service to Maysville.** Notwithstanding any terms and restrictions set forth herein to the contrary, Fort Wayne hereby acknowledges, consents, and approves of Grabill’s distribution, delivery, provision and sale of Water received from Fort Wayne to the Maysville Regional Water & Sewer District, an independent political subdivision of the State of Indiana by order of the Stream Pollution Control Board of the State of Indiana

pursuant to I.C. § 19-3-1.1-1, *et seq.* ("Maysville") for further distribution, provision, and sale of such Water by Maysville to Maysville Users during the Term.

C. **IV. CONNECTION OF WATER FACILITIES.**

- A. **Connection Point Location.** The location of the current and future Connection Point is generally shown on attached **Exhibit 4** attached hereto and made a part hereof.
- B. **Construction Costs.** Fort Wayne shall be solely responsible for all costs, fees, charges, and expenses arising from the connection of Fort Wayne's Potable Water System to the Grabill Potable Water System at and to the Connection Point including, without limitation, the mains, connection meters, pressure station, telemetry (for Fort Wayne only), and the meter vault.
- C. **Maintenance and Operation Costs.** Each party hereto shall be responsible for the maintenance and operation of its own Potable Water System and its portion of the facilities at the Connection Point. For purposes of this Agreement, Fort Wayne will be responsible for operating and maintaining the meter and Fort Wayne's telemetry. Grabill will be responsible for operating and maintaining the meter vault and all other facilities, including its own telemetry. Fort Wayne may inspect Grabill's portion of the Connection Point at any time. If such inspection finds the Connection Point is not being maintained, repaired, or operated in accordance with applicable law or industry standards, Fort Wayne shall notify Grabill in writing in accordance with Section XV. Within thirty (30) days following receipt of such notice, Grabill shall provide Fort Wayne with either (i) a written plan to correct the issues identified in Fort Wayne's notice, or (ii) a written response setting forth Grabill's disagreement with the findings of such notice. In the event Grabill fails to (a) timely provide such written plan or dispute notice, or (b) implement the actions described in the written plan to Fort Wayne's reasonable satisfaction within seven (7) days following the delivery of the written plan, Fort Wayne may complete the required maintenance, repair or operational adjustments and Grabill shall, within thirty (30) days, following receipt of invoice from Fort Wayne, reimburse Fort Wayne for all costs incurred by Fort Wayne in performing such work on Grabill's behalf.

- D. **Modification of Connection Point.** Should it become necessary or desirable to change or modify the Connection Point or to connect at different or additional Connection Points, the parties shall mutually agree upon the terms of such change, modification or connection and shall amend this Contract in accordance with Section XV hereof to memorialize such amendment.

D. **V. DISTRIBUTION AND QUALITY OF POTABLE WATER.**

- A. **Responsibility for Distribution.** Grabill shall be solely responsible for delivery of the Water from the Connection Point to its Users in accordance with applicable laws, regulations, requirements, and standards of Indiana Department of Environmental Management, the Indiana State Board of Health, and the United States Environmental Protection Agency currently in effect and as may be amended from time to time.
- B. **Quality of Water; Responsibility for Treatment.** Fort Wayne shall transport and deliver to Grabill Water hydraulically as generally described in Exhibit 4 and of a quality equal to the potable water furnished to Users of the Fort Wayne Water Utility and shall be solely responsible for the proper Sampling, Monitoring, and treatment of the Water sold and delivered to Grabill via the Connection Point in accordance with all applicable laws, regulations, requirements, and standards of Indiana Department of Environmental Management, the Indiana State Board of Health, and the United States Environmental Protection Agency currently in effect and as may be amended from time to time.
- C. **Availability of Test Results.** Upon reasonable request, Fort Wayne shall provide Grabill with any studies, treatment test results, Sampling results and reports, Monitoring results and reports and such other analysis prepared by Fort Wayne and related to its Water Utility and Potable Water System.
- D. **Fort Wayne Shall Be Grabill's Sole Source of Supply.** During the Term of the Contract, Fort Wayne shall be the exclusive provider of Water for Grabill and for any User that Grabill provides Water.

