

**UTILITY SYSTEM
ASSET ACQUISITION AGREEMENT**

By and Between

**THE CITY OF FORT WAYNE, INDIANA, BY AND THROUGH FORT WAYNE CITY
UTILITIES, AS BUYER,**

and

**THE ALLEN COUNTY REGIONAL WATER & SEWER DISTRICT,
AS SELLER**

Dated

May 24, 2022

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UTILITY SYSTEM ASSET ACQUISITION AGREEMENT

THIS UTILITY SYSTEM ASSET ACQUISITION AGREEMENT (the “**Agreement**”), is made and entered into as of this ____ day of May, 2022, by and between the City of Fort Wayne, Indiana, by and through Fort Wayne City Utilities (the “**Utilities**”), and the Allen County Regional Water & Sewer District (the “**District**”) (each a “**Party**” and, collectively, the “**Parties**”).

RECITALS:

A. The Utilities and District are separate governmental entities and political subdivisions of the State of Indiana located in Allen County, Indiana.

B. As an Indiana municipality, the Utilities are authorized under Ind. Code §§ 36-9-23 to provide sewer service inside and outside of its municipal boundaries.

C. The District is a regional water and sewer district governed by Ind. Code § 13-26 et seq. that was established for the purpose of providing sanitary sewage (and water) service to a service area (“**Service Area**”) delineated in the 1979 Order of the Indiana Stream Pollution Control Board in Cause No. B-422, as amended from time to time (“**Formation Order**”).

D. The District owns a sewage collection and distribution system (the “**District Sewage System**”) that is used for transporting sewage for treatment from the customers in the Service Area to the Utilities’ wastewater facilities, as well as to the facilities owned and operated by Cities of Woodburn and New Haven, Indiana.

E. The District now desires to transfer to the Utilities all its assets and property, as well as other rights for the provision of sewer service in the Service Area (collectively, the “**Purchased Assets**” as defined below) on the terms and subject to the conditions set forth in this Agreement.

F. At Closing, the Utilities will own and merge into its existing system all of the Purchased Assets, and the Utilities will, in turn, manage, operate, maintain, and use the Purchased Assets to be the provider of sanitary sewer service in the Service Area.

G. On the Closing Date, the Parties anticipate the following: (i) the District will use its available funds, after payment of all costs and obligations not being assumed by the Utilities, including by not limited to, the costs associated with the Contemplated Transaction and final payment of any and all obligations and wages due to the District’s employees (“**Excluded Liabilities**”, to assist in reducing the amount necessary to defease or "pay off" its outstanding indebtedness (“**District Bonds**”); (ii) the Utilities will issue new sewage revenue bonds (“**Utilities Bonds**”) in an amount sufficient that will completely pay off all of the District Bonds (after the offset for the available District funds); and (iii) the Utilities will assume any and all liabilities of the District, including the obligation to serve all customers within the Service Area.

H. After Closing, the bulk of the District's customers will receive an overall reduction in their monthly user fees from approximately \$121 per month to \$80 per month.

I. The Parties believe that this agreement is in the best interest of the District, the customers within the Service Area, and the Utilities.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations, and agreements contained herein, the receipt and sufficiency of which are agreed to and acknowledged by the Parties, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

SECTION 1.1 DEFINITIONS. As used in this Agreement, the terms outlined in this Section shall have the following meanings:

“Acquired Contracts” means those contracts, commitments, agreements, leases, and/or supply or service agreements to which the District is a party as listed on **Appendix I** attached hereto and incorporated herein.

“Agreement” means this Utility System Asset Acquisition Agreement, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

“Appendices” means **Appendices A** through **W** attached to and made a part of this Agreement.

“Assumed Liabilities” means all debts, liabilities, obligations, and other financial or service obligations of District to be assumed by the Utilities on the Closing Date either, including, but not limited to, those items set forth on **Appendix N** or otherwise identified in this Agreement as being assumed by the Utilities.

“Board” means the Board of Public Works for the City of Fort Wayne, Indiana.

“Closing” means the closing of the transaction contemplated by this Agreement at which the Purchase Price (as defined herein) is paid by the Utilities and all of the Closing Documents are executed by the Parties.

“Closing Documents” means the documents identified in Section 6.2(B) of this Agreement.

“Closing Date” has the meaning set forth in Section 6.1 of this Agreement.

“Common Council” means the Common Council of the City of Fort Wayne, Indiana.

“Contemplated Transaction” means: the (i) acquisition by the Utilities of all the

District's sanitary sewer assets (i.e. **"Purchased Assets"**, as defined herein); (ii) the assumption of all the District's Assumed Liabilities; and (iii) the provision of service to the Service Area at a lower monthly user rate.

"District Board" means Board of Trustees for the Allen County Regional Water and Sewer District.

"Easements" means all rights, privileges, easements, licenses, prescriptive rights, rights-of ways, and rights to use public and private roads, highways, streets, railroads, and other areas owned or used by District in connection with the construction, reconstruction, installation, expansion, maintenance, and operation of the Purchased Assets (as defined below).

"Environmental Law" includes all federal, state, and local environmental laws and regulations, including, without limitation: (1) the United States Clean Water Act (also known as the United States Federal Water Pollution Control Act), 33 U.S.C. §§ 1251 et seq.; (2) the United States Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; (3) the United States Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. (also known as Superfund); (4) the United States Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 Stat., 1613; (5) the United States Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (6) the United States Safe Drinking Water Act, 42 U.S.C. § 300j-8; (7) Title 13 of the Indiana Code; and (8) regulations related thereto. Any reference to legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments, or notices issued thereunder.

