

BILL NO. S-24-03-14

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving WATER POLLUTION TREATMENT CONTRACT between the City of New Haven, Indiana and the City of Fort Wayne, Indiana, by and through its Board of Public Works.

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

SECTION 1. That the WATER POLLUTION TREATMENT CONTRACT (attached hereto and marked Exhibit A) by and between the City of New Haven and the City of Fort Wayne, Indiana, by and through its Board of Public Works, is hereby ratified, and affirmed and approved in all respects.

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

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.

Council Member

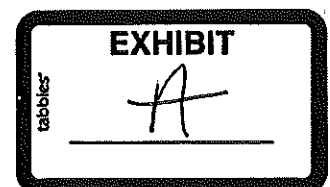
APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

CU 3-5-24

FINAL - 02/12/2024

WATER POLLUTION TREATMENT CONTRACT
BETWEEN
THE CITY OF FORT WAYNE, INDIANA
AND
THE CITY OF NEW HAVEN, INDIANA



WATER POLLUTION TREATMENT CONTRACT
BETWEEN
THE CITY OF FORT WAYNE, INDIANA
AND
THE CITY OF NEW HAVEN, INDIANA

THIS WATER POLLUTION TREATMENT CONTRACT (hereinafter referred to as "Contract") entered into this 5 day of March, 2024, by and between the **CITY OF FORT WAYNE, INDIANA**, a municipal corporation of the State of Indiana (hereinafter referred to as "Fort Wayne"), and the **CITY OF NEW HAVEN, INDIANA**, a municipal corporation of the State of Indiana (hereinafter referred to as "New Haven"), for the New Haven Service Area, as defined herein. Fort Wayne and New Haven are sometimes collectively referred to herein as the "parties" and individually as a "party."

WITNESSETH THAT:

WHEREAS, Fort Wayne owns and operates a Water Pollution Control Plant to treat Sewage; and

WHEREAS, New Haven does not own or operate a Water Pollution Control Plant to treat the Sewage generated from the New Haven Service Area (as hereinafter defined); and

WHEREAS, Fort Wayne has capacity available in its Water Pollution Control Plant to treat New Haven's Sewage pursuant to the terms and conditions of this Contract; and

WHEREAS, pursuant to I.C. § 36-9-23-16, the parties desire to enter into this Contract under which New Haven will convey its Sewage to Fort Wayne's Water Pollution Control Utility and Fort Wayne will accept and treat New Haven's Sewage pursuant to the terms and conditions hereof;

NOW THEREFORE, in consideration of the above and foregoing, 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.** A structure which provides for the conveyance of New Haven's Sewage to Fort Wayne for further transportation and treatment by Fort Wayne. The facilities comprising each Connection Point are generally described as a New Haven-owned sewer force main or gravity pipe discharging through a New Haven-owned structure, manhole, junction box, etc., into a Fort Wayne-owned sewer structure, manhole, junction box, pump station, etc.
- B. **Fort Wayne Ordinances.** Ordinances adopted by the Common Council of the City of Fort Wayne, as codified in the Fort Wayne Municipal Code, as such may be modified or amended from time to time.
- C. **Future Connection Points.** A Future Connection Point is a Connection Point that has not been constructed as of the Effective Date (as defined herein). The term includes the new proposed Connection Point "C" along East Paulding Road near its intersection with the Schmidt Drain and any other Connection Point that may be constructed after the Effective Date in accordance with the terms of this Contract.
- D. **Peak Flow Limit.** The Peak Flow Limit for the Connection Points and Future Connection Points as defined in Exhibit 3 hereto. This includes Phase I, Phase II and Phase III Peak Flow Limits.
- E. **Volume Limit.** The Volume Limit for the Connection Points and Future Connection Points as defined in Exhibit 3 hereto. This includes Phase I, Phase II and Phase III Volume Limits.
- F. **Monitoring.** The observation of Sewage characteristics without taking a portion of the Sewage for laboratory testing. Examples of characteristics determined by Monitoring include, but are not limited to, pH, conductivity, temperature and flow rates.
- G. **Peak Flow Charge.** The charge for New Haven exceeding the applicable Peak Limit, as calculated in accordance with Exhibit 3 hereto.
- H. **Prohibited Discharge.** Waste or a pollutant which is prohibited to be discharged into the Water Pollution Control Utility under the Fort Wayne Ordinances, Rules and Regulations of the Water Pollution Control Utility, state or federal laws, or rules of any regulatory agency having jurisdiction over such discharge.

- I. **Sampling.** The taking of an actual portion of the Sewage for laboratory testing and analysis. Examples of characteristics determined by Sampling include, but are not limited to, BOD, e-coli and total suspended solids.
- J. **Service Area.** The area in which a municipality may provide Sewage treatment services pursuant to I.C. § 36-9-23-36.
- K. **Sewage.** The water-carried wastes from residences, businesses, buildings, institutions and industrial establishments, singularly or in any combination.
- L. **Sewage System.** The network of sewers and appurtenances used for the collecting, transporting, or pumping of Sewage to a Connection Point or to the Water Pollution Control Plant.
- M. **User.** Any domestic or non-domestic discharger of Sewage to the Water Pollution Control Utility.
- N. **Volumetric Exceedance Fee.** The charge for New Haven exceeding the applicable Volume Limit, as calculated in accordance with Exhibit 3 hereto.
- O. **Water Pollution Control Plant.** Fort Wayne's arrangement of devices, structures and equipment used for treating and disposing of Sewage and sludge.
- P. **Water Pollution Control Utility.** All of Fort Wayne's combined facilities and systems, collectively, for collecting, transporting, pumping, treating or disposing of Sewage and sludge, including the Water Pollution Control Plant and Sewage System.

II. EFFECTIVE DATE.

- A. This Contract shall become effective upon final approval by the Fort Wayne Common Council and by the New Haven Common Council, whichever shall last occur (the "Effective Date"), subject to the approval by other local, state and federal agencies having jurisdiction over this Contract which is required.
- B. All previous agreements for the provisions of sanitary sewer service between Fort Wayne and New Haven, including, but not limited to, the following agreements, shall be void as of the Effective Date and shall be replaced by this Contract:
 - 1. Water Pollution Control Treatment Agreement – July 21, 1977 (Original Agreement)
 - 2. Supplemental Agreements – April 11, 1978; December 27, 1979

3. Amendments – October 13, 1982; July 2, 1985; December 5, 1989; October 21, 2003

III. NEW HAVEN SERVICE AREA.

- A. **Description of New Haven Service Area.** The New Haven Sewer Service Area is the geographic area in which New Haven may be the exclusive provider of Sewage service pursuant to and in accordance with this Contract. The New Haven Service Area is depicted in Exhibit 1 attached hereto and made a part hereof.
- B. **Exclusions from New Haven Service Area.** Excluded from the New Haven Service Area are any properties within the New Haven Service Area already receiving sewer services directly from Fort Wayne on the Effective Date.
- C. **Fort Wayne Facilities.** Notwithstanding Section III.B hereof, Fort Wayne may locate sewer pipes and appurtenances in the New Haven Service Area as long as no new properties within the New Haven Service Area are directly served by Fort Wayne.
- D. **New Haven Limited to Serving in New Haven Service Area.** New Haven acknowledges that Fort Wayne has entered into an Interlocal Agreement with the Allen County Regional Water and Sewer District pursuant to which Fort Wayne has acquired the right to provide sewer service within all areas of Allen County that are not currently served by another provider. Accordingly, New Haven agrees that it will not expand its Sewage System outside the New Haven Service Area for the purpose of directly serving customers without the prior written approval of Fort Wayne. Fort Wayne's approval shall not be unreasonably withheld. Fort Wayne and New Haven will collaboratively determine whether and how to best to furnish service to property owners located outside of the New Haven Service Area, who request the same; such determination shall consider the cost and economic feasibility to all parties under the then current circumstances. Approval for New Haven to provide sewer service outside the New Haven Service Area will be documented and recorded in an Interlocal Agreement.
- E. **Service Area Adjustments near Fort Wayne City Limits.** The Parties agree to cooperate in good faith and work together over the first three (3) years of the Contract to resolve current service boundaries in the areas generally along the boundary between the Fort Wayne city limits and the New Haven city limits in an effort to reduce the number

of customers receiving Sewage service from one provider and potable water service from another. Final determinations and changes to the New Haven Service Area that result from such efforts will require separate contractual agreements, amendments to this Contract and appropriate approvals from the Fort Wayne Common Council and the New Haven Common Council, as well as the Indiana Department of Environmental Management ("IDEM") and/or the Indiana Utility Regulatory Commission ("IURC") as applicable.