VI. VOLUME AND PEAK FLOW LIMITS

- A. **No Modification or Alterations.** In order to assure that adequate Water capacity is available from Fort Wayne, Grabill agrees that no material changes, modifications, or alterations will be made that may materially increase the demand for Water at the Connection Point without the prior written approval of Fort Wayne, which approval shall not be unreasonably withheld or delayed.
- B. **Volume Limit.** Exhibit 5 attached hereto and made a part hereof lists two (2) Volume Limits for Grabill at the Connection Point. The Phase I Volume Limit shall be in effect until Grabill notifies Fort Wayne in accordance with Section XV that Grabill elects to be classified at the Phase II Volume Limit and use the Phase II Volume Limit for rate calculations and subsequent billing. If Grabill requires an amount of Water in excess of the limits described in attached Exhibit 5, Fort Wayne shall apply a Volumetric Exceedance Fee, as described in attached Exhibit 5.
- C. **Peak Flow Limit.** Attached Exhibit 5 lists the Peak Flow Limits for Grabill at the Connection Points. The Phase I Peak Flow Limit shall be in effect until Grabill notifies Fort Wayne in accordance with Section XV that Grabill elects to be classified and use the Phase II Peak Flow Limit for rate calculations and subsequent billing. Failure to provide such notice shall result in Fort Wayne applying the higher Peak Flow Limit for classification of rate calculations and subsequent billing. As part of the monthly billing, Fort Wayne shall analyze peak condition characteristics. If peak flow exceeds peak flow limits specified in attached Exhibit 5, a Peak Flow Charge shall be applied to Grabill's rate in accordance with attached Exhibit 5. Grabill will not be charged a Peak Flow Charge for peak flow limit exceedances related to a Grabill Potable Water System or Grabill User water main break (on Grabill's Potable Water System), fire flow, or short term water system need that is approved by Fort Wayne's Water Engineering Manager in advance of the need. Grabill shall, upon request from Fort Wayne, provide information and documentation supporting any exceedances that were allegedly the result of a main break or fire flow.

In the event a Peak Flow Charge is assessed more than once in a twelve (12) consecutive month period, Fort Wayne shall notify Grabill of such event and Grabill shall submit a plan to Fort Wayne within sixty (60) days following receipt of such notice describing improvements or operational changes to be implemented which

assures that flow will remain within the Peak Flow Limits described in attached **Exhibit 5**. In the event Grabill fails to submit a plan within such sixty (60) day period, Grabill shall be in default under Section XIII of this Contract.

- D. **Failures, Malfunctions and Emergencies.** If for any reason, including emergency failure or malfunction in Fort Wayne's Potable Water System or its water production or treatment facilities, Fort Wayne is unable to furnish the quantities and quality of Water to be furnished to Grabill under this Contract, Fort Wayne agrees to use best efforts and diligently pursue efforts during any such occurrence to provide Water (as far as practicable) to Grabill. To the extent any capacity constraints arise as to the availability of Water that causes Fort Wayne to curtail service, Fort Wayne agrees to curtail service to Grabill on the same basis as its Fort Wayne Users as is practicable under the circumstances.

VII. APPROVALS AND CONNECTIONS

- A. **Copy of Permit Applications.** For new connections within the Grabill Service Area arising after the Contract Commencement Date, Grabill shall complete, or cause the new User to complete, an Application for Construction Permit for Public Water System (Application) required by the Indiana Administrative Code (IAC) per 327 IAC 8. Grabill shall also forward all Applications for new connections from Maysville after Grabill confirms it approves of the Application for signature by Fort Wayne.
- B. **Forward Copy of Application Materials.** Grabill shall provide Fort Wayne a completed Application executed by Grabill, a summary of the design, a completed Certification of Registered Professional Engineer, one (1) set of approved potable water plans and all other required information necessary for Fort Wayne to process the Application and supporting documentation. Grabill shall also forward all Applications for new connections from Maysville with the same documentation and information requirements.
- C. **Timely Review of Application.** Fort Wayne shall review all properly completed Applications in a timely manner and shall not arbitrarily or unreasonably delay or deny such Applications.

- D. **Report of New Corrections.** Upon written request by Fort Wayne, Grabill shall submit to Fort Wayne semi-annual reports of all new connections made to Grabill's Potable Water System within the Grabill Service Area and all new connections made by Maysville. To the extent requested, the semi-annual reports shall be provided: (a) for the period January 1 through June 30 (submitted no later than July 31); and (b) for the period July 1 through December 31 (submitted no later than January 31). Information in the report shall include the property address, lot number, date of connection, land use of property/building, number of equivalent residential units and such additional information as may be reasonably requested by Fort Wayne.

VIII. METERING AND CONNECTION POINT INFRASTRUCTURE

- A. **Monthly Bill.** Fort Wayne will calculate Grabill's monthly bill based on monthly meter readings for the Grabill Service Area at the Connection Point meter(s).
- B. **Metering Equipment.** At its sole cost and expense, Fort Wayne shall install, own, operate and maintain proper and adequate water metering equipment for the purpose of measuring the volume and instantaneous peak flow rate of Water delivered to each of the Connection Points. Fort Wayne metering equipment shall include an electronic data collection and data storage system and telemetry system to monitor and transmit to Fort Wayne in not less than one (1) minute time increments.
- C. **Connection Point Infrastructure.** Except for the metering equipment described in section VIII B., the connection point infrastructure shall be established per the following:
1. **Initial Connection Point:**
 - a) Fort Wayne shall plan, design, install and pay for the meter vault, flow control and check valve vault(s), meter bypass piping and related appurtenances, equipment and Fort Wayne telemetry systems not related to metering (collectively, the "Connection Point Infrastructure"). Grabill will be responsible for its telemetry (if desired by Grabill) and operation, maintenance, maintaining, and updating of all vaults, piping, appurtenances, equipment, and systems.