"Excluded Assets" means those assets, properties, and rights, both tangible and intangible, real and personal, of the District described in Section 3.2(C) and **Appendix L** hereto, which such Excluded Assets shall not be sold, conveyed, or transferred to the Utilities pursuant to this Agreement.

"Permitted Exceptions" means those exceptions described in **Appendix M** hereto.

"Real Property" means the real property relating to the Purchased Assets, which is owned by the District and is to be conveyed to the Utilities pursuant to this Agreement.

"Tax" means any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel, or other title or registration, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum, and other tax, fee, assessment, levy, tariff, charge, or duty of any kind whatsoever and any interest, penalty, addition, or additional amount thereof imposed, assessed, or collected by or under the authority of any governmental body or payable under any tax-sharing agreement or any other contract.

SECTION 1.2 CONSTRUCTION AND INTERPRETATION.

A. Singular and Plural. Words that indicate a singular number shall include the plural in each case and vice versa, and words that indicate a person shall include legal entities, firms, and

corporations.

B. Meaning of Certain Terms. The terms “herein,” “hereunder,” “hereby,” “hereof,” and any similar terms, shall refer to this Agreement; the term “heretofore” shall mean before the date of execution of this Agreement; and the term “hereafter” shall mean on or after the date of execution of this Agreement.

C. Gender. Words that reference only one gender shall include all genders.

D. Construction of Agreement. This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the Parties hereto.

SECTION 1.3 INCORPORATION. The Appendices and Exhibits hereto and each of the documents referred to therein are incorporated and made a part hereof in their entirety by reference.

SECTION 1.4 SECTION HEADINGS. Any headings preceding the texts of the Articles, Sections, Appendices, or Exhibits in or to this Agreement shall be incorporated herein and shall be used to interpret the intent of this Agreement.

ARTICLE II

REPRESENTATIONS OF PARTIES

SECTION 2.1 REPRESENTATIONS OF THE UTILITIES. The Utilities make the following representations and warranties to the District:

A. Authorization. The Utilities have full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery, and performance of this Agreement have been duly authorized by all necessary action on the part of the Utilities and no other proceedings on the part of the Utilities are necessary to authorize this Agreement or the consummation of the Contemplated Transaction. This Agreement has been duly and validly executed and delivered by the Utilities and constitutes a valid and binding obligation of the Utilities, enforceable in accordance with its terms.

B. No Conflict. Neither the execution and delivery of this Agreement by the Utilities, nor the consummation of the Contemplated Transaction by the Utilities will be in violation of, or conflict with, any Utilities ordinance, resolution, or other internal documents.

C. No Brokers or Finders. The Utilities have not employed any broker or finder or incurred any liability for any brokerage or finder’s fees or commissions or similar payments in connection with this Agreement or the Contemplated Transaction.

SECTION 2.2 REPRESENTATIONS OF THE DISTRICT. The District makes the following representations and warranties to the Utilities:

A. Organization; Authorization. The District was formed and operates and exists pursuant to the Formation Order; is authorized to do business in such jurisdiction; and has all requisite corporate power and authority to enter into the Contemplated Transaction.

B. No Default; Binding Obligation. Except as disclosed in **Appendix F**, the District, to the best of its knowledge, is not in default under any provisions of the laws of the State of Indiana that are material to the performance of its obligations under this Agreement. The execution, delivery, and performance of this Agreement, and the consummation by the District of the Contemplated Transaction have been duly authorized by all necessary (District Board) action. Assuming the due authorization, execution, and delivery by the Utilities, this Agreement will be valid and enforceable against the District in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with the general principles of equity.

C. No Litigation or Administrative Proceedings. Except as disclosed in **Appendix F**, there are no current actions, suits, or proceedings at law or in equity pending or, to the District's knowledge, threatened against the District before any federal, state, municipal, or other court, administrative or governmental agency or instrumentality, domestic or foreign, which would affect the Purchased Assets or the District's right and ability to make and perform this Agreement; nor is the District aware of any facts which to its knowledge are likely to result in any such action, suit, or proceeding. The District is not materially in default with respect to any permit, order, or decree of any court or of any administrative or governmental agency or instrumentality affecting any of the Purchased Assets. The District agrees and covenants that it shall have a continuing duty to disclose to the Utilities up to and including the Closing the existence and nature of all pending or threatened judicial or administrative suits, actions, proceedings, and orders which in any way materially relate to the construction, operation, or maintenance of the District Sewage System or the Purchased Assets.

D. No Brokers or Finders. The District has not dealt with any broker, salesman, or finder in connection with the transactions contemplated by this Agreement, and no sales commissions or finder's fees are due or payable as a result hereof.

E. Ownership of Purchased Assets. The District is currently the sole owner of the District Sewage System and the Purchased Assets.

F. Appendices. The District has delivered to the Utilities the following Appendices, subject to any qualifications stated in the Appendices:

1. **Appendix A** is a schedule providing recording references to the recorded documents evidencing the District's ownership interest in each parcel of Real Property to be conveyed to the Utilities.
2. **Appendix B** is the form of the Assignment and Assumption of Easements which is intended to assign all the District's easements to the Utilities as of the Closing.