IV. CONNECTION OF SEWER FACILITIES.

- A. **Connection Point Locations.** The location of the current Connection Points "A" and "B" and the proposed Future Connection Point "C" are generally shown on Exhibit 2 attached hereto and made a part hereof.
- B. **Proposed Future Connection Point "C".** Fort Wayne shall fund, construct, and operate a new Connection Point "C" for New Haven's use along East Paulding Road near its intersection with the Schmidt Drain. This Connection Point shall consist of a lift station, force main and gravity sewer that meets the following requirements:
1. Lift station at a depth of no more than twenty (20) feet.
 2. Lift station with an ultimate build out capacity for receiving peak flows from New Haven of 1,000 gallons per minute (gpm) with an initial phase of capacity of no less than 500 gpm.
 3. Force main with a minimum diameter of 10" extending west from the lift station to Fort Wayne's Sewage System.
 4. 12" gravity sewer extending east from the Connection Point lift station to a point within fifty (50) feet of the intersection of East Paulding Road and Green Road.
 5. Lift Station and 12" gravity sewer to be constructed and available for use by New Haven within three (3) years of the Effective Date of this Contract.
- C. **Maintenance and Operation Costs.** Each party shall be responsible for the maintenance and operation of its own Sewage System and its portion of the Connection Points. Fort Wayne may inspect New Haven's portion of the Connection Points at any time. If such inspection reveals the Connection Points are not being properly maintained, repaired or operated, Fort Wayne shall notify New Haven of such maintenance, repair or operational

issues in writing in accordance with Section XV. Within thirty (30) days following receipt of such notice, New Haven shall provide Fort Wayne with a written plan to correct the issues identified in Fort Wayne's notice. In the event New Haven fails to (a) timely provide such written plan or (b) implement the actions described in the written plan to Fort Wayne's reasonable satisfaction within thirty (30) days following the delivery of the written plan, Fort Wayne may complete the required maintenance, repair or operational adjustments and New Haven shall, within thirty (30) days, following receipt of invoice from Fort Wayne, reimburse Fort Wayne for all direct costs incurred by Fort Wayne in performing such work on New Haven's behalf.

D. **Modification of Connection Points.** Should it become necessary or desirable to change or modify the Connection Points or to connect at different or additional Connection Points, the parties shall 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.

E. **Fort Wayne use of New Haven Sewage System.** As a result of an asset acquisition agreement between Fort Wayne and the Allen County Regional Water and Sewer District and an Interlocal Cooperation Agreement ancillary thereto, Fort Wayne is authorized to provide water and sanitary sewer service within the former ACRWSD territory, as the same was defined pursuant to various orders promulgated by IDEM. If Fort Wayne receives a petition for Sewage service in the former ACRWSD territory, and it appears prudent to serve those petitioners/customers and convey Sewage through the New Haven Sewage System to facilitate such service, Fort Wayne will contact New Haven to discuss, and if agreeable to both parties, Fort Wayne and New Haven will execute a separate Interlocal Agreement governing the use of the New Haven Sewage System for such purposes.

V. CONVEYANCE AND TREATMENT OF SEWAGE.

A. **Responsibility for Conveyance.** New Haven shall be solely responsible for delivery of the Sewage to the Connection Points in a form compliant with Section IX and in accordance with the 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. Thereafter, Fort Wayne shall be responsible for conveyance of the Sewage through its Sewage System to the Water Pollution Control Plant for treatment.

- B. **Responsibility for Treatment.** Fort Wayne shall be solely responsible for the proper treatment of the Sewage received from New Haven at the Connection Points in accordance with the 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. **Exclusivity of Treatment.** Except as provided below, Fort Wayne shall be the exclusive provider of Sewage treatment for New Haven in the New Haven Service Area during the Term of this Contract. For any new sewer connections within the New Haven Service Area east of Ryan Road, New Haven reserves the option, if New Haven determines such option is more economical for New Haven in its construction and providing of sewer capacity and service for new customers, to connect and send up to a maximum of 250,000 gallons per day of Sewage from such connections to the City of Woodburn's utilities to facilitate septic elimination and economic development initiatives. Nothing in this Section shall permit New Haven to assign and/or transfer any connections that are served with sewage treatment by Fort Wayne, whether before or after the Effective Date, to the City of Woodburn or any other utility provider. Further, New Haven's right under this Section shall be subject to a right of first refusal by Fort Wayne which shall be exercisable as follows:
1. If New Haven becomes aware of new proposed sewer connections within the area described above and New Haven determines it desires to exercise the option to send Sewage from such connections to the City of Woodburn, New Haven shall provide written notice of such determination to Fort Wayne.
 2. Within thirty (30) days after providing notice of its determination to Fort Wayne, New Haven shall provide to Fort Wayne capital cost information, rates and contract terms provided by the City of Woodburn, and any necessary approvals by IDEM, along with any other information related to its determination that New Haven wishes to provide.

3. Upon receipt of the information described above, Fort Wayne shall have sixty (60) days to determine whether it desires to exercise its right of first refusal.
4. If Fort Wayne elects to exercise the right of first refusal, Fort Wayne shall notify New Haven in writing confirming that it will provide sewer service to the new connections on the same terms and at the same cost as offered by the City of Woodburn.
5. If Fort Wayne does not respond within sixty (60) days or responds and advises that it does not intend to exercise the right of first refusal, New Haven may proceed with the City of Woodburn on the same terms outlined in the information provided to Fort Wayne pursuant to Subsection C.2 above. In such a case, the area of the new connections will be removed from the scope of this Contract, and New Haven will be responsible for procuring any necessary regulatory approvals to serve this area by other means.

VI. CAPACITY.

- A. **No Modification or Alterations.** To assure that adequate sewer capacity is available in the Water Pollution Control Utility, New Haven agrees that no changes, modifications or alterations will be made that may increase the rate of Sewage flow at the Connection Point(s) without the prior written approval of Fort Wayne, which approval shall not be unreasonably withheld or delayed.
- B. **Volume Limit.** Exhibit 3 attached hereto and made a part hereof lists Volume Limits for New Haven at the Connection Points. The Phase I Volume Limit shall be in effect until New Haven notifies Fort Wayne in accordance with Section XV that New Haven elects to be classified at the Phase II or Phase III Volume Limit for rate calculations and subsequent billing. Failure to provide such notice shall result in Fort Wayne applying the Phase I Volume Limit for classification of rate calculations, Volume Exceedance Fee calculations and subsequent billing. If, during any billing period, New Haven delivers to a Connection Point an amount of Sewage in excess of the limits described in attached Exhibit 3, Fort Wayne shall apply a Volumetric Exceedance Fee, as described in attached Exhibit 3 to the total amount of flow measured at the Connection Points.
- C. **Peak Flow Limit.** Exhibit 3 lists the Peak Flow Limits for New Haven at the Connection Points. The Phase I Peak Flow Limit shall be in effect until New Haven notifies Fort

Wayne in accordance with Section XV that New Haven elects to be classified at the Phase II or Phase III Peak Flow Limit for rate calculations and subsequent billing. Failure to provide such notice shall result in Fort Wayne applying the Phase I Peak Flow Limit for classification of rate calculations, Peak Flow Charge calculations and subsequent billing. As part of the monthly billing, Fort Wayne shall analyze Sewage flow for peak condition characteristics. If, during any billing period, New Haven delivers to a Connection Point a peak flow in excess of peak flow limits specified in attached Exhibit 3, a Peak Flow Charge shall be applied to New Haven's rate in accordance with attached Exhibit 3. In the event a second Peak Flow Charge is assessed again within a twelve (12) consecutive month period following a prior Peak Flow Charge and the Phase I Peak Flow Limit is in effect, Fort Wayne will notify New Haven in accordance with Section XV and will apply the higher of the Phase II or Phase III Peak Flow Limit for rate calculations and subsequent billing. If the Phase II or Phase III Peak Flow Limit is already being used or the Connection Point only has one peak limit and New Haven is assessed a second Peak Flow Charge within twelve (12) consecutive months of a prior Peak Flow Charge, Fort Wayne shall notify New Haven, and New Haven 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 limits described in attached Exhibit 3. In the event New Haven (a) fails to submit a plan within such sixty (60) day period or (b) fails to comply with the terms of an approved plan, New Haven shall be in default under Section XIII of this Contract.

VII. CAPACITY ALLOCATION APPROVALS AND CONNECTIONS.

- A. **Permit Applications.** For new connections within the New Haven Service Area, New Haven shall complete an Application for Sanitary Sewer Construction Permit ("Application") required by Indiana Administrative Code (IAC) per 327 IAC 3.
- B. **Forward Copy of Application Materials.** New Haven shall provide Fort Wayne a completed Application executed by an authorized representative of New Haven, a completed Capacity Certification/Allocation Request signed by New Haven, a completed Sanitary Sewer Design Summary, a completed Certification of Registered Professional Engineer, one (1) set of approved sanitary sewer plans and all other required information

necessary for Fort Wayne to process the Application and Capacity Allocation Approval Request.