1. Fort Wayne will construct Connection Point Infrastructure to Fort Wayne standards, with approval of Grabill.
 2. Grabill will assist and coordinate with Fort Wayne with respect to Fort Wayne securing appropriate sized property for the Connection Point Infrastructure.
 3. Fort Wayne will coordinate with Grabill on electrical power connection for Connection Point Infrastructure equipment and construct the power connection. Grabill will be responsible for providing electrical power to the Connection Point.
- b) Grabill shall get approval from Fort Wayne prior to installation or modification of Connection Point Infrastructure piping, appurtenances, or equipment. If Grabill fails to obtain Fort Wayne's approval prior to installation or modification, Fort Wayne may substitute, relocate, and/or re-install or modify the installations or modifications at Grabill's expense.

2. Future Connection Points. Future connection points to the Grabill Service Area that are approved by Fort Wayne shall be constructed, operated, and maintained by Grabill.

- D. **Website for Grabill Usage.** Fort Wayne shall provide access to a secure website that report's Grabill's water meter volume and peak flow data as transferred to the website from Fort Wayne's telemetry system in not less than fifteen (15) minute time increments.
- E. **Bypass Valves.** All meter bypass valves shall be maintained in locked boxes the keys to which shall be kept by Fort Wayne. Grabill may request access to locked boxes; and such request shall not be unreasonably denied by Fort Wayne. If emergency access to the locked boxes is required, Grabill shall immediately notify Fort Wayne and access shall not be unreasonably denied by Fort Wayne.
- F. **Access to Metering Equipment.** Fort Wayne shall have complete and unrestricted access to metering equipment for inspection, testing, and approval at all reasonable times.

- G. **Meter Testing and Maintenance.** Metering equipment may be tested, calibrated, maintained, and repaired and/or replaced as necessary by Fort Wayne and Fort Wayne shall bear all reasonable costs thereof.

IX. [RESERVED]

X. [RESERVED]

E. XI. [RESERVED]

XII. CHARGES FOR CONNECTIONS, TREATMENT AND ADDITIONAL SERVICES

A. System Development / New Connections

1. **System Department Charge.** Grabill shall pay a System Development Charge (“SDC”) for new User connections to Grabill’s Potable Water System and for new User connections to the Maysville’s Potable Water System in such amounts and otherwise in accordance with applicable City of Fort Wayne Resolutions and Ordinances associated with the Fort Wayne water service area in which the Connection Point is located. SDC’s shall be applicable in the following circumstances:
 - a. Properties within Grabill’s Service Area to be served by any water line extension or other project for which an Application is approved by Fort Wayne after the Contract Commencement Date.
 - b. All new and/or first-time connections within unplatted or platted areas receiving water service from Grabill’s Potable Water System after the Contract Commencement Date.
 - c. Any building or site improvements or additions to an existing facility/structure/building that is a deemed connection to Grabill’s Potable Water System as of the Contract Commencement Date or to the facility’s connection that result in an increase in the flow volume (number of Equivalent Residential Units) and increase in water meter size required by such facility, structure, or building.

2. **Payment of SDC.** Grabill shall either (i) collect the SDC from its Users and remit the same to Fort Wayne or (ii) direct Users to pay the SDC directly to Fort Wayne. SDCs shall be paid to Fort Wayne no later than the date the Grabill's User is connected to Grabill's Potable Water System.
3. **Nonpayment of SDC.** If Grabill does not forward payment to Fort Wayne for any reason by the date on which the Grabill User is connected to Grabill's Water Utility, the applicable SDC will be added to Grabill's monthly bill at the rate in effect on the date of Fort Wayne's discovery of the connection.

B. Cost of Treatment and Water Service

1. **Billing.** Fort Wayne shall be responsible for reading the metering devices, compiling the usage data, and billing Grabill monthly in accordance with rate schedules attached hereto, as may be amended from time to time.
2. **Rate.** Consistent with this Contract, Grabill shall pay rates and charges to Fort Wayne for the Water, billing, and other charges applicable to the volume and composition of the water flow provided to the Connection Point. The rates listed in Exhibit 6 will remain in effect until a Rate Adjustment.
3. **Rate Adjustment.** Grabill understands and agrees that the metered water rates are set by Fort Wayne Board of Public Works and Common Council and are approved by the Indiana Utility Regulatory Commission and may be subject to change from time to time. Rate changes shall be consistent with the methodology as reflected in Exhibit 6 attached hereto and made a part hereof.
4. **Notice of Rate Change.** Fort Wayne shall provide Grabill with not less than ninety (90) days prior written notice of Fort Wayne's intent to seek an adjustment to the rates charged to Grabill.

