

BILL NO. S-24-03-13

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving POTABLE WATER 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 POTABLE WATER 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

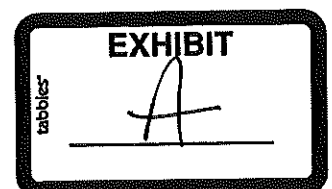
APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

CU 3.5.24

FINAL - 02/12/2024

POTABLE WATER CONTRACT
BETWEEN
THE CITY OF FORT WAYNE, INDIANA
AND
THE CITY OF NEW HAVEN, INDIANA.



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

THIS POTABLE WATER 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"). 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 potable water source and production facilities to provide potable water; and

WHEREAS, New Haven does not own or operate potable water source and production facilities for the New Haven Service Area (as hereinafter defined); and

WHEREAS, Fort Wayne has capacity available in its potable water facilities to provide New Haven potable water and is willing to provide potable water to New Haven, pursuant to the terms and conditions of this Contract; and

WHEREAS, pursuant to I.C. § 8-1.5-3-4(b), the parties desire to enter into this Contract under which New Haven will receive potable water from Fort Wayne pursuant to the terms and conditions hereof,

NOW, THEREFORE, in consideration of the above and foregoing 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 Points.** The points of joinder of New Haven-owned pipe to Fort Wayne-owned pipe which provide for the conveyance of Potable Water from Fort Wayne to New Haven for distribution, storage and consumption by New Haven.
- B. **Future Connection Points.** A Future Connection Point is a Connection Point that has not been constructed as of the Effective Date (as defined herein).
- C. **Peak Flow Limit.** The Peak Flow Limit for the Connection Points and Future Connection Points as defined on Exhibit 3 hereto. This includes Phase I and Phase II Peak Flow Limits.
- D. **Volume Limit.** The Volume Limit for the Connection Points and Future Connection Points as defined on Exhibit 3 hereto. This includes Phase I and Phase II Volume Limits.
- E. **Monitoring.** The analysis of potable water without taking a sample of the water. Examples include but are not limited to pH, conductivity, turbidity, chlorine, temperature, pressure, and flow rates.
- F. **Peak Flow Charge.** The charge for New Haven exceeding the applicable Peak Limit, as calculated in accordance with Exhibit 3 hereto.
- G. **Potable Water.** Water that has been made safe for human consumption and meets the standards and requirements for drinking water outlined in the Safe Drinking Water Act of 1974 and subsequent amendments and the applicable Indiana Department of Environmental Management standards.
- H. **Potable Water System.** The network of piping and appurtenances which may be used to distribute, store and consume Potable Water.
- I. **Sampling.** The taking of an actual portion of the Potable Water for analysis.
- J. **Service Area.** The area in which a party may provide Potable Water service pursuant to I.C. § 8-1.5-2-3, as further defined in Article III hereof.
- K. **User.** Any domestic or non-domestic consumer of Potable Water.
- L. **Volumetric Exceedance Fee.** The charge for New Haven exceeding the applicable Volume Limit, as calculated in accordance with Exhibit 3 hereto.
- M. **Water Plant.** The assemblage of devices, structures and equipment used to treat, store and provide Potable Water.

- N. **Water Utility.** The combined facilities and systems used collectively to collect, transport, store, pump and treat Potable Water.
- O. **Water Availability Fee.** A fee charged in accordance with Section XII hereof for new connections to infrastructure used to distribute, store, and consume Potable Water within the New Haven Service Area.

II. **EFFECTIVE DATE.**

- A. This Contract shall become effective upon final approval by the Fort Wayne Common Council or 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 Potable Water service from Fort Wayne to New Haven shall be void.

III. **NEW HAVEN SERVICE AREA.**

- A. **Description of New Haven Service Area.** The New Haven Water Service Area is the geographic area in which New Haven may be the exclusive provider of Potable Water service pursuant to and in accordance with this Contract. The New Haven Service Area is depicted in attached 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 receiving Potable Water services from Fort Wayne on the Effective Date.
- C. **Fort Wayne Facilities.** Notwithstanding Section III.B hereof, Fort Wayne may locate water pipes and appurtenances in the New Haven Service Area as long as no 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 shall not expand its Potable Water 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 Potable Water 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 water service outside its 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 Potable Water service from one provider and sewage 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 WATER FACILITIES.