3. **Appendix C** contains a list of the material assets of the District comprising the District's utility facilities to be conveyed to the Utilities.
4. **Appendix D** is a schedule of material construction work in progress with respect to the Purchased Assets.
5. **Appendix E** is a schedule of all current or active federal permits or applications from or filed with the Indiana Department of Nature Resources ("IDNR"), the Indiana Department of Environmental Management ("IDEM"), or any other local, state, or federal agency, together with effective dates and any expiration dates, which authorize the operation of the Purchased Assets by all such applicable governmental authorities and which schedule designates which, if any, of these permits are not transferable.
6. **Appendix F** is a schedule of litigation and material regulatory non-compliance issues affecting the Purchased Assets, which issues are known to the District and which may include notices of violation, inspection, or enforcement actions and specifically identifying the non-compliance issues identified by the regulatory authority.
7. **Appendix G** is an inventory of the material, equipment, tools, parts, laboratory equipment, computer equipment, and other personal property, other than the Excluded Assets, used by the District in connection with the operation of the District Sewage System to be conveyed to the Utilities.
8. **Appendix H** is a schedule of all operating and vendor contracts affecting the District Sewage System and which are to be assumed by the Utilities.
9. **Appendix I** is a schedule of all Acquired or Assumed Contracts that will be transferred to the Utilities under the terms of this Agreement.
10. **Appendix J** is the current District Ordinance setting forth the existing schedule of rates, fees, and charges that the District is authorized to impose.
11. **Appendix K** is a schedule of notices received by the District regarding environmental or operational non-compliance with respect to the District Sewage System in the last five (5) years.
12. **Appendix L** is a schedule of Excluded Assets.
13. **Appendix M** is the list of Permitted Exceptions.
14. **Appendix N** is a list of those debts, liabilities, obligations, and other financial or service obligations of District to be assumed by the Utilities on the Closing Date but not otherwise listed in this Agreement as being assumed by the Utilities.

15. **Appendix O** is a schedule of the current sanitary sewer boundaries.
16. **Appendix P** is a Limited Special Warranty Deed for the conveyance of all Real Property set forth in **Appendix A**.
17. **Appendix Q** is a form of Petition to Indiana Department of Environmental Management.
18. **Appendix R** is not being used.
19. **Appendix S** is a schedule of District Individual Septic Systems
20. **Appendix T** is the form of Interlocal Agreement.
21. **Appendix U** is the Utilities' Policy for Grinder Pump Stations which will be in effect after Closing.
22. **Appendix V** is a Schedule of Class II Customers and their Expected Refunds.
23. **Appendix W** is a schedule of known material issues with the District Sewage System.

G. Compliance with Law. To its knowledge, the District is not in violation of any governmental law, rule, regulation, permitting condition, or other governmental requirement of any type or nature which violation would have a materially adverse effect on the District Sewage System or the Purchased Assets.

H. Environmental Matters. To the knowledge of District: (1) there are no hazardous substances (as that term is defined in the Environmental Laws) located upon or beneath the Real Property to be conveyed to the Utilities at concentrations that could reasonably be expected to result in the owner or operator of such Real Property being required to remediate such hazardous substances under Environmental Laws; and (2) except as set forth in **Appendix K**, the District is in material compliance with all applicable Environmental Laws relating to the District Sewage System. Except as set forth in **Appendix K**, the District has not received any written notice from any governmental authority finding material non-compliance with applicable Environmental Laws relating to the District Sewage System.

I. Condition of Assets. The management, officers, and directors of the District have no knowledge of material facts or issues, other than normal wear and tear normally occurring in like systems, adversely affecting the physical condition of the District Sewage System or the Purchased Assets which are not readily observable or which have not been disclosed in **Appendix V**. The Utilities agrees, however, that it will take ownership of and title to all Purchased Assets in "as is" condition at Closing.

J. Necessary Easements and Land Rights. The District hereby represents and

warrants that it currently has, to the best of its knowledge, and the Utilities will have, all easements, rights of way, and land rights necessary for the operation, maintenance, and replacement of the Purchased Assets. The District further represents and warrants that all of its current facilities are, to the best of its knowledge, located within the Easements or upon property that the District owns and will be transferring to the Utilities as part of this transaction.

ARTICLE III

PURCHASE AND SALE OF ASSETS

SECTION 3.1 PURCHASE AND SALE COVENANT. At the Closing, the Utilities shall purchase, and the District shall sell and convey to the Utilities, the Purchased Assets upon the terms and subject to the conditions set forth in this Agreement. At the Closing, the Utilities shall assume responsibility for the performance and satisfaction of the District's obligations with respect to the Purchased Assets which constitute Assumed Liabilities in accordance with this Agreement. Notwithstanding anything contained in this Agreement to the contrary, in no event shall the Utilities assume responsibility for the Excluded Liabilities.

SECTION 3.2 PURCHASED ASSETS.