C. Additional Services

1. **Other Services and Rules.** This Contract may include services and rates not set by City of Fort Wayne Common Council Resolutions and Ordinances, Fort Wayne Rules and Regulations of Water Utility, or Fort Wayne Board of Public Works Resolutions. In addition, the parties may agree to additional services (the "Additional Services") to be provided hereunder by Fort Wayne and such rates may not be set by Fort Wayne Common Council Resolutions and Fort Wayne

Ordinances, Fort Wayne Rules and Regulations of the Water Utility, or Fort Wayne Board of Public Works Resolutions. The charges for such Additional Services shall be an amount equal to Fort Wayne's expense for the provision of such services (both in-house and contracted assistance), plus an additional ten (10) percent.

2. **Invoices and Payment for Additional Services.** Fort Wayne shall invoice Grabill for the provision of such Additional Services. Payment of invoices for such additional services by Grabill shall be in accordance with and be subject to applicable Fort Wayne Common Council Resolutions and Ordinances.

XIII. DEFAULT

- A. **Event of Default.** For the purposes of this Contract, the term "Event of Default" shall mean the failure to observe or comply with a provision or covenant in this Contract, which default is not cured to the reasonable satisfaction of the non-defaulting party within fifteen (15) days of the date Notice of such default is received by the applicable party, which Notice shall specify with reasonable particularity the basis for the default claimed.
- B. **Notice of Default.** If either party discovers a default under Section VIII, Metering, then the non-defaulting party shall notify the defaulting party of such default pursuant to Section XV hereof. The defaulting party shall have thirty (30) days following receipt of such notice to cure the default or to notify the non-defaulting party of its plan to cure the default. In the event of the defaulting party's failure to timely cure such default pursuant to Section XV hereof or submit a plan to cure, the non-defaulting party may elect to cure the default and the defaulting party shall be reimburse the non-defaulting party for the costs incurred to effect such cure.
- C. **Service Area Default.** If either party discovers a default under Section III, Grabill Service Area, the non-defaulting party shall notify the defaulting party of the default pursuant to Section XV hereof. The defaulting party shall have thirty (30) days following receipt of such notice to cure the default. In the event that the default is not cured within such thirty (30) day period, the non-defaulting party may, in its sole discretion terminate the Contract or extend the cure period for up to an additional thirty

(30) days at the expiration of which the non-defaulting party may in its sole discretion terminate the Contract if the default under Section III, Service Area has not been effected.

- D. **Water Service After Termination.** Upon a termination of the Contract under this Section XIII and subject to Section XV, Fort Wayne shall continue to provide Water to Grabill at the then current rate for Outside Fort Wayne Government Users as provided in the applicable City of Fort Wayne Resolutions and Ordinances. In the event Fort Wayne provides Water to Grabill under this Section XIII, either party may terminate by providing six (6) months' written notice of its intention to terminate the non-terminating party. Upon termination, Fort Wayne's service shall be discontinued unless otherwise agreed in writing by the parties.

XIV. COMPLIANCE WITH RULES, REGULATIONS, STANDARDS AND LAWS.

- A. **Compliance with Legal Requirements.** Fort Wayne and Grabill shall comply with all applicable local, state and federal regulations, standards, and laws currently in effect and as hereafter amended, adopted, or enacted regarding production, storage, distribution, and consumption of Water, the operation of their respective water systems, and any additional services provided pursuant to and accordance with this Contract.
- B. **Grabill Water Use Ordinance.** Grabill agrees to consider and present to its legislative body for adoption resolutions and ordinances providing for rates, rules and regulations, and use of its Water Utility which are in conformity with the reasonable requirements adopted and enforced by Fort Wayne for the purpose of permitting Fort Wayne on continuing basis to be awarded grants and loans from the State of Indiana, the United State Environmental Protection Agency, and other agencies which may now or hereafter offer such financing opportunities.

XV. MISCELLANEOUS.

- F. A. **Notices and Invoices.**
1. **Certified Mail.** Any notices required under this Contract shall be served by certified mail, return receipt requested, postage prepaid, addressed to the party to be served at the address appearing in this Section XV or at such other notice

address as such party provides to the other party in writing after the Effective Date.

2. **Notice of Flow Change.** Notices for Grabill's election for a change in Volume Limits or Peak Flow Limits as specified in Section VI must be received a minimum of two (2) years in advance of requested implementation date unless an earlier date or notice period is otherwise permitted or agreed to by Fort Wayne. Fort Wayne shall review all requests in a timely manner and shall not arbitrarily or unreasonably delay or deny such requests. In the event Grabill needs to provide capacity to a new large water User that would require higher volume or peak limits from Fort Wayne for Grabill to serve them, Grabill may request a waiver to the two (2) year minimum notice.
3. **Invoice.** Invoicing by Fort Wayne under this Contract shall be served by first class mail, postage prepaid, addressed to Grabill at the last address provided by Grabill for such invoicing.
4. **Fort Wayne Notices.** As of the Effective Date, Contractor's address is:
Fort Wayne City Utilities, Attention of the Director
200 E. Berry Street
Fort Wayne, Indiana 46802
5. **Grabill Notices.** As of the Effective Date, Grabill's address is:
Town of Grabill, Indiana
Grabill Town Hall
PO Box 254
Grabill, Indiana 46741
Attention: Clerk-Treasurer

G. B. **Amendments.**

1. **Written Mutual Consent.** This Contract may be amended only by a writing executed by the parties hereto.
2. **Notice.** A party requesting and amendment of the Contract shall send notice in accordance with Section XV and include the following:
 - a. Reasons for which the party desires to amend;
 - b. List of Sections of the Contract proposed for amendment; and
 - c. Proposed amendments to listed Sections of Contract.