- C. **Timely Review of Application.** Fort Wayne shall review all properly completed Applications and Capacity Allocation Requests in a timely manner and shall not arbitrarily or unreasonably delay or deny such Applications and Requests. It will not be unreasonable or arbitrary for Fort Wayne to deny an Application or Request if, based on Fort Wayne's review and calculations, Fort Wayne determines the additional capacity specified in the Application is likely to cause New Haven to exceed its Volume Limit or Peak Flow Limit at the applicable Connection Point as per Exhibit 3, so long as Fort Wayne provides its calculations to New Haven for review at least thirty (30) days prior to denying its application. Such a denial will not preclude New Haven from reapplying with additional information.
- D. **Report of New Connections.** New Haven, as a wholesale customer, shall provide to Fort Wayne a report of all new connections made to the New Haven Sewage System. The sanitary sewer connection report shall be provided annually during each year of this Contract for the period January 1 through December 31, which shall be submitted to Fort Wayne no later than February 28. Information to be included on said report shall include the property address, date of connection, number of equivalent residential units and such additional information as may be reasonably requested by Fort Wayne.

VIII. METERING.

- A. **Monthly Bill.** Fort Wayne will calculate New Haven's monthly sewer bill based on monthly meter readings for the New Haven Service Area facility meters at the Connection Points.
- B. **Metering Equipment.** Fort Wayne shall install, operate and maintain proper and adequate sewer metering equipment for the purpose of measuring the volume and instantaneous peak flow rate of Sewage delivered to each of the Connection Points for treatment, at Fort Wayne's cost. The sewer metering equipment will include an electronic data collection and data storage system which monitors and transmits to the Fort Wayne's telemetry in no less than one (1) minute time increments.

- C. **Connection Point/Metering Related Infrastructure.** New Haven shall be responsible for the cost of real estate acquisition, planning, designing, installing, daily operation, maintenance, updating and replacement, as necessary, of all vaults, piping, appurtenances, electrical equipment and systems necessary to support Fort Wayne's sewer metering and telemetry devices per Fort Wayne standards. Modifications to existing, or construction of new Connection Point metering related infrastructure must be approved in advance by Fort Wayne.
- D. **Access to New Haven Flow Data.** Fort Wayne shall provide and bear the cost of providing and maintaining telemetry for transferring volume and peak flow data from the meter and electronic storage system to the Fort Wayne telemetry system and website. Access to New Haven's flow data on the website shall also be provided to New Haven.
- E. **Meter Bypass Valves.** Any bypass valves shall be maintained in locked boxes and the key to each locked box shall be kept by Fort Wayne. New Haven may request access to locked boxes; said access shall not be unreasonably denied by Fort Wayne. If emergency access to the locked boxes is needed, New Haven shall immediately notify Fort Wayne and access shall not be unreasonably prohibited by Fort Wayne.
- F. **Access to Metering Equipment.** Fort Wayne shall have complete and free access to the metering equipment for inspection, testing, repair, and replacement at all reasonable times. New Haven shall provide reasonable access to the New Haven-owned structures and/or facilities where the metering equipment is located.
- G. **Meter Testing and Maintenance.** Sewer metering equipment and remote readouts may be tested, calibrated, maintained and repaired as necessary by Fort Wayne. In addition, the following testing and calibration may be performed by Fort Wayne and the reasonable cost shall be the responsibility of New Haven: testing and calibration of the sewer metering equipment while remaining in place at New Haven's facilities may be conducted annually.

IX. QUALITY.

- A. **Excess Strength.** In the event New Haven conveys Sewage which has a strength in excess of domestic waste, as defined in the applicable Fort Wayne Ordinances, such

Sewage will be accepted and treated in accordance with the Fort Wayne Ordinances and a surcharge will be applied.

B. Prohibited Discharges.

1. New Haven shall not convey Prohibited Discharges to Fort Wayne and Fort Wayne shall be under no obligation whatsoever to accept any type of Prohibited Discharge from New Haven.
2. Upon discovery that a Prohibited Discharge is being conveyed by New Haven's Sewage System to the Water Pollution Control Utility:
 - a. New Haven shall immediately cease delivery of the Prohibited Discharge upon verbal notice from Fort Wayne, and New Haven shall provide written confirmation to Fort Wayne that conveyance of such Prohibited Discharge has ceased within twenty-four (24) hours following receipt of such verbal notice from Fort Wayne.
 - b. If New Haven shall not immediately cease said conveyance, Fort Wayne may, at its option, without liability and at New Haven's cost:
 - i. Terminate the specific User found to be delivering Prohibited Discharges to New Haven's Sewage System, if such User is ascertainable;
 - ii. If the specific User is not reasonably ascertainable or able to be terminated, Fort Wayne may cease servicing the entire New Haven Sewage System and cease accepting all Sewage conveyed from New Haven until the Prohibited Discharge issue is remedied to the satisfaction of Fort Wayne, IDEM, and/or the United States Environmental Protection Agency.
 - iii. New Haven shall bear all liabilities and costs which Fort Wayne or New Haven may incur or for which Fort Wayne or New Haven may be liable in connection with either the continued conveyance of such Prohibited Discharge by New Haven and/or treatment of such Prohibited Discharge by Fort Wayne and Fort Wayne's exercise of its rights to take action to remedy the situation.

X. SAMPLING AND MONITORING OF QUALITY.

- A. New Haven shall install proper and adequate facilities to permit Fort Wayne's Sampling and Monitoring of the Sewage conveyed to the Connection Points. Facilities shall include without limitation an electronic data system which monitors the Sewage conveyed to Fort Wayne for treatment and the physical locations where Sewage may be sampled and monitored. If New Haven's Sampling and Monitoring facilities include a source of electrical power, shelter and security, reasonable access to the same shall be provided to Fort Wayne.
- B. The Sampling and Monitoring facilities shall be approved by Fort Wayne prior to installation or modification. If New Haven fails to obtain such approval and Fort Wayne reasonably determines that such facilities do not comply with Fort Wayne's requirements, Fort Wayne may at New Haven's expense re-install or modify the Sampling and Monitoring devices at a location selected by Fort Wayne.
- C. Fort Wayne shall have complete and unrestricted access to the Sampling and Monitoring facilities at all times. New Haven shall maintain continuous accessibility to such facilities through appropriate measures, including snow removal. New Haven shall maintain, at a minimum, remote read-only access to both current and backup electronic data and shall not edit, change or delete any data without the prior written approval of Fort Wayne. Fort Wayne may add, alter or modify its final read out equipment at Fort Wayne's cost and may maintain such equipment with a lock, which key will be held by Fort Wayne.
- D. New Haven shall bear all costs related to the planning, designing, installing, operating and replacing the Sampling and Monitoring devices, including the acquisition of real estate as needed.
- E. Fort Wayne may test, calibrate, maintain and repair, as necessary, Sampling and Monitoring devices, the cost of which shall be paid by New Haven in accordance with Fort Wayne's Rate and Use Ordinances.
- F. Material samples received from the Sampling devices shall be available to Fort Wayne and New Haven. In the event Fort Wayne provides testing for samples, the cost of such testing shall be paid by New Haven in accordance with the schedule of flat rate charges set forth in the applicable Fort Wayne Ordinances. New Haven may request Sampling

and analysis in addition to Fort Wayne's Sampling, the cost of which shall be in accordance with Section XLC of the Contract.

XI. INSPECTION AND ENFORCEMENT.

A. New Haven shall maintain a current Industrial Waste Survey list in accordance with the following:

1. The Industrial Waste Survey list shall include the name and address of all commercial and industrial Users in New Haven's Service Area, the nature of each User's business and the name and contact information of a responsible contact person for each User.
2. An updated list shall be provided to Fort Wayne within thirty (30) days of the Effective Date of this Contract.
3. Additional lists shall be provided to Fort Wayne annually on or before January 15th of each year during the Term of this Contract.