A. District Assets Needed or Necessary for Service. The assets of the District to be purchased by the Utilities hereunder (the "**Purchased Assets**") shall consist of any and all assets, business properties, and rights (both tangible and intangible) of the District and that the District owns, possesses, and are necessary to own, operate, replace, expand, and/or maintain the District Sewage System, including, but not limited to, the following:

1. All fee simple Real Property with respect to the District Sewage System as described in **Appendix A** hereof;
2. All Easements and land rights that the District owns or holds;
3. All collection and transmission system piping, pumping, and effluent and disposal facilities of every kind and description whatsoever including, without limitation, all trade fixtures, leasehold improvements, lift stations, pumps, generators, controls, tanks, distribution, collection, or transmission pipes or facilities, valves, service connections, and all other physical facilities, appurtenances, and property installations used in the operation of the District Sewage System including, but not limited to, those items described in **Appendix C**, together with an assignment of all existing and assignable third-party warranties and ownership documents that relate to completed or in progress construction as more particularly described in **Appendix D**;
4. All as-built surveys and water plans, plats, engineering, and other drawings, designs, blueprints, plans and specifications, maintenance and operating manuals, engineering reports, calculations, computer studies, non-corporate accounting, and non-corporate business records and all other information relating to the District Sewage System in the District's possession;

5. To the extent that they may be lawfully transferred, all necessary regulatory approvals subject to all conditions, limitations, or restrictions contained therein; all existing permits and other governmental authorizations and approvals of any kind necessary to construct, operate, expand, and maintain the Purchased Assets according to all governmental requirements, as more specifically described in **Appendix E** to this Agreement;
6. The following records in paper and electronic form, as available: (i) all information required by applicable law to be maintained related to the Purchased Assets; (ii) all information provided to the Utilities through the due diligence process; (iii) engineering project files; (iv) electronic map files; (v) plans for engineering projects; (vi) environmental files; (vii) developer files; (viii) daily operations logs; (ix) operations files; (x) any consents or administrative orders; (xi) service and warranty records; (xii) equipment logs and operating guides and manuals; (xiii) database of customer accounts and customer records; (xiv) updated fixed asset list; and (xv) copies of the general ledger;
7. All claims of the District against third parties, whether choate or inchoate, known or unknown, contingent or non-contingent, relating to: (a) the Purchased Assets; and (b) a tacking of time periods for any prescriptive easement or adverse possession claim;
8. All of the Assumed Contracts relating to the Purchased Assets listed in **Appendix I**.
9. After payment of all Excluded Liabilities, all deposits, cash on hand and in accounts, certificates of deposit, debt service reserve accounts for the District Bonds, any funds set aside to make principal and interest payments on such bonds, and any other cash equivalents; and
10. All accounts receivable, tap and inspection fees, connection charges, and any other fees which are due and payable to the District.

B. No Encumbrances on Purchased Assets. The Purchased Assets shall be conveyed by the District to the Utilities free and clear of all liens or encumbrances, subject to payoff of the District Bonds and the Permitted Exceptions listed in **Appendix M**.

C. Exclusion of Certain Assets. The Purchased Assets do not and shall not include the Excluded Assets, if any, as set forth in **Appendix L** to this Agreement.

D. Exclusion of Certain Liabilities. The Utilities assume any and all debts, liabilities, obligations, or other financial or service obligations of the District except for the Excluded Liabilities or except as may be otherwise provided hereunder or as may be otherwise provided in writing.

SECTION 3.3 PURCHASE PRICE. As initially noted in Recital G, the Contemplated Transaction is generally designed so that the Utilities will use the remainder of the District's available funds (and/or proceeds from the disposal of any Purchased Assets) on hand and the proceeds from the Utilities Bonds to defease or pay off all of the District Bonds. For purposes of this Agreement, the purchase price ("**Purchase Price**") for the Purchased Assets shall be the principal amount of, and any accrued interest on, the District Bonds after application of the available District funds. Based on a report from the District's financial advisor, the estimated outstanding principal balance on the District Bonds as of closing is \$12,396,000.00; the estimated accrued interest through Closing is \$118,339.00; and the amount of available District funds to apply against such outstanding balance will be approximately \$2,371,000.00. Accordingly, the Purchase Price will be approximately \$10,144,339. These amounts will later be "trued-up" as of the Closing Date and agreed upon by the Parties.

SECTION 3.4 UTILITIES' BONDS AND USE OF DISTRICT FUNDS. The Utilities shall use the available District funds and issue revenue bonds (i.e. the Utilities Bonds) in an amount sufficient to defease the District Bonds so that the District can, in turn, transfer the Purchased Assets free and clear of all liens and encumbrances and without any other debt. In an effort to achieve the lowest possible rate for the District's customers, the Utilities will pursue a low interest loan (i.e. the Utilities Bonds) and a grant from the Indiana Finance Authority ("**IFA**").

ARTICLE IV

CONDITIONS PRECEDENT TO CLOSING ON THE PURCHASED ASSETS

SECTION 4.1 PROVISION OF INFORMATION BY DISTRICT.

A. Information in Appendices. The District shall have gathered, and delivered to the Utilities, the information described and to be encompassed by **Appendices A** through **W** hereof, which are more particularly described in Section 2.2 hereof.

B. Plans and Specifications. The District shall have made any plans or specifications for the Purchased Assets and other information related to the operation of the Purchased Assets that is available to the District available to the Utilities, or its representatives, for inspection during normal business hours and upon reasonable advance notice from the Utilities.

A. Approval by Any Regulatory Agencies. To the extent required, approval of this Agreement and the transfer of permits, licenses, or other approvals to the Utilities so that the District is permitted to proceed with the Contemplated Transaction.

C. Interlocal Agreement. Mutual execution by the District and the Utilities of the Interlocal Agreement, as hereinafter defined.

D. Termination of Certain Agreements. All service agreements between the Parties will effectively be terminated at closing without any further action of the Parties.