3. The parties shall have six (6) months in which to negotiate in good faith the proposed amendments to the Contract. In the event that the parties do not reach agreement on the proposed amendments, the original Contract provisions herein will remain in force.

C. **Change of Conditions or Legal Environment.** If a party believes there has been a change in conditions which materially affect the Contract, such party may request the Contract terms and conditions be renegotiated in good faith to address the effect of such change. Such a request shall be initiated by a notice provided from the requesting party in accordance with Section XV that includes the following:

1. Desire of party to discuss renegotiation;
2. Description of material change in conditions; and
3. Description of proposed renegotiated terms and conditions based upon such material change in conditions.

D. **Termination by Both Parties.** This Contract may be terminated in writing by the agreement of both parties.

E. **Survival.** The obligations set forth in the following Sections shall survive termination or expiration of this Contract for any reason until Fort Wayne no longer provides water services to Grabill:

1. Section IV
2. Section V (A), (B)
3. Section VI
4. Section VIII
5. Section IX
6. Section X
7. Section XI
8. Section XII (C)
9. Section XIII
10. Section XIV
11. Section XV (A),(C),(E),(F)

F. **Indemnities.**

1. **Environmental Indemnity/Grabill.** Grabill shall comply with all applicable environmental, federal, state, and local laws, rules, regulations, orders, codes, or directives of all federal, state, and local governmental entities having jurisdiction over its water system. Grabill agrees to defend, indemnify, and hold Fort

Wayne (and its officers, directors, employees, contractors, representatives, duly authorized agents, departments, and divisions), harmless from any cost, action, award, expense, liability, penalty, final judgment, settlement, loss, or damage (including indirect, special, punitive, incidental, and consequential damage), including, but not limited to the recovery of legal costs and reasonable attorney fees, arising out of Grabill's violation of any such law, rule, regulation, order, code, or directive which relates directly or indirectly to Grabill's performance or failure to perform under this Contract or from any breach of this Contract by Grabill.

2. **Environmental/Fort Wayne.** Fort Wayne shall comply with all applicable environmental federal, state and local, laws, rules, regulations, orders, codes, or directives of all federal, state, and local governmental entities having jurisdiction over its water system. Fort Wayne agrees to defend, indemnify, and hold Grabill (and its officers, directors, employees, contractors, representatives, and duly authorized agents), harmless from any cost, damage (including indirect, special, punitive, and consequential damage), award, action, or liability, including, but not limited to, the recovery of reasonable attorney fees and legal costs, arising out of Fort Wayne's violation of any such law, rule, regulation, order, code, or directive which relates directly or indirectly to Fort Wayne's performance or failure to perform this Contract or from any breach of this Contract by Fort Wayne.
3. **Personal Injury, Death and Property Damage/Grabill.** Grabill agrees to defend, indemnify, and hold harmless Fort Wayne (including its officers, employees, representatives, departments, divisions, and agents) from all direct demands, (but not indirect, special, incidental, punitive, or consequential) damages (including, damages for personal injury, death, or property damage), liabilities, costs and expenses (including reasonable attorney's fees), judgments, settlements, and penalties arising out of Grabill's negligent, or intentional, or willful non-performance or failure to perform under this Contract and/or arising out of Grabill's negligent, intentional, or willful failure to maintain or operate its Potable Water System and Water Utility.

4. **Personal Injury, Death and Property Damage/Fort Wayne:** Fort Wayne agrees to defend, indemnify, and hold harmless Grabill (including its officers, employees, and agents) from all direct (but not indirect, special, punitive, coincidental, or consequential) demands, damages (including, damages for personal injury, death or property damage), liabilities, costs, and expenses (including legal costs and reasonable attorney's fees), judgments, settlements and penalties arising out of Fort Wayne's negligent, intentional, or willful performance or failure to perform under this Contract and/or arising out of Fort Wayne's negligent, intentional, or willful failure to maintain or operate its Potable Water System, Water Plant, and/or Water Utility.

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

H. **Severability.** Invalidity or unenforceability of any covenant, condition, term, or provision of this Contract shall not affect the validity and enforceability of any other covenant, condition, term, or provision of this Contract.

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

J. **Headings.** The headings to the paragraphs of this Contract are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Contract.

K. **Applicable Law.** This Contract shall be governed by, construed and interpreted in accordance with the laws of the State of Indiana. Any claim or action brought by either party hereunder shall be heard by a court of applicable jurisdiction located in Allen County Indiana.