B. New Haven authorizes Fort Wayne and Fort Wayne agrees to:

1. Maintain an Industrial Waste Survey list of industrial dischargers to New Haven's Sewage System.
2. Apply Fort Wayne's pretreatment limits to Users of New Haven's Sewage System.
3. Establish industrial wastewater permits required under Fort Wayne's Industrial Pretreatment and Sewer Ordinances to dischargers into New Haven's Sewage System.
4. Require and receive all industrial pretreatment reports required by 40 CFR 403 and Fort Wayne's Sewer Use Ordinance, which is set forth in the Fort Wayne Ordinances. Reports will be maintained by Fort Wayne's Industrial Pretreatment Department.
5. Inspect all facilities of industries permitted to discharge into New Haven's Sewage System.
6. Require any person that discharges or may discharge industrial waste into New Haven's Sewage System via floor drains, sinks, and catch basins, or other similar means to install and maintain, at such person's expense, one or more control

- manholes to facilitate observation, measurement, and sampling of such person's waste.
7. Collect and analyze samples of waste Sewage from industries permitted to discharge into New Haven's Sewage System.
 8. Conduct all inspections, surveillance and monitoring procedures necessary to determine, independent of information supplied by permitted dischargers to New Haven's Sewage System; such dischargers' compliance statuses pertaining to pretreatment limits, reporting requirements, and such dischargers' wastewater permits.
 9. Enter the premises of any permitted discharger or any commercial or industrial User which has a discharge source or pretreatment system, in order to inspect the same or to view records relevant to the permitted discharger's operation, treatment, monitoring or discharge.
 10. Immediately make all reasonable efforts to prevent any discharge or pollutants into New Haven's Sewage System which would present an imminent endangerment to the health or welfare of the public or the environment or which threatens the operation of New Haven's Sewage System or the Water Pollution Control Utility.
 11. Undertake a full range of enforcement when pretreatment violations occur, as provided in Fort Wayne Ordinances and the Rules and Regulations of the Fort Wayne Water Pollution Control Utility, and as set out in Fort Wayne's Enforcement Response Plan.
 12. Charge fees consistent with those assessed against industrial and commercial Users discharging directly to Fort Wayne for sampling.
 13. Undertake any other action necessary to ensure compliance with 40 CFR 403 or with Fort Wayne's National Pollutant Discharge Elimination System permit.
- C. New Haven appoints Fort Wayne's Board of Public Works as its agent with full authority and license to enforce, the provisions of the Fort Wayne Ordinances and Rules and Regulations and all applicable State and Federal laws, rules, regulations, orders, codes and directives upon customers in New Haven's Service Area at New Haven's reasonable expense.

XII. CHARGES FOR AVAILABILITY, CONVEYANCE, TREATMENT AND ADDITIONAL SERVICES.

A. Capacity Availability Fees.

1. **Area Connection Fees Not Required.** New Haven shall not be required to pay Area Connection Fees for new customer connections that (i) are approved to connect to the New Haven Sewage System, (ii) send all of their Sewage through existing Connection Points "A" and "B" and the proposed Future Connection Point "C" as described in Exhibit 3, and (iii) do not require increases to the Volume Limits or Peak Flow Limits for those Connection Points as described in Exhibit 3.
2. **New Connection Points or Capacity Increase Fees.** Prior to approval and construction of any Future Connection Points (excluding Future Connection Point "C") or Fort Wayne providing increases to the Volume Limits or Peak Flow Limits of Connection Points "A", "B" or "C" as listed in Exhibit 3, an amendment to this Agreement will be required. The amendment will specify the new payment arrangements for New Haven to reimburse Fort Wayne for its costs to construct the Future Connection Point and provide the additional capacity in lieu of Fort Wayne collecting Area Connection Fees from new customer connections.

B. Cost of Conveyance and Treatment.

1. **Billing.** Fort Wayne shall be responsible for reading the metering devices/data and billing New Haven in accordance with rate schedules then in effect.
2. **Rate.** New Haven shall pay to Fort Wayne for the conveyance, billing and other charges applicable to the Sewage flow received at the Connection Points shown on attached Exhibit 2, the fees and charges set forth in the Fort Wayne Ordinances and this Contract applicable to wholesale contract metered customers, as provided in said rate schedule and this Contract.
3. **Rate Adjustment.** New Haven understands and agrees that the metered sewer rates are set by Fort Wayne Board of Public Works and City of Fort Wayne Common Council and may be subject to change from time to time, which changes shall be consistent with the methodology as reflected in Exhibit 4 attached hereto

and made a part hereof. Provided, however, Fort Wayne agrees not to increase rates to New Haven by a percentage that is more than the percentage of increase to Fort Wayne's residential customers on an annual basis. New Haven specifically reserves the ability to pass on any increase to the rate charged by Fort Wayne to New Haven's customers.

4. **Notice of Rate Change.** Fort Wayne shall provide New Haven with not less than sixty (60) days written notice of Fort Wayne's intent to adjust rates charged New Haven prior to a rate adjustment becoming effective. This Subsection does not prohibit or restrict the Fort Wayne Board of Public Works and/or Common Council from adopting a rate increase.
5. **Reimbursement for Construction of Connection Point "C".** New Haven agrees to reimburse Fort Wayne for the construction cost of the proposed Future Connection Point "C" in the amount of Two Million Dollars (\$2,000,000.00).
 - a. The reimbursement to Fort Wayne will be paid in monthly installments of \$5,555.55 for a period of thirty (30) years and will be added to New Haven's monthly treatment bill. If this agreement terminates prior to New Haven repaying of the entire \$2,000,000.00 reimbursement, the outstanding balance shall be due and payable to Fort Wayne on the date of termination. If the amount due is \$500,000.00 or more, New Haven shall have the option to pay in three (3) installments, the first due at date of termination and the other installments due six and twelve months later
 - b. The first monthly installment of the reimbursement will begin the month after Future Connection Point "C" is placed into service and begins receiving sewage flow from New Haven.

C. Additional Services

1. This Contract governs the parties' respective rights and obligations as they pertain to Sewage conveyance and treatment services, and the rates and charges provided for herein shall apply only to those specific services. From time to time, New Haven may request Fort Wayne to provide additional services such as IT services, professional engineering services, administrative support services, and/or emergency repair services. Provided Fort Wayne has the capability for such

services and agrees to provide them, the parties agree that the charges for such services shall be an amount equal to the Fort Wayne's expense for providing such services (both in-house and contracted assistance) plus an additional ten percent (10%).

2. Fort Wayne shall invoice New Haven for the cost of such services. Payment of invoices for such additional services by New Haven shall be in accordance with and be subject to applicable Fort Wayne Ordinances and Resolutions adopted by the Fort Wayne Board of Public Works.

XIII. DEFAULT.

- A. **Event of Default.** Unless otherwise specifically provided herein, 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, and such default is not cured to the reasonable satisfaction of the non-defaulting party within fifteen (15) days of the date Notice of such default is given, which Notice shall specify with reasonable particularity the basis for the default claimed; provided, that if such default is of such nature that it cannot be cured within fifteen (15) days, despite reasonably diligent efforts, then the default period shall be extended as reasonably necessary for the defaulting party to cure the default, so long as the defaulting party commences to cure the default and diligently pursues such cure to completion.
- B. **Notice of Default.** If either party discovers a violation of Section VII Metering, Section X Sampling and Monitoring, then the non-defaulting party shall notify (in accordance with Section XV) the defaulting party of the violation. The defaulting party shall have thirty (30) days to cure the violation or to notify the non-defaulting party of its plan to cure the violation. Failure to cure or submit a plan to cure shall be considered a minor breach and the non-defaulting party shall have the right to cure the violation itself and the defaulting party shall be responsible for the costs to cure.
- C. **Service Area Default.** If either party discovers a violation of Section III Service Area the non-defaulting party shall notify (in accordance with Section XV) the defaulting party of the violation. The defaulting party shall have thirty (30) days to cure the violation or to notify the non-defaulting party of its plan to cure the violation. If notice of a plan to

cure the violation is provided, the parties shall have two (2) months in which to negotiate a resolution to the service area violation. If the default is not cured within thirty (30) days or a resolution is not negotiated and approved within two (2) months following the defaulting party's notice of its plan to cure the violation, the non-defaulting party may, at its sole discretion, terminate the Contract.

- D. **Default Costs.** If an Event of Default occurs which results in the cancellation of the Contract and services provided hereunder prior to the date the Contract was to terminate, the defaulting party shall compensate the non-defaulting party in an amount equal to the revenue non-defaulting party was to gain if the default had not occurred, reduced by the reasonable value of the services the non-defaulting party is no longer required to provide as a result of the Contract termination, if any. Such revenue will be equal to New Haven's administrative cost and debt service cost which is paid by New Haven's customers and is included in New Haven's sewer bills, if Fort Wayne defaults, or equal to the amount of excess revenue that would be paid to Fort Wayne by New Haven for the remainder of the Original Term or any Renewal Term then in effect, if New Haven defaults. Such revenue shall be calculated as a monthly amount taking an average of the preceding twelve (12) months.

- E. **Service After Termination.** Upon a termination of the Contract under this Section XIII and subject to Section XV, Fort Wayne shall continue to provide treatment services for New Haven's Sewage at the then current rate for Outside City Metered Retail Users as set forth in the Fort Wayne Ordinances. In the event Fort Wayne provides treatment services for New Haven's Sewage under this Section XIII, either party may terminate Fort Wayne's treatment services by giving thirty-six (36) months' notice of its intention to terminate Fort Wayne's treatment services to the other party prior to termination. In the event the Contract is terminated as a result of a default by New Haven, payments provided by New Haven pursuant to this Subsection may offset the amount of damages the City is entitled to recover under Subsection D. above but otherwise shall not affect the City's ability to recover damages under Subsection D.

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

- A. Each of the parties to this Contract shall comply with all local, state and federal regulations, standards and laws currently in effect and as amended, adopted or enacted regarding the collection and treatment of Sewage, the operation of their respective systems and any additional services provided according to the terms and provisions of this Contract.
- B. New Haven shall adopt and enforce ordinances providing for rates, rules and regulations, and use of its Sewage System which are in conformity with the reasonable requirements 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 and from United States Environmental Protection Agency and other agencies which may now or in the future have such opportunities offered.

XV. MISCELLANEOUS.

A. Notices and Invoices,

- 1. Any notices required under this Contract shall be served by certified mailing, return receipt requested, postage prepaid, addressed to the party to be served at the last address filed by such party with the other party.
- 2. Notices for New Haven's election for a change in Volume Limits or Peak Limits as specified in Section VI must be received a minimum of two (2) years in advance of requested implementation date.
- 3. Invoicing by Fort Wayne under this Contract shall be served by first class mail addressed to New Haven at the last address filed by New Haven.
- 4. At the Effective Date of this Contract, Fort Wayne's address is:
Fort Wayne City Utilities, Attention of the Director
200 E. Berry Street, Suite 250
Fort Wayne, Indiana 46802
- 5. At the Effective Date of this Contract, New Haven's address is:
City of New Haven, Attention of Superintendent
815 Lincoln Highway East
PO Box 570
New Haven, IN 467774

B. Term of Contract, Renewals,

1. **Original Term.** This Contract shall continue in full force and effect for twenty (20) consecutive years from the effective date (hereinafter referred to as the "Original Term").
2. **Automatic Term Renewals.** This Contract shall automatically renew for an indeterminate number of five (5) year terms (each being hereinafter referred to as a "Renewal Term" and together with the Original Term being collectively referred to as the "Term") unless a party notifies the other of its desire to terminate services or to terminate the Contract at least thirty-six (36) months prior to the expiration of the then current term. Failure of either party to notify at least thirty-six (36) months prior automatically renews this Contract for another Renewal Term. The notice shall be in accordance with Section XV and state the intent of the party not to continue the Contract after the conclusion of the then current term and shall cite one of the following two bases:
 - a. **Termination of Contract.** Upon notice of termination of Contract by either party, with the intent to enter into a new Contract with new terms, the terms of this Contract shall remain in force and effect until the termination date; or
 - b. **Termination of Services.** Upon notice of termination of this Contract by either party with no intent to enter into a new Contract under current or new terms, the following provisions of this Contract shall become null and void, effective the date of the notice to terminate:
 - i. Section III. Service Area.
 - ii. Section VII. Capacity Allocation Approvals and Connections.
 - ii. The applicable rate for conveyance, treatment and other charges for Wholesale Contract Customers as set forth in Section XLB.2 shall terminate and New Haven shall pay all fees and charges applicable to Outside City Government customers as established in Fort Wayne Ordinances.

C. Amendments.

1. **Written Mutual Consent.** Written amendments to the Contract executed and approved by the parties shall be the only recognized changes to the Contract.

2. **Notice.** In the event a party wishes to amend the contract, that party shall send notice in accordance with Section XV and include the following:
 - a. Desire of party to discuss and amend;
 - b. List of subject portions of the Contract; and
 - c. Description of relief or change desired.
 3. The parties shall have six (6) months in which to negotiate in good faith the proposed amendments to the Contract. If the parties do not reach agreement on the proposed amendments, the original Contract provisions herein will remain in force.
- D. Change of Conditions or Legal Environment.** If a party believes there has been a change in conditions applicable to the Contract, the Contract terms and conditions may be renegotiated in good faith to reflect the effect of such change. Such a request must be initiated by a notice provided from a party to the other in accordance with Section XV that includes the following:
1. Desire of party to discuss and renegotiate;
 2. Description of substantial change in conditions; and
 3. Description of conceptual relief or change desired.
- E. Termination by Both Parties.** This Contract may be terminated in writing by both parties.
- F. Survival.** The obligations set forth in the following sections shall survive termination or expiration of this Contract until Fort Wayne no longer provides treatment services to New Haven:
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.B.5, C
 9. Section XIII
 10. Section XIV
 11. Section XV.A, C, E, F, G
- G. Indemnities.**

1. **Environmental Indemnity/New Haven.** New Haven shall comply with all applicable environmental laws, rules, regulations, orders, codes and/or directives of all federal, state and local governmental entities having jurisdiction over its water and Sewage System. New Haven agrees to defend, indemnify and hold Fort Wayne (and its officers, directors, employees, contractors, representatives, agents, departments and divisions), harmless from any cost, action, award, expense, liability, penalty, final judgment, settlement, loss or damage (including indirect, incidental, special, punitive and consequential damage), including but not limited to the recovery of legal costs and reasonable attorney fees, arising from New Haven's violation of any such law, rule, regulation, order, code or directive which relates directly or indirectly to (a) New Haven's negligent, intentional or willful performance or failure to perform under this Contract or (b) any breach of this Contract by New Haven. This provision shall survive termination of this Contract and the date of termination of service by Fort Wayne.
2. **Environmental Indemnity/Fort Wayne.** Fort Wayne shall comply with all applicable environmental laws, rules, regulations, orders, codes or directives of all federal, state and local governmental entities having jurisdiction over its water and Sewage System. Fort Wayne agrees to defend, indemnify and hold New Haven (and its officers, directors, employees, contractors, representatives and agents), harmless from any cost, damage (including indirect, incidental, special, punitive and consequential damage), award, action or liability, including but not limited to the recovery of reasonable attorney fees and legal costs, arising from Fort Wayne's violation of any such law, rule, regulation, order, code or directive which relates directly or indirectly to (a) Fort Wayne's negligent, intentional or willful performance or failure to perform under this Contract or (b) any breach of this Contract by Fort Wayne. This provision shall survive termination of this Contract and the date of termination of service by Fort Wayne.
3. **Personal Injury, Death and Property Damage/New Haven.** New Haven agrees to defend, indemnify, and hold harmless Fort Wayne (including its officers, employees, representatives, departments, divisions and agents) from all direct demands, liabilities, costs and expenses (including legal costs and reasonable

attorney's fees), judgments, settlements and penalties arising from (a) New Haven's negligent, intentional or willful performance, including damages for personal injury, property damage or death (but excluding indirect, special, incidental, punitive and consequential damages) or failure to perform under this Contract and/or (b) New Haven's negligent, intentional or willful failure to maintain and operate its water and Sewage System. This provision shall survive termination of this Contract and the date of termination of service by Fort Wayne.

4. **Personal Injury, Death and Property Damage/Fort Wayne.** Fort Wayne agrees to defend, indemnify, and hold harmless New Haven (including its officers, employees, representatives, departments, divisions and agents) from all direct demands, liabilities, costs and expenses (including legal costs and reasonable attorney's fees), judgments, settlements and penalties, including damages for personal injury, property damage or death (but excluding indirect, special, incidental punitive and consequential damages) arising from (a) Fort Wayne's negligent, intentional, or willful performance or failure to perform under this Contract and/or (b) Fort Wayne's negligent, intentional, or willful failure to maintain and operate its water and Sewage System. This provision shall survive termination of this Contract and the date of termination of service by Fort Wayne

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

- L. **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, or before the IURC (if applicable).
- M. **Force Majeure.** Fort Wayne shall not be responsible for a failure to provide service under this Contract if such failure is caused by fire, flood, drought, earthquake, or other physical natural disaster, war, hostilities, invasion or act of foreign enemies, acts of terrorism, or requisition or compulsory acquisition by a governmental authority, riots, strikes, or lockouts, or other contingencies beyond its control and without its fault.
- N. **Integration.** This Contract constitutes the entire agreement and understanding between the parties hereto relating to the provision of sanitary sewer service, and it is agreed that any change in, addition to, or amendment or modification of the terms hereof shall be of no effect unless reduced to writing and executed by both parties.
- O. **Assignment.** This Contract, including the capacity allocations contemplated hereby, may not be assigned by New Haven without the prior written consent of Fort Wayne.
- P. **Administrative Approval.** In the event this Agreement requires any approval by an administrative agency (including but not limited to IDEM or the IURC) both parties agree to work together to achieve that approval, and neither will object to the Agreement's approval.
- Q. **Utility Advisory Board.** The Parties agree the New Haven Common Council will have one appointment to the Fort Wayne Utility Advisory Board. This appointment may not be an elected official. The parties acknowledge and agree that Fort Wayne and New Haven have entered, or may be entering, into a Potable Water Agreement that also provides for one appointment to the Fort Wayne Utility Advisory Board, and the appointments provided under each contract are not intended to be cumulative. The New Haven Common Council will have a total of one appointment, whether made under this Contract or any other contract.
- R. **Presentations to New Haven Common Council.** Fort Wayne agrees to provide up to two (2) presentations annually to the New Haven Common Council at the request of New Haven.

- S. **Dispute Resolution.** Should there be a dispute between the Parties regarding actions that must be taken with respect the Contract, including, without limitation, current service boundaries or the expansion of the New Haven Service Area as set forth in Section III hereof, the Parties agree to attempt to resolve the dispute by participating in mediation, with a third-party mediator mutually agreeable to both parties. The costs of the mediator shall be split equally by the parties, and each party will pay its own attorney's fees incurred in connection with the mediation. If the dispute is not resolved by mediation, either party may request appropriate relief with the IURC or a court of competent jurisdiction, as provided in Section XV.L.
- T. **Fort Wayne's Right of First Refusal.** If the City of New Haven determines to sell or lease any portion of New Haven's Sewage System, New Haven agrees to grant Fort Wayne a right of first refusal. Fort Wayne's right of first refusal may be exercised as follows:
1. If New Haven receives an offer to purchase or lease a portion of the New Haven Sewage System ("Offer"), New Haven shall provide written notice of the Offer, including a description of the portion of the New Haven Sewage System proposed to be purchased or leased and the price to be paid by the offeror.
 2. Upon receipt of the information described above, Fort Wayne shall have ninety (90) days to determine whether it desires to exercise its right of first refusal.
 3. If Fort Wayne elects to exercise the right of first refusal, Fort Wayne shall notify New Haven in writing confirming that it will purchase the portion or lease the portion of the New Haven Sewage System in accordance with the terms set forth in the Offer.
 4. If Fort Wayne does not respond within ninety (90) days or responds and advises that it does not intend to exercise the right of first refusal, New Haven may proceed to sell or lease all or a portion of the New Haven Sewage System on the same terms outlined in the Offer. If the Offer only pertains to a portion of the New Haven Sewage System, then that portion of the Sewage System and connections thereto will be removed from the scope of this Contract.
- U. **Conveyance of the Georgian Park Sewer Infrastructure.** Within sixty (60) days after the Effective Date and receipt of a written request from New Haven, Fort Wayne agrees

to execute any and all documents to transfer and quitclaim all of its right, title, and interest in and to the Georgian Park Sewer Infrastructure (including all sewer collection system infrastructure, property easements, and lift station infrastructure) to New Haven for the price of One Dollar (\$1.00). The Georgian Park Sewer Infrastructure is depicted in Exhibit 5. The transfer contemplated hereby shall be "as is" without warranties or representations of any kind, and Fort Wayne specifically disclaims all warranties that may be disclaimed under Indiana law including, without limitation, the implied warranties of merchantability or fitness for a particular purpose.

[Signature Page to Follow]

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

By: [Signature]
Shan Gumawardena, Chairman

By: [Signature]
Kumar Menon, Member

By: [Signature]
Chris Guerrero, Member

Attest: [Signature]
Michelle Fulk-Vondran, Clerk

Date: 3-5-2024

ACKNOWLEDGEMENT

STATE OF INDIANA)
) ss
COUNTY OF ALLEN)

Before me, a Notary Public, in and for said County and State personally appeared Shan Gumawardena, Kumar Menon, and Chris Guerrero 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 Water Pollution Treatment Contract as and 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 5th day of March 2024

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



CITY OF NEW HAVEN

By: _____

By: _____

ACKNOWLEDGEMENT

STATE OF INDIANA)
) ss
COUNTY OF ALLEN)

Before me, a Notary Public, in and for said County and State personally appeared Steve McMichael of the City of New Haven and acknowledged the execution of the foregoing Water Pollution Treatment 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 22nd day of February, 2024

Deborah A. Smith
Notary Public and Resident of
Allen County, Indiana

My Commission Expires:



DEBORAH A. SMITH, Notary Public
Allen County, State of Indiana
Commission Number NP0702493
My Commission Expires July 9, 2025