E. Representations, Warranties, and Agreements. (i) The representations and warranties of the Utilities set forth in this Agreement shall have been true and correct when made

and shall be true and correct in all material respects as of the Closing Date as though made at such time; and (ii) the Utilities shall have performed and complied in all material respects with the obligations contained in this Agreement at or prior to the Closing;

SECTION 4.2 CONDITIONS PRECEDENT OF THE UTILITIES. The obligation of the Utilities to consummate the Contemplated Transaction is subject to satisfaction of the following conditions, unless waived by the Utilities in writing:

B. Inspection. The completion of any inspections, reviews, audits, testing, and any other financial, legal, regulatory, and similar due diligence, in the Utilities' sole discretion, on or before June 1, 2022;

C. Condition of Purchased Assets. The Purchased Assets shall be in a condition satisfactory to the Utilities, in its sole discretion, after the completion of any appropriate inspections, reviews, and audits;

D. Financing. The Utilities shall have obtained financing from the IFA that is acceptable to the Utilities, in its sole discretion, to enable it to pay the Purchase Price and assist it in performing its other obligations under this Agreement;

E. Approval by any Regulatory Agencies. To the extent required, approval of this Agreement and the transfer of permits, licenses, or other approvals to the Utilities so that it can operate the Purchased Assets;

F. Assignment of Existing Service Agreements. The Utilities shall obtain assignments of the District's agreements with the City of Woodburn, Indiana ("**Woodburn**"), City of New Haven, Indiana ("**New Haven**"), and Aqua Indiana, Inc. ("**Aqua**") (and all other agreements listed on Exhibit I). The District shall use commercially reasonable efforts to obtain the foregoing assignments; provided, however, the failure to secure any such assignments shall not be a breach of this Agreement by the District;

G. Termination of Certain Agreements. All current service agreements between the Parties will effectively be terminated at closing without any further action of the Parties;

H. No Loss or Destruction. The Purchased Assets shall not either individually or in the aggregate have suffered any material loss, damage, destruction, casualty, or condemnation;

I. Representations, Warranties, and Agreements. (i) The representations and warranties of the District set forth in this Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing Date as though made at such time; and (ii) the District shall have performed and complied in all material respects with the obligations contained in this Agreement at or prior to the Closing;

J. Litigation. No actions or proceedings have been instituted or threatened in writing by any person, entity, or governmental body, seeking to restrain or prohibit or to recover damages relating to or arising out of the Contemplated Transaction;

K. Title Insurance. A title insurance policy insuring the title to the Real Property shall be obtained at the District's expense and shall: (i) not contain any exceptions to coverage except for the Permitted Exceptions; and (ii) insure that the Utilities is acquiring good and marketable title to the Real Property;

L. Schedules. The Utilities shall have, in writing, and, in its sole discretion, approved and be agreeable to the form and content of each and every schedule attached hereto or referred to herein, such approval being subject to the Utilities' satisfaction and acceptance of matters arising out of and related to such schedules after review, including but not limited to, decrees, orders, and pending litigation affecting the Purchased Assets, and the ability to legally assume the Acquired Contracts; and

M. Obligations Satisfied at Closing. The District shall have satisfied all financial and other obligations owed to its professionals, service providers, developers, and any other third party that are Excluded Liabilities as of the date of Closing.

SECTION 4.3 CONSENTS AND APPROVALS. The Parties shall have received evidence, in form and substance reasonably satisfactory to the respective counsel for the Parties, that all material consents, waivers, releases, authorizations, approvals, licenses, certificates, permits, and franchises, as may be necessary to lawfully consummate the Contemplated Transaction, and for the Utilities to continue the operations of the Purchased Assets as they are now conducted, have been obtained, including, but not limited to, the following consents and approvals:

A. The District Board shall have authorized the execution, delivery, and performance by the District of this Agreement and the consummation of the Contemplated Transaction;

B. The Board shall have authorized the execution, delivery, and performance by the Utilities of this Agreement and the consummation of the Contemplated Transaction;

C. The Mayor of the City shall have authorized the execution, delivery, and performance by the Utilities of this Agreement and the consummation of the Contemplated Transaction; and

D. The Common Council shall have authorized the execution, delivery, and performance by the Utilities of this Agreement and the consummation of the Contemplated Transaction.

SECTION 4.4 NO PROCEEDINGS. Neither the Utilities nor the District shall be subject to any threatened or pending litigation, injunction, preliminary restraining order, or other similar decree of a court of competent jurisdiction prohibiting the consummation of this Agreement and the Contemplated Transaction.

SECTION 4.5 DISTRICT EMPLOYEES. All District employees will be encouraged to apply for open jobs with the Utilities, other City departments, and Allen County, Indiana ("County"). Any District employees hired by the Utilities (or City) will be subject to the

same collective bargaining, budgeting, and disciplinary procedures as other Utilities or City employees. The Utilities shall be responsible for payment of all wages, salaries, and benefits under the Utilities' benefit plans, relating to all District employees hired by the Utilities consistent with the Utilities' policies, procedures, and guidelines or the applicable collective bargaining agreements.

SECTION 4.6 DEADLINE TO CLOSE AND DISBURSE. Notwithstanding any other provision in this Agreement, if the Closing does not occur on or before June 30, 2022, then the District or the Utilities shall have the option of: (1) waiving this deadline or (2) terminating this Agreement (regardless whether the other Party waived this deadline), thereupon the Utilities and the District shall have no liability and no further obligations to each other under this Agreement.