[Signature Page to Follow]

CITY OF FORT WAYNE
BY AND THROUGH ITS BOARD
OF PUBLIC WORKS

By: [Signature]
Shan Gunawardena, Chairman

By: [Signature]
Kumar Menon, Member

By: ABSENT
Chris Guerro, Member

Attest: [Signature]
Michelle Fulk-Vondran, Clerk

Date: 5-17-2022

ACKNOWLEDGEMENT

STATE OF INDIANA)
) ss
COUNTY OF ALLEN)

Before me, a Notary Public, in and for said County and State personally appeared **Shan Gunawardena, Chairman, Chris Guerro and Kumar Menon** as Members of the Board of Public Works of the City of Fort Wayne, and **Michelle Fulk-Vondran**, Clerk of the Board of Works and acknowledged the execution of the foregoing Potable Water Contract as and for their voluntary act and deed for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed my Notarial Seal, this 17 day of May, 2022.

[Signature]
Notary Public and Resident of
Allen County, Indiana



TOWN OF GRABILL, INDIANA

By: Wilmer Delagrange
Wilmer Delagrange, President

By: Jeff Smead
Jeff Smead, Vice President

By: Claude Schrock
Claude Schrock, Council Member

Attest:

Cynthia Barhydt
Cynthia Barhydt, Clerk-Treasurer

ACKNOWLEDGEMENT

STATE OF INDIANA)
) ss
COUNTY OF ALLEN)

Before me, a Notary Public, in and for said County and State personally appeared Wilmer Delagrange, Jeff Smead and Claude Schrock, as members of the Town Council of the TOWN OF GRABILL, INDIANA and acknowledged the execution of the foregoing Potable Water Contract and for their voluntary act and deed for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed my Notarial Seal, this 18 day of May, 2022.