- A. **Connection Point Locations.** The location of the current Connection Points "A", "B", "C" and "D" are generally shown on Exhibit 2 attached hereto and made a part hereof.
- B. **Maintenance and Operation Costs.** Each party shall be responsible for the maintenance and operation of its own water production and distribution 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, in Fort Wayne's discretion, the Connection Points are not being properly maintained, repaired or operated, Fort Wayne shall notify New Haven 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 an invoice from Fort Wayne, reimburse Fort Wayne for all costs incurred by Fort Wayne in performing such work on New Haven's behalf.

- C. **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.
- D. **Fort Wayne use of New Haven Water System.** As a result of an asset acquisition agreement between Fort Wayne and the Allen County Regional Water and Sewer District ("ACRWSD") 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 water service in the former ACRWSD territory, and it appears prudent for Fort Wayne to serve those petitioners/customers and convey water through the New Haven Water 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 use of the New Haven Water System for such purposes.

V. DISTRIBUTION OF POTABLE WATER.

- A. **Responsibility for Distribution.** New Haven shall be solely responsible for delivery of the Potable Water from the Connection Points to its customers 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.
- B. **Responsibility for Treatment.** Fort Wayne shall be solely responsible for the proper treatment of Fort Wayne's water and delivery to the Connection Points in accordance with the laws, regulations, requirements and standards of the 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.** Except as provided below, Fort Wayne shall be the exclusive provider of Potable Water for New Haven in the New Haven Service Area during the Term of this Contract. For any new Potable Water connections within the New Haven Service Area east of Ryan Road, New Haven reserves the option, for purposes of helping customers get off their wells and/or to facilitate economic development projects, to connect and draw up to a maximum of 250,000 gallons of Potable Water per day from the City of Woodburn's utilities if New Haven determines such option is more economical for New Haven, based on the costs of constructing additional capacity for such customers to be served by Fort Wayne and the costs for Fort Wayne to serve such customers. Nothing in this Section shall permit New Haven to assign and/or transfer any connections that are served with potable water treated by Fort Wayne, whether before or after the Effective Date, to the City of Woodburn or any other utility provider. Provided, further, the option granted 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 Potable Water connections within the area described above and New Haven determines it desires to exercise the option to draw water from the City of Woodburn to provide service to such connections, 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 Potable Water 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 Potable Water capacity is available from Fort Wayne, New Haven agrees that no changes, modifications or alterations will be made that may increase the demand for Potable Water at the Connection Points 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 Volume Limit and use the Phase II 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 requires an amount of potable water at a Connection Point 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.** Attached 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 and use the Phase II Peak Flow Limit for rate calculations and subsequent billing. Failure to comply with this notification requirement shall result in Fort Wayne applying the Phase I Peak Flow Limit for classification of rate calculations, Peak Flow

Charge calculations and subsequent billing. Otherwise, in the absence of notification from New Haven, the Lower Peak Limit will be applied. As part of the monthly billing, Fort Wayne shall analyze water flow peak condition characteristics. If, during any billing period, New Haven's peak flow exceeds 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, Fort Wayne shall notify New Haven of such event 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) is subsequently assessed a Peak Flow Charge, 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 Construction Permit for Public Water System ("Application") required by 327 Ind. Admin. Code § 8-3-1 *et seq.*
- B. **Forward Copy of Application Materials.** New Haven shall provide Fort Wayne a completed Application executed by an authorized representative or officer of New Haven, 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.
- 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. It will not be unreasonable or arbitrary for Fort Wayne to deny an Application 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 per Exhibit 3, so long as Fort Wayne provides its calculations to New Haven for review at

least 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 submit to Fort Wayne a report of all new connections made to New Haven's Potable Water System. The report shall be provided annually during each year of this Contract; for the period January 1 through December 31, which shall be submitted no later than February 28. Information in the report shall include the property address, date of connection, number of equivalent residential units ("ERUs") 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 bill based on monthly meter readings for the New Haven Service Area facility meters.
- B. **Metering Equipment.** Fort Wayne shall install, 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 which monitors and transmits to Fort Wayne's telemetry in not 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, purchasing, installing, operating, maintaining, updating and replacing, of New Haven's metering equipment and electronic data storage system when and as required or appropriate. New Haven's equipment, location for metering equipment, and electronic storage system and manner of metering shall be approved by Fort Wayne prior to installation or modification of such equipment by New Haven and shall include adequate space in an appropriate enclosure for Fort Wayne to install its telemetry. If New Haven fails to obtain Fort Wayne's approval prior to New Haven's purchase and location and installation of metering equipment and electronic storage system, installation or modification of metering equipment and Fort Wayne reasonably determines that New Haven's equipment and electronic storage system, the location and installation of such metering