ARTICLE V

CERTAIN AGREEMENTS

SECTION 5.1 USER RATES FOR DISTRICT CUSTOMERS. Monthly rates for all District customers would change at Closing to no more than the sum of:

1. Utilities Rates. The Utilities flat sewer rate which will be the inside City rate or outside Utilities rate as appropriate based on the customer's location; and

2. Capital Surcharges. Any existing capital surcharges applicable to the customer based on the customer's location until the existing capital surcharge terminates on its own schedule. The Parties understand that approximately 395 District customers in eight neighborhoods are assessed a monthly capital surcharge that covers the other broader costs of extending service to such customers specific to those neighborhoods (e.g. the Carrol Hand Area is \$20.00 and the Flutter Wheelock Area is \$22.50). These capital surcharges will continue after the acquisition and will be in addition to the rates listed in this paragraph until their termination on separate terms.

SECTION 5.2 IDEM PETITION. Upon execution of this Agreement, the District will petition IDEM to amend its formation order as follows:

A. Modification of Automatic Adjustment of the District's Boundary. Section 3.A.(1) shall be modified as to eliminate the automatic adjustment of the District's boundaries to exclude any territory served by the Utilities in accordance with the terms of that Section.

B. Petition. A copy of the agreed-upon form of the Petition to be filed with IDEM is attached as **Appendix Q**. The Parties agree to file the Petition as soon as reasonably practical after the District executes this Agreement on April 27, 2022 (and the Common Council initially approves and introduces the Resolution approving this Agreement on or about May 10, 2022), with the intent of receiving IDEM approval of the same before Closing.

C. Role of District Board. After Closing, the District Board will remain intact and be responsible for the following:

1. Conducting education and outreach efforts;
2. Collecting requests and petitions of those interested in service;
3. Forwarding such completed information to the Utilities for further action; and
4. Reviewing and providing feedback on prospective rate adjustments by the Utilities.

SECTION 5.3 DISTRICT SEPTIC SYSTEMS. For those District customers that were provided replacement septic systems (approximately 23 residential homes) and are listed in **Appendix S**, the Utilities shall continue to own and operate such septic systems until the planned completion of payments (10 years from their respective start) as listed for each customer/premise/account in **Appendix S**. After all payments are made by the Utilities and all other obligations are satisfied, the ownership of and responsibility for such septic systems will be turned over to the customers as originally planned by the District.

SECTION 5.4 ADDITIONAL CONTRACT. The current Operations and Maintenance Interlocal Agreement between Utilities and the District under which Utilities performs certain services on behalf of the District will become void upon Closing and the Utilities will assume all responsibility and costs for operating the District's assets.

SECTION 5.5 INTERLOCAL AGREEMENT. The District and the Utilities will enter into a separate Interlocal Agreement ("**Interlocal Agreement**") authorizing the Utilities to be the service provider in the Service Area on behalf of the District, with the exception of any other territories established by state, county, or local agencies such as the Leo-Cedarville Regional Sewer District, the Maysville Regional Water and Sewer District, the City of New Haven, Indiana, the City of Woodburn, Indiana, the Town of Hometown, Indiana, and the Town of Grabill, Indiana. The agreed-upon form of the Interlocal Agreement that will be executed by the Parties at or before closing is attached as **Appendix T**.

SECTION 5.6 GRINDER PUMP STATIONS. The Parties understand that grinder pump stations ("GPS") have, to date, allowed entities such as the District and Utilities to provide sewer service to many customers that may not have otherwise been feasibly served; however, GPS are generally more costly to operate and maintain in comparison to other sewer service methods. The District shall transfer title to all GPS at Closing. The District understands that the Utilities intends that the GPS will be owned, operated, and selectively transferred in accordance with **Appendix U**.

SECTION 5.7 DISTRICT CUSTOMERS WITH PREPAID DEBT SERVICE. The Parties understand that certain District customers initially made an up-front, lump sum payment for each customer's proportionate share of the cost associated with extending service to each customer. These District customers are commonly referred to and listed as "Class II" customers in the District's rate ordinances and other documents. **Appendix V** includes a list of the District's Class II customers subject to this section (as well as the calculated refund for each customer, see below). After Closing, the Utilities shall refund the remaining portion of the up-front capital payments to the applicable customers, and all customers shall be subject to the Utilities' standard rates and charges.

SECTION 5.8 RIGHTS OF FIRST REFUSAL. The Utilities recognize that: (i) the District has agreements with New Haven and Aqua; and (ii) the agreements provide New Haven and Aqua with a right of first refusal to purchase the assets currently interconnected to each system. The Utilities assume all obligations of the District under these agreements, including the obligation to provide each party with notice that each may exercise its right of first refusal.

ARTICLE VI

CLOSING PROCEDURES

SECTION 6.1 DATES AND PLACE FOR CLOSING. The Closing of this Agreement and the Contemplated Transaction (the “**Closing**”) shall take place at the office of Utilities, 200 East Berry Street, Suite 270, Fort Wayne, Indiana 46802, at 10:00 a.m. on June 22, 2022 (“**Closing Date**”), or such other place as the Parties mutually agree, provided satisfaction or waiver of the conditions set forth in this Agreement.

SECTION 6.2 CLOSING.