Jennifer Nicole Burgess
Notary Public and Resident of
Marion County, Indiana

My Commission Expires: January 3, 2030

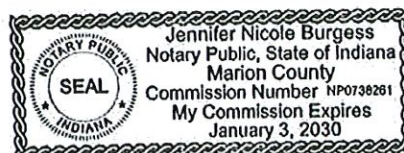


EXHIBIT 1

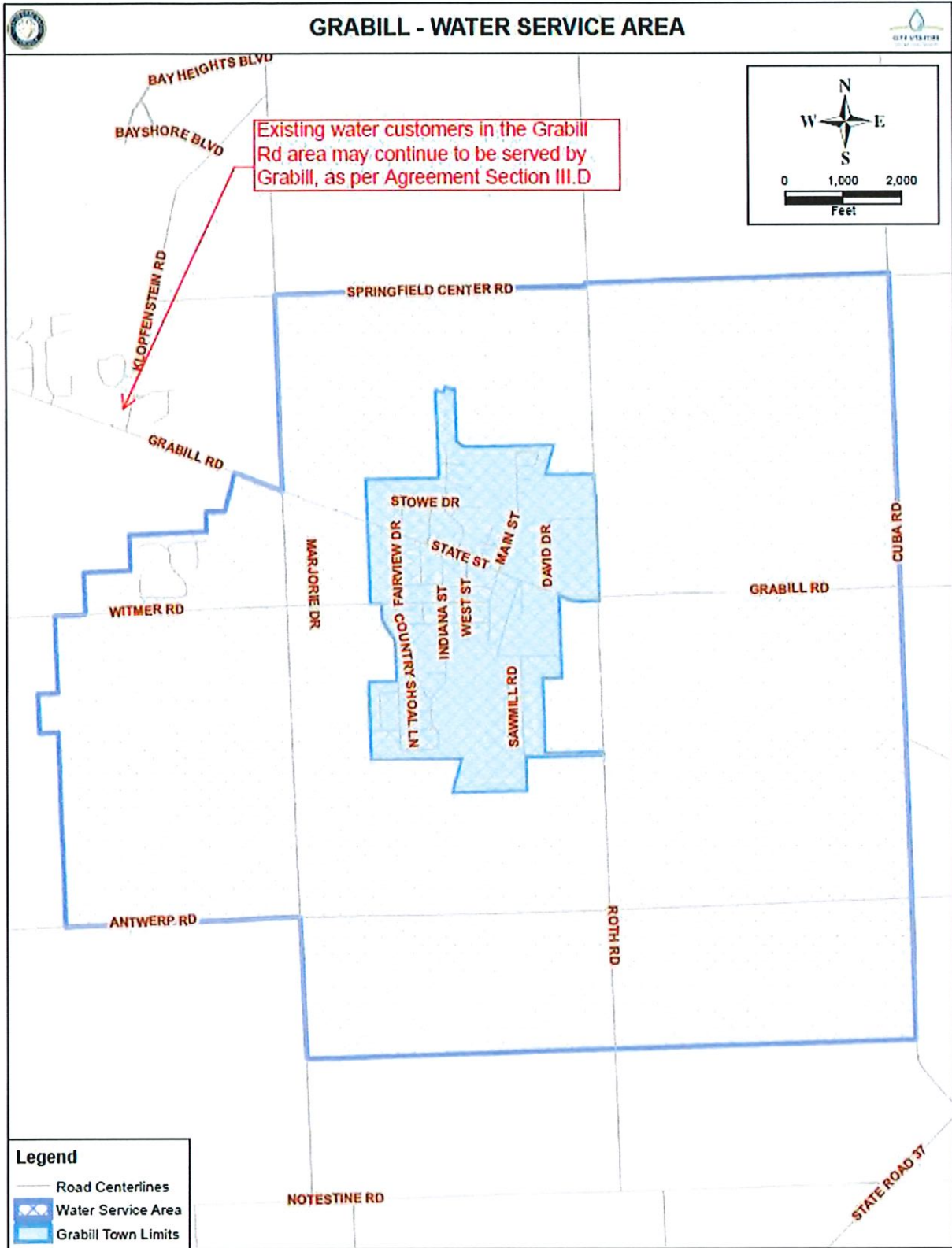


EXHIBIT 2

Not Used

EXHIBIT 3

Not Used

EXHIBIT 4

Grabill Connection Points Map & Information



Flows and Pressures at Connection Point. The design basis for the system hydraulic conditions provided at the connection point by Fort Wayne are intended in general to keep the two (2) Grabill elevated storage tanks generally full and in top third of their head range during normal operating conditions.

At the connection point and at the initial start of this Agreement, Fort Wayne estimated hydraulics delivered under peak flow (Fire Flow) conditions are as follows:

- i. At a Total sustained Peak Flow of 600 gpm, HGL will be 936 (plus or minus) for a duration of 2 to 4 hours.
- ii. At a Total Peak Flow of 900 gpm, HGL will be 845 (plus or minus)

EXHIBIT 5

VOLUME LIMIT - Average Gallons per Day (GPD) over rolling 24 hour Period

Connection Point	Connection Description	Volume Limit (GPD)
A	Witmer Road at Saddlecreek	520,000

Phase I - Volume Limit - All Connection Points Combined 520,000

Phase II - Volume Limit - All Connection Points Combined* 700,000*

PEAK FLOW LIMIT - Average Gallons per Minute (GPM) over rolling 15 Minute Period**

Connection Point	Connection Description	Peak Flow Limit (GPM)
A	Witmer Road at Saddlecreek	600

Phase I - Peak Limit - All Connection Points Combined 600

Phase II - Peak Limit - All Connection Points Combined* 800*

** Grabill is allowed to elect to implement Phase II Limits upon their request as per Sections VI and XV of this agreement. Grabill's implementation will change both the Volume and Peak Flow limit at same time.*

*** As noted and in accordance with Section VI, the Peak Flow Limit does not apply to fire flow or main break scenerios*

Volume Exceedance Fee

- **Contract Customer Penalty for Exceeding Volume Limit (Volumetric Exceedance Fee)**
 - If the Total Volume Limit is exceeded in any 24 hour rolling period for three consecutive days (72 hours total), a Volume Exceedance Fee shall be assessed to the flows billed during the billing period
 - The Volume Exceedance fee rate shall be the current Commodity Charge multiplied by a factor of 1.25

Peak Flow Charge

- **Contract Customer Penalty for Exceeding Peak Flow Limit (Peak Flow Charge)**
 - If the Total Peak Flow rate (average over a rolling 15 minute period), is exceeded for more than 15 minutes a Peak Flow Charge shall be assessed to the billing period for each exceedance
 - The Peak Flow Charge shall be the current Demand Charge multiplied by a factor determined by the following:
 - Factor of 2 for Total Peak Flow exceedances of up to 20% above the Peak Flow Limit
 - Factor of 5 for Total Peak Flow exceedances over 20% above the Peak Flow Limit

EXHIBIT 6

Contract & Rate Methodology

Town of Grabill Water Rates – Starting year 2023 – these rates remain in effect until any new rates are calculated and approved as described in following section “Cost of Service Rate Setting Methodology – Summary of Principles”

Demand Charge (per Month)	\$1,801.39
Commodity Charge (per 100ccf)	\$1.9684
Service Charge (per Month)	\$1,088.74 <i>(based on 6” meter)</i>
Fire Protection Charge (per Month)	\$302.89 <i>(based on 6” meter)</i>

Cost of Service Rate Setting Methodology – Summary of Principles

❖ Cost of Service Rate Categories

- Retail - Inside City
- Retail - Outside City
- Large Industrial
- Contract Customer
- Public Fire Protection
- Private Fire Protection

❖ Customer Classes within Retail Rate Categories

- Residential
- Commercial
- Industrial

❖ Contract Customer Characteristics

- Signed long term (20 year+) contract committing to receive water distribution from Fort Wayne
 - Provide growth projections, estimated consumption data to calculate maximum day and maximum hour levels, agree to peak consumption limits and seek capacity reservations for those consumption levels which allows Fort Wayne to long term plan for accommodating those requirements
1. For 2023 water rates, the following are assumed for Grabill capacity reservations:
 - Average Day (gallons per day) 315,000
 - Maximum Day (gallons per day) 520,000
 - Peak Hour (rate of gallons per day) 850,000