Exhibit 1- New Haven Sewer Service Area Map

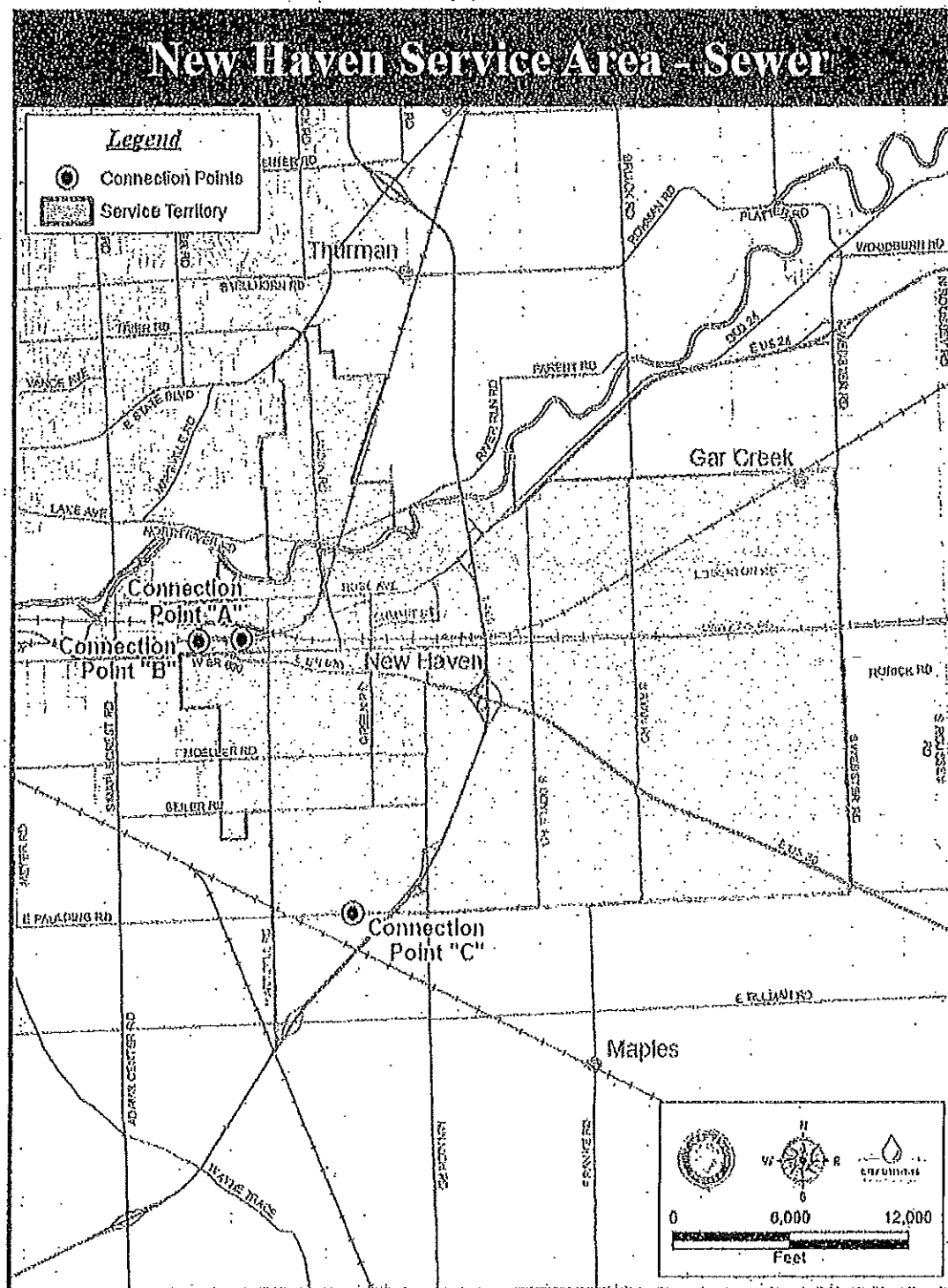


Exhibit 2 – New Haven Connection Points

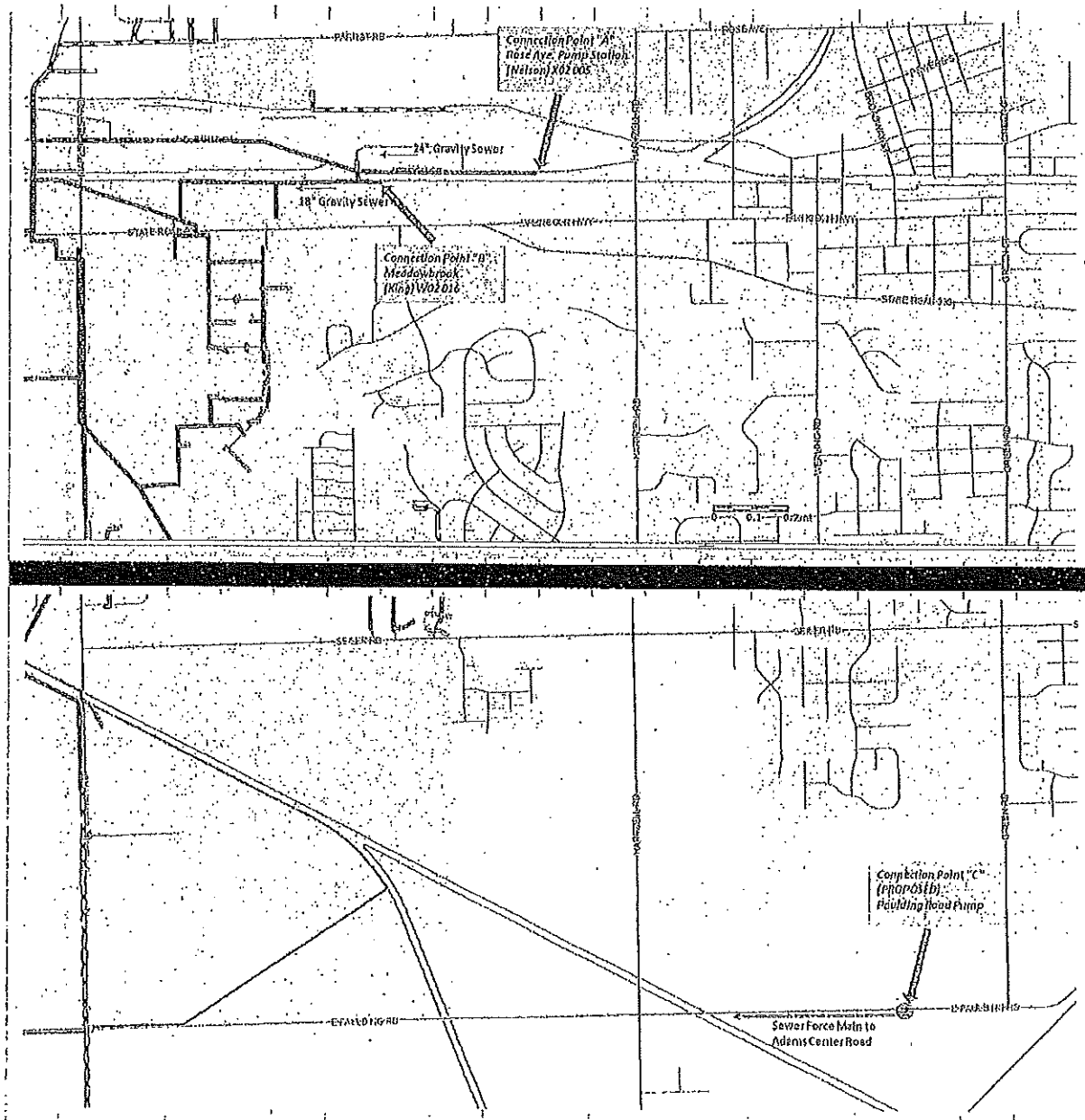


Exhibit 3 – New Haven Capacity - Limits, Fees & Charges

		Phase I	Phase II*	Phase III**
VOLUME LIMIT - Average Gallons per Day (GPD) for Month				
Connection Point	Connection Description	Volume Limit per Connection Point	Volume Limit per Connection Point	Volume Limit per Connection Point
A	Rose Ave. Pump Station (Nelson) - X02 005	3,500,000	3,500,000	3,500,000
B	Meadowbrook (King) - W02 016	500,000	500,000	500,000
C	Paulding Road Lift Station (PROPOSED)*		750,000	750,000
D	Future Connection Point - location to be determined**			750,000
Total	Phase I Volume Limit - Points "A", "B" Combined	4,000,000		
Total	Phase II Volume Limit - Points "A", "B", "C" Combined*		4,750,000	
Total	Phase III Volume Limit - Points "A", "B", "C", "D" Combined**			5,500,000
PEAK FLOW LIMIT - Average Gallons per Minute (GPM) over rolling 15 Minute Period				
Connection Point	Connection Description	Peak Flow Limit per Connection Point	Peak Flow Limit per Connection Point	Peak Flow Limit per Connection Point
A	Rose Ave. Pump Station (Nelson) - X02 005	3,000	3,000	3,000
B	Meadowbrook (King) - W02 016	1,200	1,200	1,200
C	Paulding Road Lift Station (PROPOSED)*		1,000	1,000
D	Future Connection Point - location to be determined**			1,000
Total	Phase I Peak Flow Limit - Points "A", "B" Combined	4,200		
Total	Phase II Peak Flow Limit - Points "A", "B", "C" Combined*		5,200	
Total	Phase III Peak Flow Limit - Points "A", "B", "C", "D" Combined**			6,200
* New Haven is allowed to elect to implement Phase II Volume & Peak Limits and use of Connection Point "C" after completion of improvements by Fort Wayne. The terms of Sections VI and XV of this agreement also apply. ** New Haven is allowed to elect to implement Phase III Volume & Peak Limits and use of Future Connection Point "D" after completion of improvements that result in construction of new infrastructure at New Haven's cost to establish Connection Point "D" and its capacity. The terms of Sections VI and XV of this agreement also apply.				

Volume Exceedance Fee and Peak Flow Charge

- **Contract Customer Penalty for Exceeding Volume Limit (Volumetric Exceedance Fee)**
 - If the Volume Limit is exceeded at a Connection Point, or in Total, in the average of any three consecutive billing periods, a Capital Surcharge rate will be assessed to all the flows billed during the exceedance period
 - Capital Surcharge rate will be calculated based upon Contract Customers proportionate share (using Cost of Service Study allocation methodology) of current Common to All Conveyance Debt Service costs divided by consumption flow of the Contract Customer
- **Contract Customer Penalty for Exceeding Peak Flow (Peak Flow Charge)**
 - If the Peak Flow Limit (average over 15 minute period), is exceeded for more than 15 minutes at a Connection Point, or in Total, a Peak Flow charge shall be assessed
 - Peak Flow charge will be calculated based upon updating the Capacity allocation for conveyance at the Peak Flow rate (observed during the exceedance) and then new conveyance rates will be calculated using the same methodology as the Cost of Service Study and then multiplied by:
 - Factor of 5 for Peak Flow exceedances of 0-10%
 - Factor of 10 for Peak Flow exceedances over 10%
 - The recalculated conveyance rate and conveyance base charge will be charged for the next 12 months, unless the new Peak Flow rate is exceeded
 - After 12 months, the conveyance rate and conveyance base charge will return to the original cost of service established level if another Peak Flow exceedance has not occurred

End.

Exhibit 4 – Rate Setting Methodology

Cost of Service Rate Setting Methodology – Summary of Principles

❖ Three Cost of Service Rate Categories

- Retail - Inside City
- Retail - Outside City
- Contract Customer

❖ Contract Customer Characteristics

- Signed long term (20 year+) contract committing to send sewer flows to Fort Wayne
- Provide growth projections; estimated average day flows, agree to peak flow limits and seek capacity reservations for those flows which allows Fort Wayne to long term plan for accommodating those capacities
- Commit to controlling their peak flows and managing capacities or pay penalties for exceedances
- Customers for whom Fort Wayne provides less than all of administrative, customer collection, conveyance and treatment services needed by the customers
or
- Customers that receive all the needed administrative, customer collection, conveyance and treatment services from Fort Wayne, but by the terms of the contract commit themselves to restrictions not applicable to retail customers

❖ Rate Methodology

- Sewage Works costs are separated into three categories
 1. Treatment costs (includes Operations & Maintenance (O&M), Payment in Lieu of Taxes (PILOT), Debt Service (DS) and capital additions / components)
 - Treatment O&M costs are allocated to flow, extra-strength (Total Suspended Solids (TSS), Biochemical Oxygen Demand/Carbonaceous Biochemical Oxygen Demand (BOD/CBOD), Phosphorous and Ammonia) and inflow and infiltration
 - ◆ Inflow and infiltration is allocated to retail customer classes based on adjusted test year flows
 - ◆ Inflow and infiltration (I/I) is allocated to Contract Customers based on system allowances for leakage per design standards and/or analysis and estimated wet weather inflows along interceptors
 - Current breakdown (to be updated with each COSS) of I/I for Flow is:
 - Retail – Inside City – 80.41%
 - Retail – Outside City – 15.29%
 - Contract Customers – 4.3%
 - Current breakdown (to be updated with each COSS) of I/I for TSS, BOD, Phosphorus, and Ammonia is:

- Retail – Inside City – 76.12%
- Retail – Outside City – 14.48%
- Contract Customers – 9.40%
- Treatment PILOT, DS and capital costs are allocated to flow
- 2. Conveyance costs (includes O&M, PILOT, DS and capital components)
 - Conveyance O&M, PILOT and capital costs are allocated to customer classes based on their capacity miles in proportion to the total conveyance system peak capacity miles
 - ♦ Contract Customer O&M, PILOT and capital costs are directly allocated to customer based on capacity miles
 - Capacity calculation is based on contract specified peak flow capacity (in gpm) and distance from Contract Customer connection point to the wastewater treatment plant
 - ♦ Conveyance O&M, PILOT and capital costs are recovered via a flow based conveyance rate
 - Conveyance DS costs are categorized as Common to All or Retail Only
 - ♦ Common to All Conveyance DS costs consist of all debt issued prior to 2014 for conveyance system improvements and debt issued after 2013 and after that is related to conveyance system projects that will benefit Contract Customers
 - ♦ Retail Only Conveyance DS costs are the debt service issued for conveyance system improvements not allocated to Common to All
 - ♦ Conveyance DS costs are recovered via:
 - Retail – Approximately 45% via flow rate / 55% via base charge (to be updated with each COSS)
 - Contract Customer – 100% via a fixed monthly base charge that would only change due to changes in a customer's capacity requirements or debt service requirements
- 3. Billing costs (includes O&M, PILOT, DS and capital components)
 - Billing costs are recovered via a monthly billing charge calculated in relation to the cost of preparing, issuing, collecting and accounting for a sewer bill

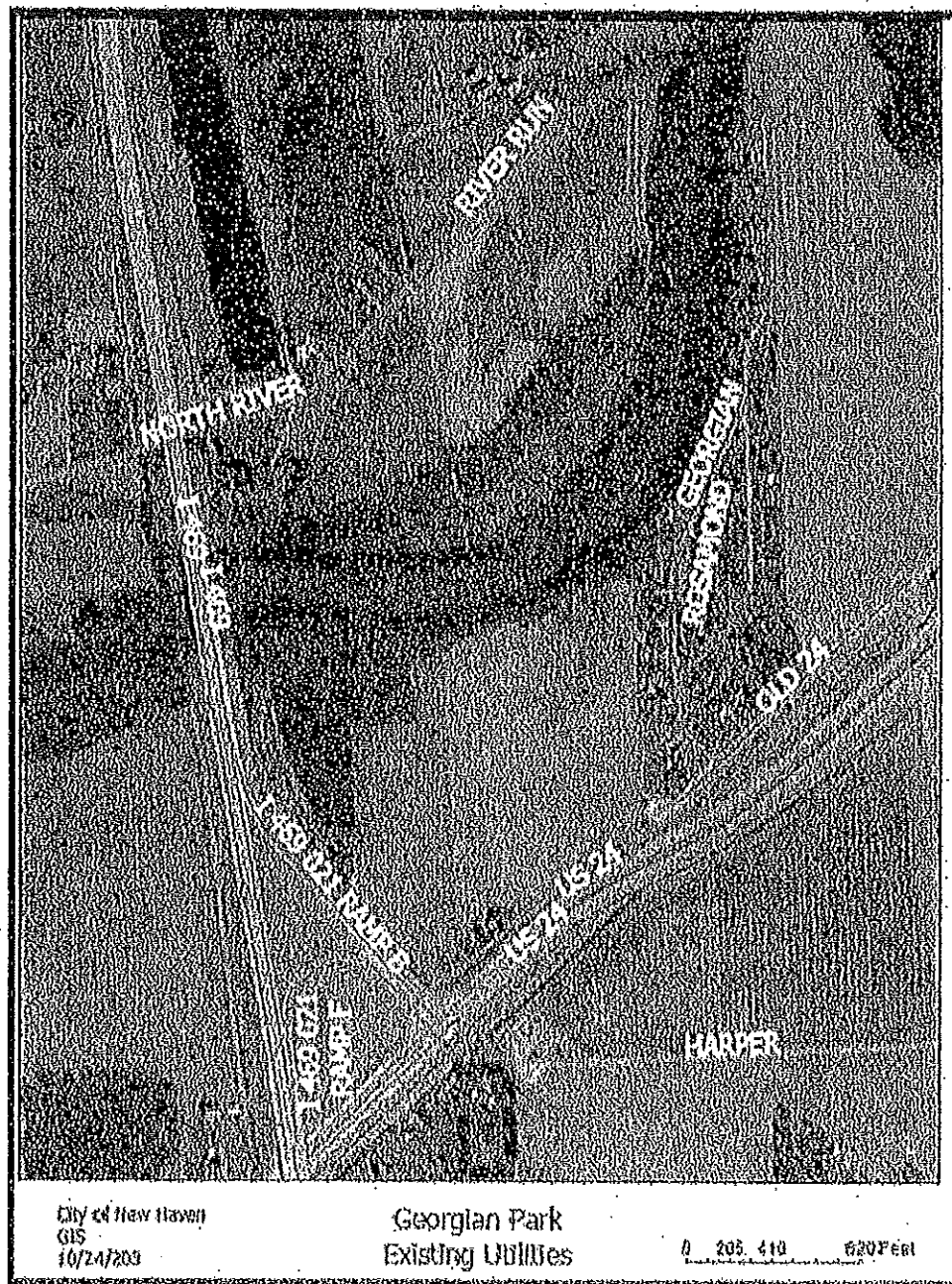
❖ Rate Adjustments

- 2020 Cost of Service Study (COSS) includes rate schedule for years 2020-2024 with rates to be implemented January 1 of each year and serves as the framework for Contract Customer's rate determinations in future COSS's
 - 1. COSS's are subject to final Executive Review and Legislative Approval
 - 2. Annual rate adjustment percentages conform to Section XII.B.3.
 - 3. If City Ordinance approves overall rate increases that are different than the % increases 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.

- Beyond 2024, the City is committed to extension of 2020 COSS methodology framework updated for (primary features):
1. Treatment costs will continue to be allocated to function and customer class using same methodology as described above in Rate Methodology (1) or the 2020 COSS
 2. Inflow and infiltration allocated to Contract Customers will continue to be based on system allowances for leakage per design standards and/or analysis and estimated wet weather inflows along interceptors and using same methodology as described above in Rate Methodology (1).
 - NOTE: I/I in COSS report accounts for not only inflow and infiltration, but also other differences between billed volume and WPCP treatment volume, including treatment of decant flow from the Biosolids facility, construction flows and Wet Weather Pond odor control recirculated flows.
 3. Conveyance DS costs will continue to be split between Common to All and Retail Only
 4. Contract Customers will pay their proportionate share (based on capacity) of Common to All Conveyance DS costs in the manner described above in Rate Methodology (2)
 5. Contract Customers will not share in Retail Only conveyance DS costs
 6. Billing costs will continue to be recovered using a monthly charge and as described above in Rate Methodology (3)

End.

Exhibit 5 -- Georglan Park Sewer Infrastructure



DMS 40539572v7

Interoffice Memo

Date: 3/6/24
To: Common Council Members
From: Matthew Wirtz, Deputy Director City Utilities
RE: **Water Pollution Treatment Contract – City of New Haven**

Council District # N/A – East of Fort Wayne

Contract / Agreement Scope.

Per this contract, Fort Wayne City Utilities (FWCU), as a regional utility wastewater system, desires to continue to provide wastewater treatment services for the City of New Haven. Under this new contract, New Haven will continue to own and operate its sewer collection system while purchasing wholesale wastewater treatment services from FWCU.

The contract is for a minimum of 20 years and contains the terms and conditions for a long-term partnership between FWCU and New Haven. The contract allows FWCU to utilize its capacity, expertise, and services to support New Haven and its desire to provide high quality and affordable sewer service to its community and for economic development and growth. The contract includes provisions for FWCU to provide a future capacity of up to 5.5 million gallons per day to New Haven. FWCU wastewater treatment plant has a capacity to treat 100 million gallons per day, while currently averaging approximately 50 million gallons per day, so FWCU has the capacity to provide wastewater treatment for serving the New Haven area.

New Haven currently consumes on average over 1.4 million gallons of sewage per day and pays approximately \$1.8 million per year to FWCU for wastewater services.

Implications of not being approved:

New Haven would have to construct its own wastewater treatment facilities at a significantly higher cost and impact its sewer user rates and not be able to support potential economic development in the area. Fort Wayne would not have the opportunity to serve as a regional utility and leverage its existing excess wastewater treatment capacity and sewer system to generate additional revenue that will help mitigate and put downward pressure on future increases in cost and sewer rate increases.

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

Approval Process:

The Board of Public Works approved the contract on 3/5/24

The City of New Haven approved the contract on 2/22/24

Council Introduction Date: 3/12/24

CC: BOW
Matthew Wirtz
Jill Helfrich
File