A. Documents for Closing. At least two (2) days prior to the Closing, the District shall furnish the documents listed in this Section 6.2, all in substantially the forms to be mutually agreed upon by the Parties. At the Closing, District shall also furnish any necessary assignments, estoppel letters, releases, satisfactions, terminations, and any corrective instruments reasonably requested by the Utilities.

B. Closing Documents. At the Closing, the Utilities shall pay all recording fees necessary for transfer, filing, or recording the following documents affecting the transfer of the Purchased Assets to the Utilities; these documents shall be in final form, together with any exhibits or appendices thereto, and the District shall deliver said documents to the Utilities in the forms to be mutually agreed upon by the Parties (collectively, the “**Closing Documents**”):

1. A Warranty Deed in the form attached hereto as **Appendix P** for the conveyance of all Real Property set forth in **Appendix A**;
2. An Assignment and Assumption of Easements in the form attached hereto as **Appendix B**;
3. Transfer, Assignment, and Assumption Agreement covering all contracts, agreements, permits, and approvals and other interests in the Purchased Assets as set forth in **Appendices C, D, E, G, H, and I**;
4. A Bill of Sale and other documents of assignment and transfer, with full warranties of title, to all Purchased Assets other than the Real Property set forth in **Appendix A**;
5. Non-foreign affidavit, no-lien affidavit, “gap” affidavit, waiver, and release of lien, or such other forms as are customarily required for issuance of the title insurance policy referenced herein;

6. Any affidavits, certificates, estoppel certificates, corrective instruments, releases, satisfactions, or terminations reasonably necessary to consummate the transactions contemplated by this Agreement, including, but not limited to, those instruments identified by the title insurer insuring the Real Property set forth in **Appendix A**.
7. The executed Interlocal Agreement, the form of which is attached as **Appendix S**.

C. Consent From and Approval by the IFA. The District acknowledges that the Utilities will issue the Utilities Bonds (to the IFA) in an amount sufficient to generate the proceeds necessary to pay the Purchase Price, as well as the soft costs associated therewith. Therefore, all Closing procedures shall be subject to the requirements of the IFA.

D. Execution of Additional Documents to Effect Contemplated Transaction. From time to time prior to and after the Closing, each Party hereto shall, upon request of the other, execute, acknowledge, and deliver, or shall cause to be executed, acknowledged, and delivered, all such further acts, limited special warranty deeds, assignments, transfers or other documentation for (1) confirming deeds or correcting title in the name of the Utilities or perfecting possession by the Utilities of any or all of the Purchased Assets in existence or use at the time of the Closing, including the establishment of Easements of record, without resort to litigation, expenditure of monies or other extraordinary means. For clarity, it is the intent of the District to sell, transfer, and convey any and all assets of the District (i.e. the Purchased Assets) to the Utilities. The Parties agree to execute any documents reasonably necessary to effectuate that purpose both before and after Closing.

SECTION 6.3 ACCOUNTS RECEIVABLE; CUSTOMER DEPOSITS. The District hereby agrees to cooperate with the Utilities to ensure an orderly transition of all of its customers with respect to accounts receivable, customer deposits, billing, and customer service activities, including, but not limited to, working with the Utilities on a compatible format for transfer of customer data. After the Closing Date, any payments received with respect to utility services provided utilizing the Purchased Assets shall belong to the Utilities.

SECTION 6.4 PROFESSIONAL FEES; COSTS. Each Party shall be responsible for the payment of the fees of its own attorneys, bankers, engineers, accountants, and other professional advisors or consultants in connection with negotiation and preparation of this Agreement and all matters arising therefrom.

SECTION 6.5 RISK OF LOSS. At all times prior to and through the Closing Date, the District shall maintain adequate fire and extended insurance coverage for the cost of any repairs to the Purchased Assets that may be required by casualty damage. The risk of loss during the said period of time shall fall upon the District. The risk of loss shall pass to the Utilities on the Closing Date.

ARTICLE VII

COVENANTS

SECTION 7.1 RIGHT TO ENTER; COOPERATION. After the date of execution of this Agreement and until the Closing, the District shall cooperate with the due diligence procedures of the Utilities and shall provide the Utilities and its representatives with access to the District's books and records for the Purchased Assets, including all relevant records of inventories, capital expenditures, maintenance, and monthly billings in the format currently maintained, and reasonable access to the Purchased Assets, all upon twenty four (24) hours' prior written notice to the District and during normal business hours.

SECTION 7.2 CONDUCT BETWEEN EXECUTION AND CLOSING. After the date of execution of this Agreement and until the Closing, the District: (i) shall conduct the operations of the District Sewage System only in the ordinary course of business in accordance with past practices and procedures, and use commercially reasonable efforts to maintain the Purchased Assets; and (ii) shall not, other than in the ordinary course of business, sell, transfer, assign, lease, or otherwise dispose of any of the Purchased Assets without the prior written notice and consent of the Utilities:

A. No New Liabilities. Dispose of or incur liabilities with respect to, pledge, mortgage, grant a security interest in, or encumber any Purchased Assets;

B. Limited Salary Adjustments. Increase the base compensation of any District employee other than routine annual raises and merit increases;

C. No Modification of Agreements. Enter into, amend, or modify any employment or severance agreement or increase, terminate, amend, or otherwise modify in any material respect any plan or arrangement for the benefit of the District's employees; or

D. No Increased Liabilities. Increase any liabilities or obligations of the District other than in the ordinary course of business consistent with past practices and the expense projections provided to the Utilities, including, without limitation, any capital expenditure programs.