- Commit to controlling maximum or peak consumption and managing capacities or pay penalties for exceedances
- Monthly Service Charge per meter is billed at In-City rates and only for the master meters connecting the Contract Customer system to Fort Wayne
- Monthly Public Fire Protection Service Charge per meter is billed at In-City rates and only for the master meters connecting the Contract Customer system to Fort Wayne
- Customers for whom Fort Wayne provides less than all of administrative, customer distribution, transmission, pumping and treatment services needed by the customers
or
- Customers that receive all the needed administrative, customer distribution, transmission, pumping and treatment services from Fort Wayne, but by the terms of the contract commit themselves to restrictions not applicable to retail customers

❖ **Rate Methodology**

- Water Utility costs are separated into four categories
 1. Operation and Maintenance Expenses
 2. Taxes
 3. Depreciation and Amortization
 4. Return
- General Cost of Service Study (COSS) Methodology to be followed is the AWWA “base-extra capacity” method as described in AWWA M1 Manual – Principles of Water Rates, Fees and Charges (Sixth Edition)
 1. Cost Functions: Base, Extra Capacity, Customer and Direct Public Fire Protection
 - Base and Extra Capacity cost functions are classified as Common to All Customers or Common to Small Customers
 - ◆ Transmission Mains = 12” and larger diameter
 - ◆ Distribution Mains = Smaller than 12” diameter
 2. Functional Cost Allocation Factors: Base, Maximum Day, Maximum Hour, Number of Bills, Equivalent Meters and Equivalent Hydrants
 3. Peaking Factors (Capacity Factors) shall be based on actual data/readings that are available from the connection point meters, unless otherwise negotiated. Peaking factors will be tested for reasonableness via diversity test (as per AWWA M1 Manual)

❖ **Rate Adjustments**

- Rate Adjustments and future COSS’s by Fort Wayne include following procedures
 1. Fort Wayne shall provide Contract Customer with a draft copy of COSS and/or Rate Adjustment reports at least 90 days prior to filing / beginning Approval process.
 2. Rate Adjustments from COSS’s are subject to final Executive Review and Legislative Approval by Fort Wayne City Council

3. If City Council Ordinance approves overall rate increases that are different than the adjustments in the proposed COSS, Contract Customer annual increases shall be adjusted accordingly in the same methodology as the original COSS and proportioned to the City's retail customers.
4. If the IURC approves overall rate increases that are different than the increases in the proposed COSS or City Ordinances, Contract Customer annual increases shall be per the approved IURC Tariffs.

Interoffice Memo

Date: 6/7/22
To: Common Council Members
From: Matthew Wirtz, Deputy Director City Utilities - Engineering
RE: Potable Water Contract – Town of Grabill

Council District # N/A – Northeast of Fort Wayne

Contract / Agreement Scope.

Per this contract, Fort Wayne City Utilities (FWCU), as a regional utility water system, will provide water treatment services for Town of Grabill, allowing Grabill to abandon its current water production and treatment facilities that have reached their capacity limits and useful life. Grabill currently provides wholesale water to the Maysville Water District (town of Harlan). Under this contract, Grabill would continue to own and operate its water distribution system and wholesale water to Maysville while wholesale purchasing water from FWCU through a new connection point between Grabill and FWCU.

Grabill and its engineering and financial advisors worked with FWCU and the Indiana State Revolving Fund to develop this regionalization plan. SRF continues to show its support in regionalization and offered a combination of grants and low interest loans to FWCU, Grabill and Maysville to help make this plan even more economical and significantly less than Grabill and/or Maysville constructing their own water treatment facilities.

Contract is for minimum of 35 years, starting in mid-2023, and provides future capacity of up to 700,000 gallons per day to Grabill. FWCU water treatment plant has a capacity to treat 72 million gallons per day, while currently averaging approximately 35 million gallons per day, so it has extra capacity to provide water treatment for Grabill.

Grabill currently treats an annual average of approximately 260,000 gallons per day. FWCU estimates at that average daily flow the initial annual revenue will be approximately \$290,000.

FWCU will construct and pay for a water main extension and metering station along Witmer Road to establish the new connection point to Grabill's water system. All other construction and water system improvements to support this transition to FWCU water will be constructed and paid for by Grabill and Maysville.

Implications of not being approved:

Grabill would have to replace its current water treatment facilities at a significantly higher cost and impact to its water user rates. Fort Wayne would not have the opportunity to serve as a regional utility and leverage its existing excess water treatment capacity and generate additional revenue that will help mitigate future increases

in cost and water rate increases. SRF grants and low interest funding pledged to this project would not be able to be utilized.

If Prior Approval is being Requested, Justify: N/A

Approval Process:

The Board of Public Works approved the contract on 5/17/22

The Town Council of Grabill approved the contract on 5/18/22

Council Introduction Date: 6/14/22

CC: BOW
Matthew Wirtz
Jill Helfrich
File