equipment and electronic storage system or manner of metering does not comply with Fort Wayne's requirements, Fort Wayne may substitute, relocate and/or re-install or modify the metering equipment and electronic storage system at New Haven's expense.

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 New Haven's meter and electronic storage system to Fort Wayne's telemetry system and website. Access to New Haven's data on the website shall be provided to New Haven. In the event New Haven's electronic data collection system does not transfer adequate data to Fort Wayne's telemetry system for any billing period, New Haven shall provide available data from its electronic data collection system for Fort Wayne's use.

B. **Meter Bypass Valves.** All bypass valves shall be maintained in locked boxes the keys to which shall be kept by Fort Wayne. New Haven 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, New Haven 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 New Haven's metering equipment for inspection, testing and approval at all reasonable times.

G. **Meter Testing and Maintenance.** Metering equipment and remote readouts may be tested, calibrated, maintained and repaired as necessary by Fort Wayne, and New Haven shall bear all reasonable costs thereof. In addition, the following testing and calibration may be performed by Fort Wayne, the reasonable costs of which will be the responsibility of New Haven: annual testing and calibration of the metering equipment while remaining in place at New Haven's facilities.

IX. [RESERVED]

X. [RESERVED]

XI. [RESERVED]

XII. CHARGES FOR AVAILABILITY, TREATMENT AND ADDITIONAL SERVICES

A. Capacity Availability Charges.

1. **System Development Charges Not Required.** New Haven shall not be required to pay System Development Charges for new customer connections that (i) are approved to connect to the New Haven Water System, (ii) receive all of their Potable Water through existing Connection Points "A", "B", "C", and "D", (iii) and 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 Point or Fort Wayne providing increases to the Volume Limits or Peak Flow Limits of Connection Points "A", "B", "C" or "D" 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 System Development Charges from new customer connections.

B. Cost of Treatment and Water Service

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 Fort Wayne for the water, billing and other charges applicable to the volume and composition of the water flow provided to the Connection Points shown on attached Exhibit 2, the fees and charges set forth in the Fort Wayne Common Council Resolutions and Ordinances and this Contract applicable to wholesale contract metered customers.
3. **Rate Adjustment.** New Haven understands and agrees that the metered water rates are set by Fort Wayne Board of Public Works and Common Council and may be subject to change from time to time. Any such 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.

C. Additional Services

1. 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 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 services shall be an amount equal to Fort Wayne's expense for the providing of such services (both in-house and contracted assistance) plus an additional ten (10) percent.
2. Fort Wayne shall invoice New Haven for such additional services. Payment of invoices for such additional services by New Haven 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 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 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 (i) have thirty (30) days following receipt of such notice to cure the default; provided, that if such default is of such nature that it cannot be cured within thirty (30) 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, or (ii) 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 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 regarding the New Haven 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 has not been cured.
- D. **Default Costs.** If an Event of Default occurs which results in the termination of the Contract and services were provided hereunder prior to the date of termination, the defaulting party shall compensate the non-defaulting party in an amount equal to the revenue the non-defaulting party would have realized if the default had not occurred; reduced by the reasonable value of the services, if any, the non-defaulting party is no longer required to provide as a result of the Contract termination. Such revenue will be equal to: (a) New Haven's administrative cost and debt service cost which is paid by New Haven's customers and is included in New Haven's water bills, if Fort Wayne

defaults; or (b) the amount due and owing to Fort Wayne by New Haven, if New Haven defaults. Such revenue shall be calculated as a monthly amount taking an average of the preceding twelve (12) months. Compensation for services provided up to the date of termination under this Subsection shall not limit a party's ability to seek further compensation for actual damages resulting from the other party's Default. Such damages may include expectation damages had the Contract been performed for the remainder term or any renewal term then in effect, damages incurred in reliance on the other party's promise to perform, or other damages suffered by the non-defaulting party.

- E. **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 Potable Water for New Haven 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 Potable Water for New Haven under this Section XIII, either party may terminate by upon thirty-six (36) months' written notice of its intention to terminate Fort Wayne's services to the non-terminating party. 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 Fort Wayne is entitled to recover under Subsection D above but otherwise shall not affect Fort Wayne's ability to recover damages under Subsection D.

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

- A. Fort Wayne and New Haven shall comply with all 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 Potable Water, the operation of their respective Potable Water Systems and any additional services provided pursuant to and in accordance with this Contract.
- B. New Haven shall adopt and enforce resolutions and ordinances providing for rates, rules and regulations, and use of its Potable Water 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, the United States Environmental Protection Agency and other agencies which may now or hereafter offer such financing opportunities.

XV. MISCELLANEOUS.

A. Notices and Invoices.

1. 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. 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. Fort Wayne shall review all requests in a timely manner and shall not arbitrarily or unreasonably delay or deny such requests. In the event New Haven needs to provide capacity to a new large water use customer that would require higher volume or peak limits from Fort Wayne in order for New Haven to serve them, New Haven may request a waiver to the two (2) year minimum notice.
3. Invoicing by Fort Wayne under this Contract shall be served by first class mail, postage prepaid, addressed to New Haven at the last address provided by New Haven for such invoicing.
4. As of the Effective date, Contractor's address is:

Fort Wayne City Utilities, Attention of the Director
200 E. Berry Street, Suite 250
Fort Wayne, Indiana 46802
5. As of the Effective date, New Haven's address is:

City of New Haven, Attention of Superintendent
815 Lincoln Highway East
PO Box 570
New Haven, IN 46774

B. Term of Contract, Renewals.

1. **Original Term.** This Contract shall commence on the Effective Date and continue for a period of twenty (20) consecutive years 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".
2. **Renewal Terms.** This Contract shall automatically renew for an indeterminate number of 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 services or to terminate the Contract not less than thirty-six (36) months prior to the expiration of the then current Renewal Term. Failure of either party to notify at least thirty-six (36) months prior automatically renews this Contract for the next succeeding Renewal Term. Notice shall be in accordance with Section XV, state the intent of the party not to continue the Contract after the conclusion of the then current Renewal Term and shall cite one of the following two bases for non-renewal:
 - a. **Termination of Contract.** Notice of termination of Contract by either party, with the intent to enter into a new Contract (in such event, the terms of this Contract shall remain in force and effect until the termination date); or
 - b. **Termination of Services.** Notice of termination of Services by either party with no intent to enter into a new Contract. In such event or, the following provisions of this Contract shall become null and void, effective the date of the notice to terminate Services:
 - i. Section III. New Haven Service Area.
 - ii. Section VI. Capacity.
 - iii. The applicable rate for conveyance, treatment and other charges for Wholesale Contract Customers as set forth in Section XII.B.2 shall terminate and New Haven shall pay all fees and charges applicable to Outside City Government customers as established by applicable City of Fort Wayne Resolutions and Ordinances.

C. **Amendments.**

1. **Written Mutual Consent.** This Contract may be amended only by a writing executed by the parties hereto.
 2. **Notice.** A party requesting an amendment of the Contract, that shall send notice in accordance with Section XV and include the following:
 - a. Reasons 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.
- D. **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.
- E. **Termination by Both Parties.** This Contract may be terminated in writing by the agreement of both parties.
- F. **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 New Haven:
1. Section IV
 2. Section V.A, B
 3. Section VI
 4. Section VIII
 5. Section XII.C
 6. Section XIII
 7. Section XIV
 8. Section XV.A, C, E, F, G

G. Indemnities.

1. **Environmental Indemnity/New Haven.** New Haven 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 and sewage systems. New Haven 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 New Haven's violation of any such law, rule, regulation, order, code or directive which relates directly or indirectly to New Haven's performance or failure to perform under this Contract or from 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 federal, state and local, laws, rules, regulations, orders, codes or directives of all federal, state and local governmental entities having jurisdiction over its water and sewage systems. Fort Wayne agrees to defend, indemnify and hold New Haven (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. 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, (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 New Haven's negligent, or intentional, or willful non-performance or failure to perform under this Contract and/or arising out of New Haven's negligent, intentional, or willful failure to maintain or 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. **Billing Disputes or Transmission of Data.** New Haven 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), liabilities, costs and expenses (including reasonable attorney's fees), judgments, settlements, and penalties arising out of New Haven's manner or method of billing its customers, including but not limited to, claims involving the meters and/or devices New Haven uses to monitor customer usage, transmit usage data, and calculate customer bills. This provision shall survive termination of this Contract and the date of termination of service by Fort Wayne.

5. **Personal Injury, Death and Property Damage/Fort Wayne.** Fort Wayne agrees to defend, indemnify, and hold harmless New Haven (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 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, covenant, or obligation under this Contract.
- I. **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.
- 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.
- M. **Force Majeure.** Fort Wayne shall not be responsible for a failure to deliver water 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 water 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 Water Pollution Control 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 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 Water 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 Potable Water System ("Offer"), New Haven shall provide written notice of the Offer, including a description of the portion of the New Haven Potable 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 Potable Water 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 Potable Water System on the same terms outlined in the Offer. If the Offer only pertains to a portion of the New Haven Potable Water System, then that portion of the Potable Water System and connections thereto will be removed from the scope of this Contract.

[Signature Page to Follow]

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

By: [Signature]
Shan Gunawardena, Chairman

By: [Signature]
Chris Guerra, Member

By: [Signature]
Kumar Menon, 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 Gunawardena, Chair, Chris Guerra** 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 Water Pollution Treatment 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 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 Agreement 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 HP0702483
My Commission Expires July 9, 2025

Exhibit 1- New Haven Service Area Map

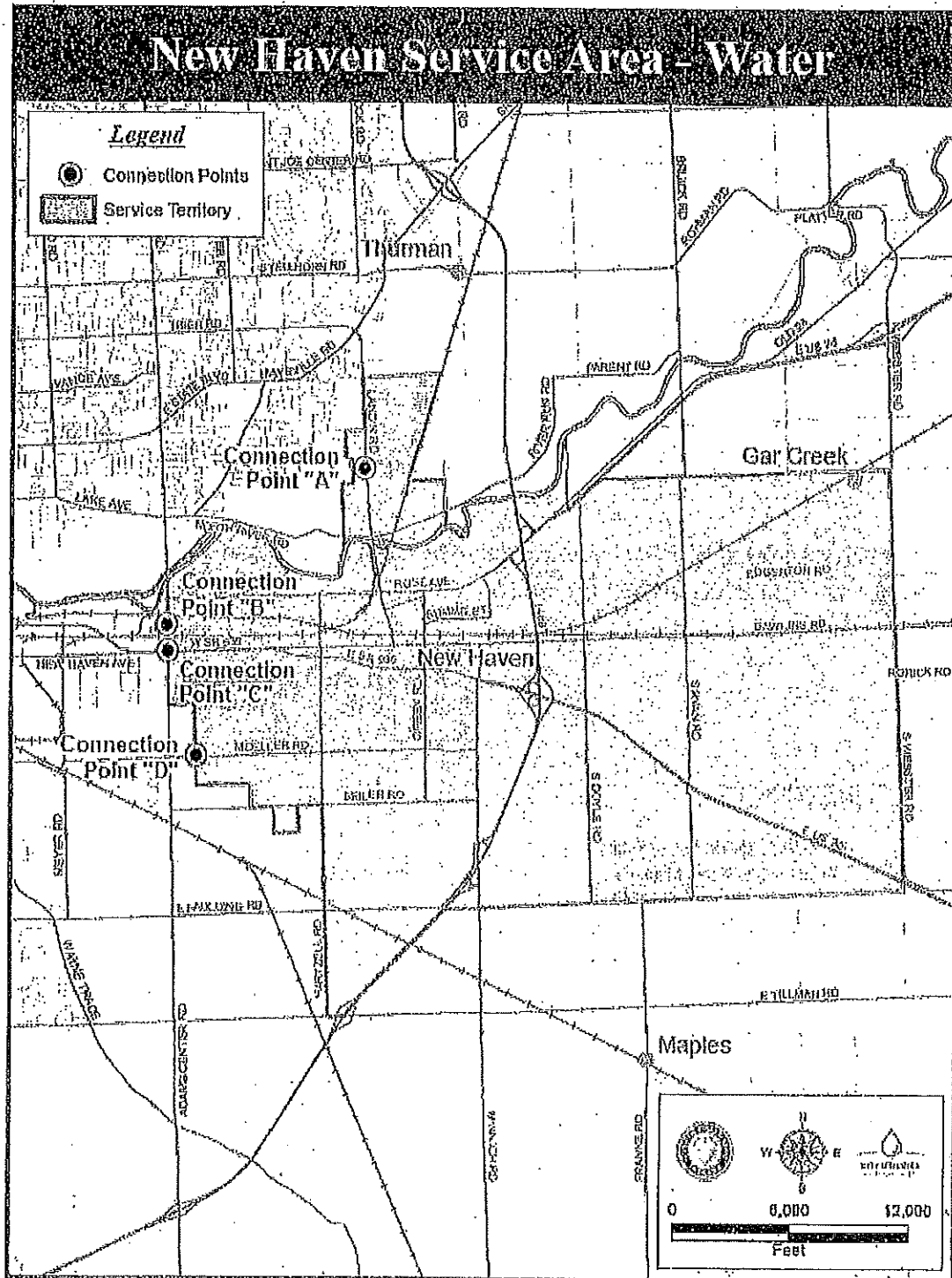


Exhibit 2 - New Haven Connection Points

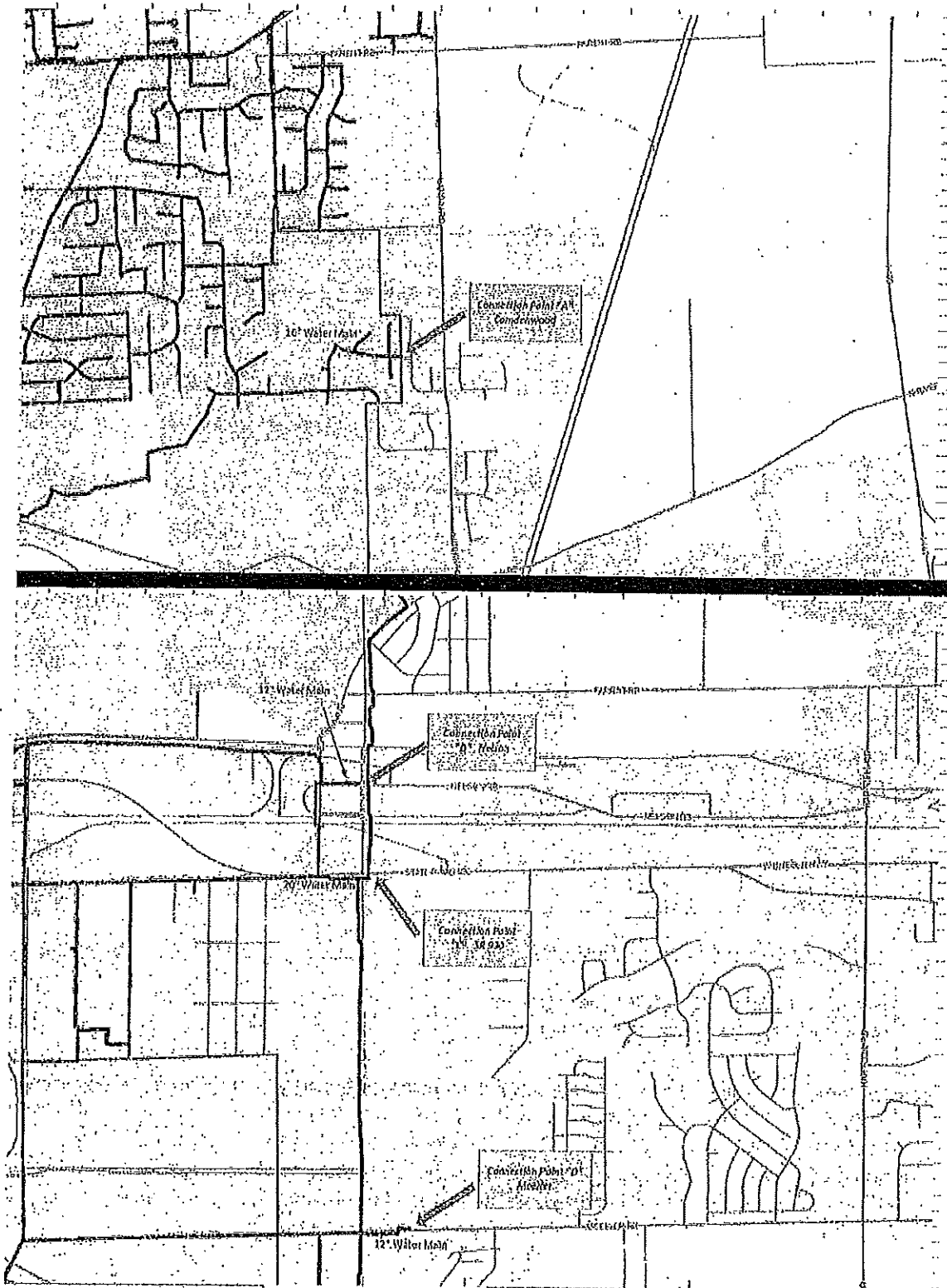


Exhibit 3 - New Haven Capacity - Limits & Charges

		Phase I	Phase II*
VOLUME LIMIT - Average Gallons per Day (GPD) for Month			
Connection Point	Connection Description	Volume Limit per Connection Point	Volume Limit per Connection Point
A	Camdenwood	400,000	400,000
B	Nelson	No Individual Limit ¹	No Individual Limit ¹
C	SR 930	No Individual Limit ¹	No Individual Limit ¹
D	Moeller	No Individual Limit ¹	No Individual Limit ¹
E	Future Connection Point - location to be determined**		1,500,000
Total	Phase I Volume Limit - All Points Combined	1,500,000	
Total	Phase II Volume Limit - All Points Combined		3,000,000
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
A	Camdenwood	1,200	1,200
B	Nelson	No Individual Limit ¹	No Individual Limit ¹
C	SR 930	No Individual Limit ¹	No Individual Limit ¹
D	Moeller	No Individual Limit ¹	No Individual Limit ¹
E	Future Connection Point - location to be determined**	tbd yet	tbd yet
Total	Phase I Peak Flow Limit - All Points Combined	2,100	
Total	Phase II Peak Flow Limit - All Points Combined		3,500

¹ There is not an individual contractual limit to the capacity for these connection points. The capacity of these connection points are collectively combined and in part limited by the existing hydraulic capacity of the Fort Wayne distribution system. The capacity of all three connection points combined is limited to what is available in the Total Limit for the Phase.

* New Haven is allowed to elect to implement Phase II 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 Volume Exceedance Fee will be assessed to all the flows billed during the exceedance period
 - The Volume Exceedance fee rate shall be the current Commodity Charge multiplied by a factor of 1.25
- **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 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

End.

Exhibit 4 – Rate Setting Methodology

Cost of Service Rate Setting Methodology – Summary of Principles

❖ Cost of Service Rate Categories

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

❖ Customer Classes within Retail Rate Categories

- Residential
- Commercial
- Industrial

❖ Contract Customer – Wholesale 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
- 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 (refer to 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. Annual rate adjustment percentages conform to Section XII.B.3.
 4. 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.
 5. 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.

End.

Interoffice Memo

Date: 3/6/24
To: Common Council Members
From: Matthew Wirtz, Deputy Director City Utilities
RE: Potable Water 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 water system, desires to continue to provide water treatment services for the City of New Haven. Under this new contract, New Haven will continue to own and operate its water distribution system while wholesale purchasing of treated water 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 water service to its community and for economic development and growth. The contract includes provisions for FWCU to provide a future capacity of up to three million gallons per day to New Haven. FWCU water treatment plant has a capacity to treat 72 million gallons per day, while currently averaging approximately 35 million gallons per day, so FWCU has the capacity to provide water treatment for serving the New Haven area.

New Haven currently consumes on average over 1 million gallons of water per day and pays approximately \$1.2 million per year to FWCU for water services.

Implications of not being approved:

New Haven would have to construct its own water treatment facilities at a significantly higher cost and impact to its water 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 water treatment capacity and water system to generate additional revenue that will help mitigate and put downward pressure on future increases in cost and water 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