Notwithstanding the foregoing, the District shall have the right until the Closing, to settle any or all disputes provided such settlement does not modify the District's rates, fees, charges, or revenue or materially modify the Purchased Assets.

SECTION 7.3 UTILITIES' LIABILITIES. The Utilities shall not be obligated to pay any liability arising out of or in any connection whatsoever with this Agreement from any funds except from the net revenues realized by the Utilities after the Closing on the Utilities Bonds and the Closing from its ownership and operation of the Purchased Assets; provided, however, this limitation shall not create any obligation or liability for the District. It is further agreed that any obligations of the Utilities arising out of or in any manner in connection with this Agreement shall not constitute a lien on the Utilities' water or sewage systems or any other property owned or operated by the Utilities.

ARTICLE VIII

GENERAL PROVISIONS

SECTION 8.1 APPLICABLE LAW; JURISDICTION AND VENUE.

A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

B. Jurisdiction for Disputes. The Parties to this Agreement expressly consent to the jurisdiction of, and agree that exclusive venue and jurisdiction for any litigation arising under this Agreement shall be in, any state court located in any county that is directly contiguous with Allen County, Indiana, and in the United States District Court for the Northern District of Indiana.

SECTION 8.2 NOTICE.

A. Notice to Parties. All notices, certificates or other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, or by courier service, charges prepaid, to the Parties at the following addresses:

If to the Utilities, to: Fort Wayne City Utilities
200 East Berry Street, Suite 270
Fort Wayne, Indiana 46802
Attention: Kumar Menon, Director

With a copy to: Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
Attention: J. Christopher Janak, Esq.

If to the District, to: Allen County Regional Water & Sewer District
200 East Berry Street, Suite B-015
Fort Wayne, Indiana 46802
Attention: Ric Zehr, President

With a copy to: Carson LLP
301 West Jefferson Boulevard, Suite 200
Fort Wayne, Indiana 46802
Attn: Andrew Boxberger, Esq.

B. Notice Requirements. Any written notice given to one person in subsection (A) of this Section 8.2 shall also be copied and provided to all other persons identified in subsection (A) of this Section 8.2.

C. Changes of Address for Notice Purposes. The Parties may, by notice in writing given to the other, designate any future or different addresses to which the subsequent notices, certificates, or other communications shall be sent. Any notice shall be deemed given on the date

such notice is delivered by hand, by electronic correspondence, or five (5) days after the date mailed.

SECTION 8.3 ASSIGNMENT AND JOINDER. Neither the District nor the Utilities shall have the power or authority to assign this Agreement or any of its respective rights, duties, or obligations hereunder to a third party, without the prior written consent of the other Party. This Agreement shall be construed as solely for the benefit of the Utilities, the District, and their successors by law, and no claim or cause of action shall accrue to or for the benefit of any other third party by reason hereof.

SECTION 8.4 AMENDMENTS AND WAIVERS. No amendment, supplement, modification, or waiver of this Agreement shall be binding upon either Party hereto unless executed in writing by such Party. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

SECTION 8.5 ENTIRE AGREEMENT. This Agreement is the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the Parties, whether oral or written, pertaining to the subject matter hereof, and there are no warranties, representations, or other agreements between the Parties in connection with the subject matter hereof, except as specifically set forth herein.

SECTION 8.6 EFFECT OF TERMINATION. In the event of the termination of this Agreement in accordance with its terms, this Agreement shall then become void and have no effect, with no liability on the part of any of the Parties to this Agreement or their affiliates, except that nothing shall relieve a Party from liability for any breach of this Agreement.

SECTION 8.7 PUBLICITY; ANNOUNCEMENTS. The Parties recognize that the Contemplated Transaction has already been addressed in a public forum. However, the Parties agree to issue an initial press release announcing the Parties' intent to consummate the Contemplated Transaction promptly following the date of execution of this Agreement and in a form which is prepared by the Utilities and reasonably satisfactory to the District. To the extent practicable and as permitted by law, the Utilities will coordinate with the District regarding the timing and content of any Utilities notices or public statements regarding the Contemplated Transaction until the expiration of fifteen (15) days after the Closing Date.

SECTION 8.8 COUNTERPARTS. This Agreement may be executed by the Parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all of the Parties notwithstanding that all the Parties are not signatories to the same counterpart. For purposes of this Agreement, a document (or signature page thereto) signed and transmitted by portable document file ("PDF") is to be treated as an original document. The signature of any Party thereon shall be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any Party, any PDF document is to be re-executed in original form by the Parties who executed the PDF document. No Party may raise the use of a PDF or the fact that any signature was transmitted by PDF as a defense to the enforcement of this Agreement or any other document executed in compliance with this Section 8.8.

[remainder of page left intentionally blank; signature page follows]

IN WITNESS WHEREOF, the Utilities, the District, and the County have caused this Agreement to be duly executed and entered into on the date first above written.

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

BY: _____
Shan Gunawardena, Chair

BY: _____
Kumar Menon, Member

BY: _____
Chris Guerrero, Member

ATTEST: _____
Michelle Fulk-Vondran, Clerk

**ALLEN COUNTY REGIONAL WATER
& SEWER DISTRICT**

By: _____


Printed: Eric T. Zehr

Its: President

Attest:

