

**TOWN OF ST. JOHN, LAKE COUNTY, INDIANA  
RESOLUTION NO. 2016-09-22**

**A RESOLUTION AUTHORIZING ENTRY INTO THE FIRST AMENDMENT AND RESTATEMENT OF THE JANUARY 1 , 2001, JOINT INTERLOCAL COOPERATION AGREEMENT FOR SEWAGE TREATMENT BY AND BETWEEN THE TOWN OF SCHERERVILLE, INDIANA, AND THE TOWN OF ST. JOHN, INDIANA, FOR MUTUAL BENEFIT, AND ALL MATTERS RELATED THERETO.**

**WHEREAS**, the Town Council of the Town of St. John, Lake County, Indiana (hereinafter, the "Town Council"), has been advised that the provisions of I.C. §36-1-7-1, et seq., as amended from time to time, permit local governmental units and entities to make the most efficient use of their powers by enabling such governmental units to mutually contract and utilize services for the mutual benefit of the participating governmental entities; and

**WHEREAS**, the Town of Schererville, Lake County, Indiana (hereinafter, "Schererville"), is a Municipal Corporation and Special Taxing District which operates and provides a municipal sewer utility service for the residents of Schererville and operates an approved Publicly Owned Treatment Works (POTW), or Wastewater Treatment Plant (WWTP) facility, for the treatment of wastewater, liquid wastes, and sewage collected in Schererville and the Town of St. John, and elsewhere, and as such, is empowered by the terms and provisions of I.C. §36-1-7-1, et seq., as amended from time to time, to enter into agreements with participating governmental units for the treatment of wastewater, liquid wastes, and sewage for the mutual benefit of participating governmental units; and

**WHEREAS**, the Town of Schererville, Lake County, Indiana, is also a Municipal Corporation and Special Taxing District empowered by the terms and provisions of I.C. §36-1-7-1, et seq., as amended from time to time, to enter into agreements with other local governmental units for the purpose of treatment of wastewater, liquid waste, and sewage collected for the mutual benefit of the participating governmental units; and

**WHEREAS**, the Towns of Schererville and St. John, each located in Lake County, Indiana, as Municipal Corporations and Special Taxing Districts, have entered into a Joint Interlocal Cooperation Agreement, based upon the terms and provisions of I.C. §36-1-7-1, et seq., as amended from time to time, together, in October, 2001, with such Agreement effective January 1, 2001, for transmission, collection, acceptance and treatment by Schererville of the wastewater, liquid wastes, and sewage transmitted from St. John for collection, processing, treatment and discharge of sewage, liquid waste, and wastewater received from St. John for the mutual benefit of the participating governmental units, at shared costs, and as set forth in said Sewage Treatment Agreement; and

**WHEREAS**, the Town Council of the Town of St. John, Lake County, Indiana (hereafter, the "Town Council"), determined in 2001 that entry into such a Joint Interlocal Cooperation Agreement with the Town of Schererville and the Special Taxing District of the Town of Schererville under the jurisdictional authority of the Schererville Utility Board for Sewage Treatment purposes, as described herein, at shared costs, was in the best interests of the residents of the Town of St. John, and therefore, determined at that time that it was advisable and appropriate to enter into and become a participating unit under such a Joint Interlocal Cooperation Agreement pursuant to the applicable provisions of Indiana State Law; and

**WHEREAS**, the Town Council has now been informed and advised that a First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, is appropriate and advisable to address substantive amendments in said Sewage Treatment Agreement for change of Capacity/Allocation terms between the parties, as well as amendment in the various provisions for periodic operation and maintenance rate review and true-up report requirements changing same from biennial to a five (5) year period and other related and relevant terms and matters; and

**WHEREAS**, the Town Council, being duly advised by its Administrative Staff and Financial Advisors, and having reviewed the proposed First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, now concurs that said First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, is appropriate and advisable, and as such, agrees to enter into the First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, in conformance with the provisions of applicable law.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF ST. JOHN, LAKE COUNTY, INDIANA, AS FOLLOWS:**

**SECTION ONE:** That the Town Council of the Town of St. John, Lake County, Indiana, shall take all appropriate and legal measures to enter into the First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, as set forth and described therein, for the mutual benefit of the two (2) Towns and Sewer Districts, at shared costs.

**SECTION TWO:** That the Town Council is hereby authorized and directed to execute and enter into the First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, for the mutual benefit of the Towns of Schererville and St. John, at shared costs, pursuant to the applicable provisions of I.C. §36-1-7-1, et seq., as amended from time to time. Further, that the Town Clerk – Treasurer is hereby authorized to attest the First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, executed on behalf of the Town of St. John by its Town Council. Further, that the First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, is attached hereto and incorporated herein in all its terms, as Exhibit “A”, with the same bearing an effective date of October \_\_\_\_\_, 2016.

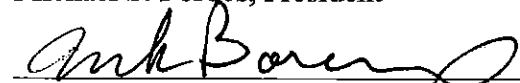
**SECTION THREE:** That the Town Council concurs and agrees to the terms and provisions of the First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, for Sewage Treatment as set forth and attached hereto as Exhibit “A”, and directs that all said terms and provisions contained therein be complied with and followed.

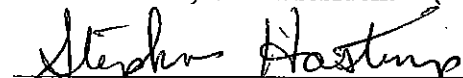
**SECTION FOUR:** That this Resolution authorizing the entry into First Amendment and Restatement of the January 1, 2001 Joint Interlocal Cooperation Agreement for Sewage Treatment by and between the Town of Schererville, Indiana, and the Town of St. John, Indiana, each in Lake County, Indiana, shall take effect, and be in full force and effect from and after its passage and approval by the Town Council of the Town of St. John, Lake County, Indiana.

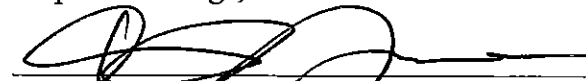
ALL OF WHICH IS PASSED AND RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF ST. JOHN, LAKE COUNTY, INDIANA, THIS 22 DAY OF September, 2016.

TOWN OF ST. JOHN,  
LAKE COUNTY, INDIANA,  
TOWN COUNCIL

  
Michael S. Forbes, President

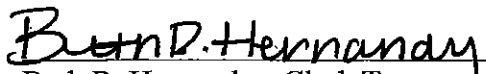
  
Mark Barenie, Vice-President

  
Stephen Hastings, Member

  
Christian J. Jorgensen, Member

  
Gregory J. Volk, Member

ATTEST:

  
Beth R. Hernandez, Clerk Treasurer

FIRST AMENDMENT AND RESTATEMENT  
OF THE  
JANUARY 1, 2001  
JOINT INTERLOCAL COOPERATION AGREEMENT  
FOR  
SEWAGE TREATMENT  
BY AND  
BETWEEN  
THE TOWN OF SCHERERVILLE, INDIANA  
and  
THE TOWN OF ST. JOHN, INDIANA

EFFECTIVE DATE: \_\_\_\_\_



FIRST AMENDMENT AND RESTATEMENT  
OF THE  
JANUARY 1, 2001  
JOINT INTERLOCAL COOPERATION AGREEMENT  
FOR SEWAGE TREATMENT  
BY AND BETWEEN  
THE TOWN OF SCHERERVILLE, INDIANA  
and  
THE TOWN OF ST. JOHN, INDIANA

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FIRST AMENDMENT AND RESTATEMENT  
OF THE  
JANUARY 1, 2001  
JOINT INTERLOCAL COOPERATION AGREEMENT  
FOR SEWAGE TREATMENT  
BY AND BETWEEN  
THE TOWN OF SCHERERVILLE, INDIANA  
and  
THE TOWN OF ST. JOHN, INDIANA

1 THIS AGREEMENT (hereinafter referred to as the "Agreement"), entered into this  
2 \_\_\_\_\_ day of \_\_\_\_\_, 2016 effective \_\_\_\_\_, by and between the  
3 Town Council and Utility Board of the Town of Schererville, Lake County, Indiana, a Municipal  
4 Corporation, (hereinafter referred to as "Schererville"), and the Sanitary District of the Town of  
5 St. John, Lake County, Indiana, a special taxing district of the State of Indiana, and the Town  
6 Council of the Town of St. John, Lake County, Indiana, a Municipal Corporation (hereinafter  
7 each and all referred to as "St. John"). This Agreement amends and restates all previous  
8 treatment agreements between the parties and including the Joint Interlocal Cooperation  
9 Agreement for Sewage Treatment entered into October 25, 2001, effective January 1, 2001.

10 WITNESSETH:

11 WHEREAS, the Town of St. John does not have adequate means of disposing of its  
12 wastewater, liquid wastes and sewage collected in St. John; and

13 WHEREAS, Schererville is a municipal corporation which owns and operates an  
14 approved sewage treatment plant that has received federal and state grant assistance for  
15 expansion of capacity and improvements in the quality of treatment and now has capacity  
16 available for the treatment of wastewater, liquid wastes and sewage collected in St. John; and

17 WHEREAS, St. John is a municipal corporation and a special taxing district which  
18 renders sewage collection and disposal service within certain areas in the Town of St. John, Lake  
19 County, Indiana, and surrounding areas, and desires to contract with Schererville to treat  
20 wastewater, liquid wastes and sewage collected by St. John; and

21 WHEREAS, St. John has constructed and connected the sewer collection system of St.  
22 John to the sewage treatment and disposal facilities of Schererville and is presently transporting

23 wastewater, liquid wastes and sewage generated within the jurisdiction of St. John and its  
24 contractual customers, all located within the area allocated to St. John, as identified by NIRPC  
25 through §§ 201 and 208 of the Clean Water Act, to the Schererville plant to be treated by  
26 Schererville.

27 NOW, THEREFORE, it is hereby agreed by and between the parties hereto that  
28 Schererville will accept from St. John the wastewater, liquid wastes and sewage of St. John and  
29 its contractual customers and will treat and dispose of the same in a proper manner at its sewage  
30 treatment plant, subject to the following covenants and conditions:

31 1. DEFINITIONS

32 1(A) "Administrator" shall mean the presiding Officer of the Schererville Sanitary  
33 District and Town Council, or the presiding Officer of the St. John Sanitary District and  
34 Town Council.

35 1(B) "Biochemical Oxygen Demand (BOD<sub>5</sub>)" of sewage, sewage effluent, polluted  
36 waters or industrial wastes shall mean the quantity of dissolved oxygen in milligrams per  
37 liter required during stabilization of the decomposable organic matter by aerobic bio-  
38 chemical action under standard laboratory procedures for five (5) days at 20 degrees  
39 Centigrade. Laboratory determinations of BOD<sub>5</sub> shall be made in accordance with  
40 procedures set forth in "Standard Method".

41 1(C) "Capacity" Shall mean the percentage of total plant capacity currently allocated  
42 thirty percent (30%) to St. John and seventy percent (70%) to Schererville, which shall  
43 remain constant and not subject to change unless the ratio of capacity allocated shall  
44 change by virtue of additional capacity being added to the WWTP. The parties agree that  
45 the plant has an actual current design treatment capacity of 8.75 MGD design average  
46 flow.

47 1(D) "Collection System" shall mean the system of local sewers, including  
48 transmission facilities, necessary to accept effluent from individual residences,  
49 businesses, industries, and other users, throughout Schererville or St. John. The collection  
50 system of St. John shall terminate at the point of discharge from St. John's flow  
51 monitoring station located at Schererville's WWTP. The collection system of



52 Schererville shall terminate at the influent wet well immediately upstream of the sewage  
53 treatment plant lift station.

54 1(E) "Computation of Time" In computing any period of time prescribed or allowed by  
55 this agreement, the day of the act or event from which the designated period of time  
56 begins to run shall not be included. The last day of the period so computed is to be  
57 included unless it is:

58 (1) a Saturday

59 (2) a Sunday

60 (3) a legal holiday as defined by state statute, or

61 (4) a day the clerk/treasurer's office, in which the act is to be done, is closed  
62 during regular business hours

63 In any event, the period runs until 4:00 p.m. on the next day that is not a Saturday, a  
64 Sunday, a legal holiday, or a day on which the office is closed. "Days" are deemed to be  
65 calendar days unless specifically stated otherwise. "Working days" or "business days" are  
66 Monday through Friday, excluding holidays.

67 1(F) "Daily Annualized Flow" shall mean the daily average flow of St. John and  
68 Schererville, individually and collectively, for the current month and immediately  
69 preceding eleven months, as documented by the monthly billing report submitted by  
70 Schererville to St. John and the monthly report submitted to IDEM by Schererville  
71 respectively. These flows are three in number: first, the flow of St. John; second, the total  
72 flow of the Schererville WWTP; and third, the flow of Schererville which shall be  
73 calculated by subtracting St. John's flow from the total WWTP flow, or, in the alternative  
74 by actual measured flows using such meters as may be installed by Schererville.

75 1(G) "Director" shall mean the Director of Public Works for the Town of St. John  
76 and/or the St. John Sanitary District, his designee or successor.

77 1(H) "EPA" shall mean the United States Environmental Protection Agency.

78 1(I) "Excess Loadings" shall mean those components of the daily flow which exceed  
79 250 mg/l of total suspended solids (TSS) or 250 mg/l biodegradable oxygen demand

80 (BOD<sub>5</sub>). Excess loadings shall be flow related and shall be calculated based upon total  
81 daily flow irrespective of capacity.

82 1(J) "Flow" shall mean the gallons of liquid effluent transmitted or received. Flow  
83 shall include the normal domestic loadings of BOD<sub>5</sub> (250 mg/l), Suspended Solids (250  
84 mg/l), and such other normal pollutants as may be acceptable as identified and regulated  
85 by any NPDES permit applicable to the Schererville WWTP.

86 1(K) "IDEM" shall mean the Indiana Department of Environmental Management, its  
87 predecessor the Indiana Stream Pollution Control Board, or any successor agency.

88 1(L) "Major or Capital Replacement" means:

89 1(L)(1) the replacement, modification or addition of a significant component of  
90 the WWTP with a total cost of Twenty Five Thousand Dollars (\$25,000) or more, but  
91 less than Two Hundred Fifty Thousand Dollars (\$250,000), inclusive of equipment,  
92 materials and contracted labor, and specifically excluding routine, ordinary maintenance.  
93 Expenditures between Twenty Five Thousand Dollars (\$25,000) and Two Hundred Fifty  
94 Thousand Dollars (\$250,000) shall be funded as provided in ¶9(B)(1)(b) et seq.

95 1(L)(2) the replacement, modification or addition of a significant component of  
96 the WWTP with a total cost equal to or in excess of Two Hundred Fifty Thousand  
97 Dollars (\$250,000), inclusive of equipment, materials and contracted labor, and  
98 specifically excluding routine, ordinary maintenance. Expenditures of Two Hundred  
99 Fifty Thousand Dollars (\$250,000) or more shall be discussed and shared pro-rata based  
100 upon capacity allocation as agreed between the parties.

101 1(M) "Minor Replacement" means routine expenditures, less than Twenty Five  
102 Thousand Dollars (\$25,000), for obtaining and installing equipment, accessories or  
103 appurtenances which are necessary during the service life of the treatment works to  
104 maintain the capacity and performance for which such works were designed and  
105 constructed and shall be included in charges for operation and maintenance.

106 1(N) "NIRPC" shall mean the Northwest Indiana Regional Plan Commission.

107 1(O) "NPDES" means a permit issued to the Town of Schererville by the U.S.  
108 Environmental Protection Agency (EPA) and/or the Indiana Department of

109 Environmental Management (IDEM) or their successor agency, under the Clean Water  
110 Act 33 USC 151 §§1251 et. seq.

111 1(P) "Operation and Maintenance" means the associated costs of manpower (labor and  
112 benefits), minor replacements, energy, materials, chemicals and other direct costs, and  
113 indirect costs, all as defined in the rate template, Exhibit "C" to this Agreement, actually  
114 expended, or reasonably projected and documented, necessary to produce a wastewater  
115 plant discharge, including the disposal of sludge or other by-products, that will meet the  
116 requirements of Schererville's NPDES permit and to keep equipment functioning at  
117 satisfactory efficiencies.

118 Included in these expenses can be Payment in Lieu of Taxes, provided however,  
119 that an administrative credit, which shall be equal to the allocated expense to St. John for  
120 Payment in Lieu of Taxes, shall be credited against such administrative expenses.

121 1(Q) "Rate Template" shall mean the accounting schedule and formulas attached hereto  
122 and identified as Exhibit "C", as amended.

123 1(R) "St. John" shall mean the Town of St. John, a municipal corporation, and the St.  
124 John Sanitary District, a special taxing district, or any successor board or agency, and  
125 shall include for purposes of definition, flows collected from its contractual customers.

126 1(S) "Schererville" shall mean the Town of Schererville, a municipal corporation, and  
127 the Schererville Sewage Works Utility, or any successor board or agency.

128 1(T) "Standard Methods" shall mean the most current edition of Standard Methods for  
129 the Examination of Water and Wastewater published by the American Public Health  
130 Association, as it may, from time to time, be amended, or as otherwise promulgated by  
131 IDEM.

132 1(U) "Superintendent" shall mean the superintendent of the waste water treatment plant  
133 owned and currently operated by the Town of Schererville, or any successor entity.

134 1(V) "Suspended Solids" shall mean solids which either float on the surface of or are in  
135 suspension in water, sewage or other liquid and which are removable by laboratory  
136 filtration, as defined or called for by Standard Methods. Their concentration shall be

137 expressed in milligrams per litre. Quantitative determinations of Suspended Solids shall  
138 be made in accordance with procedures set forth in "Standard Methods".

139 1(W) "Transmission Facilities" shall mean large diameter transmission lines, force  
140 mains, lift stations, and metering stations necessary for the transportation of sewage to  
141 the wastewater treatment plant.

142 1(X) "Wastewater Treatment Plant" or "WWTP" shall mean the wastewater treatment  
143 plant owned and currently operated by Schererville and located at Schererville, Indiana.

144 2. EFFECTIVE DATE

145 It is understood and agreed between the parties that this Agreement originally  
146 became effective January 1, 2001, and immediately after its execution and approval by  
147 the Town Council and Utility Board of the Town of Schererville, the Board of Sanitary  
148 Commissioners of the St. John Sanitary District, and the Town Council of the Town of  
149 St. John, and in compliance with the provisions of the Interlocal Cooperation Act, I.C.  
150 1971, 36-1-7-1, et seq. This First Amendment and Restatement of the January 1, 2001  
151 Joint Interlocal Agreement for Sewage Treatment by and between Schererville and St.  
152 John shall become effective \_\_\_\_\_, 2016, and immediately after approval and  
153 executive by the responsible jurisdictional bodies of each of Schererville and St. John, as  
154 originally approved.

155 3. TERM OF AGREEMENT

156 3(A) St. John shall have the right, for as long as Schererville operates its sewage works,  
157 to use Schererville's WWTP to the extent of agreed capacities set forth in this agreement  
158 and in the schedules attached hereto and made a part hereof, for the treatment of its  
159 sewage or until this Agreement is terminated as provided in ¶3(B) hereafter.

160 3(B) In the event St. John constructs its own sewage treatment plant, or becomes  
161 connected to another system for a portion of, or all of its treatment, St. John may, at its  
162 sole option, terminate this Agreement upon giving Schererville thirty (30) days written  
163 notice of its intention to do so, and specifying the effective date of the termination. On or  
164 before the effective date of such termination St. John, shall disconnect all of its sewers  
165 from Schererville's WWTP. All monies due Schererville under the terms of this

166 Agreement, including any capital charges and debt service payments shall be due and  
167 payable to Schererville within thirty (30) days from the effective date of termination.

168 4. COMPLIANCE WITH APPLICABLE LAWS

169 4(A) St. John has adopted, and will maintain and enforce, the following in such a  
170 manner as to at all times comply with the "Federal Water Pollution Control Act  
171 Amendments of 1972" (Public Law 92-500) particularly Title II, Section 204(b), as  
172 amended, and the federal regulations as contained in the Federal Register Volume 39, No.  
173 29, dated February 11, 1974, and any further or supplementary laws and amendments  
174 thereto, in order to permit Schererville, on a continuing basis, to receive grants from the  
175 United States EPA and the State of Indiana which may, in the future, offer grants  
176 incidental to the collection and treatment of sewage and provide Schererville with a  
177 treatment facility which meets NPDES permit limitations and with sufficient total  
178 capacity to meet the capacity reserved to Schererville under this agreement:

179 4(A)(1) A system of charges to assure that each recipient of waste treatment  
180 services within its jurisdiction will pay its proportionate share of the costs of operation  
181 and maintenance of the sewer system (user charge system).

182 4(A)(2) An ordinance prohibiting the discharge of any sewage or polluted water  
183 prohibited by Schererville's Ordinance No. 1862 as amended, and ensuring that new  
184 sewers and connections to the sewer system are properly designed and constructed (sewer  
185 use ordinance).

186 4(A)(3) St. John has adopted an industrial cost recovery ordinance, as may be  
187 amended from time to time thereafter, which shall conform at a minimum with the  
188 Schererville pre-treatment ordinance, the same being Ordinance No. 1862 as amended.

189 4(B) Schererville has adopted, and will maintain and enforce, the following in such a  
190 manner as to at all times comply with the "Federal Water Pollution Control Act  
191 Amendments of 1972" (Public Law 92-500) particularly Title II, Section 204(b), as  
192 amended, and the federal regulations as contained in the Federal Register Volume 39, No.  
193 29, dated February 11, 1974, and any further or supplementary laws and amendments  
194 thereto, in order to permit St. John, on a continuing basis, to receive grants from the

195 United States EPA and the State of Indiana which may, in the future, offer grants  
196 incidental to the collection and treatment of sewage and provide St. John with a treatment  
197 facility which meets NPDES permit limitations and with sufficient total capacity to meet  
198 the capacity reserved to St. John under this agreement:

199 4(B)(1) A system of charges to assure that each recipient of waste treatment  
200 services within its jurisdiction will pay its proportionate share of the costs of operation  
201 and maintenance of the sewer system (user charge system).

202 4(B)(2) An ordinance prohibiting the discharge of any sewage or polluted water  
203 prohibited by Schererville's Ordinance No. 1862 as amended, and ensuring that new  
204 sewers and connections to the sewer system are properly designed and constructed (sewer  
205 use ordinance).

206 4(B)(3) A pretreatment ordinance the same being Ordinance No. 1862 as  
207 amended, which ordinance establishes general pretreatment requirements to conform with  
208 the provisions of CFR Part 403 and applies to all industrial users within the Schererville  
209 collection system.

210 4(C) In the construction, maintenance and operation of their respective sewage  
211 systems, St. John and Schererville will comply with all applicable federal and state laws.

212 4(D) Schererville shall enforce its user charge and sewer use ordinances as to all of its  
213 users and customers beginning at the point of discharge from St. John into Schererville's  
214 sewage system (metering facility), downstream to the Schererville treatment plant and  
215 upstream from the Schererville WWTP throughout the Schererville Collection System.

216 4(E) St. John shall enforce its user charge and sewer use ordinances as to all of its  
217 users and customers beginning at the point of discharge from St. John into Schererville's  
218 sewage system (metering facility) and upstream throughout the St. John Collection  
219 System.

## 220 5. INTERCONNECTION

221 5(A) Schererville agrees to accept for treatment in its WWTP, wastewater, liquid  
222 wastes and sewage delivered by St. John at the metering and sampling vault located on

223 the west side of the WWTP facility, adjacent to the Schererville WWTP as shown on  
224 Exhibit "A" attached hereto and made a part hereof.

225 5(B) The engineering plans and specifications for any modifications to the existing  
226 connection or additional connections, modifications or replacement of measuring devices,  
227 sampling devices, or appurtenances connecting to Schererville's system shall be  
228 submitted to Schererville at least one (1) month before the same are submitted for  
229 approval, if necessary, to IDEM in order to allow Schererville to review and make written  
230 comments to St. John and IDEM with respect to said submissions. If Schererville and St.  
231 John jointly determine that submission to IDEM is not required, approval by Schererville  
232 shall authorize St. John to proceed with the additional connection, modification or  
233 replacement.

234 5(C) It is expressly understood and agreed between the parties that all costs of any  
235 connection by St. John, including the planning, inspection and construction of any  
236 transmission facility, including metering stations, from St. John to said connection point,  
237 or any other connection point, shall be borne exclusively by St. John.

## 238 6. CAPACITY AND LOADING ALLOCATIONS

239 6(A) Sewage received by Schererville from St. John shall meet all criteria of  
240 Schererville's NPDES permit as to acceptable materials, acceptable volume and loadings,  
241 unacceptable materials and such other criteria as may now or in the future be equitably  
242 applied throughout the region served by Schererville in meeting requirements of the State  
243 of Indiana or the federal government.

244 6(B) Upon discovery that unacceptable substances or materials as defined by the Sewer  
245 Use Ordinance No. 1862 or waste or materials deemed unacceptable pursuant to the rules  
246 and regulations duly promulgated by the United States EPA or IDEM, are being  
247 discharged by St. John to Schererville, St. John shall be notified and St. John shall  
248 forthwith take appropriate steps to ensure that such unacceptable materials are excluded  
249 from future discharge to Schererville. In the event of failure of St. John to take such steps  
250 then St. John shall be liable for any additional costs at the wastewater treatment plant in  
251 connection with such unacceptable materials, including any fines as may be levied by the  
252 State of Indiana or United States EPA for non-compliance with Schererville's NPDES

253 permit. Upon discovery that any unacceptable substances or materials are being  
254 discharged as set forth above:

255 6(B)(1) Schererville shall immediately notify St. John of such unacceptable  
256 sewage or materials, including the location, time or times, the nature of such  
257 unacceptable sewage or waste, and such other information as may be available.

258 6(B)(2) Upon verbal notification and confirmation thereof in writing, and St.  
259 John's ability to identify the user responsible for the delivery of such unacceptable  
260 wastewater, liquid wastes and sewage, St. John shall notify that user to immediately cease  
261 delivery of such materials and/or waste, within twenty-four (24) hours. In the event the user  
262 fails to immediately cease delivery of such materials and/or waste St. John shall take such  
263 steps as it deems necessary to cause that unacceptable discharge to cease, including but not  
264 limited to termination of service, injunction, or other extraordinary remedies to cure such  
265 violation.

266 6(B)(3) Schererville shall, in the event St. John is unable to identify the location, time  
267 and/or source of such unacceptable sewage, cooperate with St. John in locating such source.  
268 St. John will use its best efforts to correct or cut off the user delivering unacceptable  
269 wastewater, liquid wastes and sewage to the parties' sewer line.

270 6(B)(4) In the event that the user delivering such unacceptable sewage or materials  
271 through the St. John interconnection point or points, to the Schererville WWTP cannot be  
272 ascertained after diligent inquiry by St. John and Schererville, St. John and Schererville shall  
273 jointly give notice as soon as practical to IDEM and request that an emergency investigation  
274 be instigated forthwith in regard to the matter. Said emergency investigation shall determine  
275 the severity of the damage, if any, to Schererville's collection and treatment facilities  
276 resulting from the discharge of such unacceptable sewage or materials. After such  
277 emergency investigation, and upon identification of any violator, IDEM may issue an  
278 order mandating St. John to cease delivering such unacceptable sewage.

279 6(B)(5) In the event St. John does not comply with said order, Schererville shall  
280 have the right to cease receiving sewage from St. John at the violating interconnection  
281 point and may disconnect, at St. John's expense, or take other appropriate action  
282 consistent with an order of IDEM, until the cause for such action is remedied to the



283 satisfaction of Schererville, the United States EPA and IDEM, provided however, that the  
284 right to cease servicing the entire system of St. John, shall be only for the delivery of  
285 unacceptable sewage or waste materials from the collection system as a whole, as  
286 provided herein.

287 6(C) St. John shall pay its fair share of the annual cash operation and maintenance  
288 costs, as defined in ¶1(P) and, minor replacement costs as defined in ¶1(M) for treatment  
289 of such sewage, according to its use of Schererville's facilities and the template set out  
290 hereafter in Exhibit "C" and made part of this agreement.

291 6(D) Schererville shall accept, transport and treat all sanitary effluent, as set forth in  
292 Paragraph 6(E) below, collected by St. John and delivered to Schererville, including  
293 reasonable inflow and infiltration in connection therewith, together with industrial flow  
294 and loadings, all in the same manner as such effluent is acceptable throughout the total  
295 region served by Schererville.

296 6(E) In recognition of the capital costs paid by St. John and agreed to between the  
297 parties, it is further agreed that St. John shall have the right to the use of the Schererville  
298 WWTP equal to a daily annualized flow of thirty percent (30%) of 8.75 MGD. It is  
299 understood between the parties that St. John currently has one point of connection to  
300 Schererville's WWTP. At the connection point depicted on Exhibit "A", St. John shall  
301 have the right to discharge a design peak hourly flow in accordance with the chart and  
302 formulas attached as Exhibit "B" and identified as "Ratio of Peak Hourly Flow to Design  
303 Average Flow" taken from Fair, G.M. and Geyer, J.C., "Water Supply and Waste-Water  
304 Disposal", 1<sup>st</sup> Edition, 1954.

## 305 7. ACCEPTANCE AND TREATMENT OF SEWAGE

306 7(A) Delivery and Transportation. St. John shall be solely responsible for delivery of  
307 the wastewater, liquid wastes and sewage in a form suitable for passage through the  
308 Schererville sewer line system to the metering point and/or to the connection point or  
309 points. Said wastewater, liquid wastes and sewage shall be delivered from the St. John  
310 sanitary system to the connection point depicted on Exhibit "A". Schererville shall be  
311 solely responsible for transporting the wastewater, liquid wastes and sewage from the  
312 connecting point to its WWTP.

313 7(B) Treatment. Schererville shall be solely responsible for the proper treatment and  
314 transportation of the wastewater, liquid wastes and sewage received from St. John in  
315 accordance with the requirements and standards of IDEM, the Indiana State Board of  
316 Health, the United States EPA, and the terms and conditions of the NPDES permit held  
317 by Schererville.

318 7(C) Acceptable Sewage. St. John has adopted a sewer use ordinance and user charge  
319 ordinance, as may be amended from time to time thereafter, which shall comply at a  
320 minimum with the sewer use ordinance of the Town of Schererville and as applicable to  
321 all users of the system and specifically all applicable rules and regulations of the United  
322 States EPA. Schererville shall be under no obligation whatsoever to accept any type of  
323 waste or toxic materials, which are a prohibited discharge under the rules of the United  
324 States EPA or IDEM. Schererville has no obligation to accept radioactive material. It is  
325 recognized by St. John that the sewer use ordinance of Schererville, the same being  
326 Ordinance No. 1862, and pre-treatment ordinance may be amended from time to time so  
327 as to change the types of waste which must be accepted by Schererville, however, this  
328 shall not constitute a waiver of St. John's right to testify or oppose passage of said  
329 ordinances and amendments.

330 8. METERING AND SAMPLING DEVICES

331 8(A) St. John has installed and will maintain the required metering and sampling  
332 devices located at the connection point for the purpose of measuring the volume and  
333 strength of wastewater, liquid wastes and sewage delivered by St. John to the connection  
334 point for conveyance and treatment and to provide a sampling and monitoring capability.  
335 Said metering and sampling devices have been constructed in a manner and in a place  
336 accessible to Schererville. Any such device shall be subject to the inspection, testing and  
337 approval of Schererville at all reasonable times during normal business hours. For said  
338 purposes, and the purposes of reading and recording data from said meters, each party  
339 shall, at all times, have complete and free access to said metering point and sampling  
340 devices.

341 8(B) The cost of planning, designing, building and installing any additional metering  
342 and sampling devices for an additional connection point which may be required for St.

343 John, including acquisition of real estate, shall be borne exclusively by St. John. In  
344 addition, St. John shall assume complete responsibility, including costs, for the  
345 installation, maintenance and repair of all of its metering devices and will further defray  
346 any costs incurred by reason of testing of the metering devices as requests may be made  
347 by Schererville, from time to time, provided such requests are reasonable as to frequency  
348 and nature of tests required.

349 8(C) St. John agrees to provide, install and maintain at its own cost and expense, at the  
350 metering vault located at the connection point, an automatic flow measuring and  
351 recording device with an integrator-totalizer, for the purpose of recording the volume of  
352 flow discharged into Schererville's system. Readings from such volumetric device shall  
353 be read daily within forty-five (45) minutes of the start of the operating day by St. John  
354 and/or Schererville. Schererville shall have the sole discretion of determining the  
355 operating day, and may, from time to time, change that determination, provided however  
356 that such changes shall not be made more frequently than semi-annually; and that not less  
357 than seven (7) days' notice of such change shall be given to St. John.

358 8(D) A flow-weighted, composite 24-hour sampler has been installed at the St. John  
359 metering vault and shall be utilized at a minimum of monthly intervals by St. John, and  
360 tested by Schererville, or such other laboratory as St. John and Schererville may, from  
361 time to time, approve. Parameters to be tested shall include pH, Suspended Solids, COD,  
362 BOD, phosphorus, metal ions, total nitrogen or other testing as required to satisfy the  
363 Schererville NPDES permit limitations, or IDEM and United States EPA regulations. In  
364 addition, St. John shall test at least annually for "priority pollutants" or other exotic  
365 substances as defined by the United States EPA or IDEM when such agency requires the  
366 Town of Schererville to report same.

367 8(E) Flow-weighted, composite 24-hour sampling will be conducted at the Schererville  
368 WWTP wet well, at a minimum of monthly intervals by Schererville, and tested by  
369 Schererville, or such other laboratory as St. John and Schererville may, from time to time,  
370 approve. Parameters to be tested shall include pH, Suspended Solids, COD, BOD,  
371 phosphorus, metal ions, total nitrogen or other testing as required to satisfy the  
372 Schererville NPDES permit limitations, or IDEM and United States EPA regulations. In

373 addition, Schererville shall test at least annually for "priority pollutants" or other exotic  
374 substances as defined by the United States EPA or IDEM or when such agency requires the  
375 Town of Schererville to report same.

376 8(F) Sampling shall be carried out by customarily accepted methods. BOD<sub>5</sub>, Suspended  
377 Solids, Phosphorus, Ammonia Nitrogen, Oil and Grease tests shall be done at least monthly,  
378 for a period of seven (7) days, with 24-hour flow-weighted, composite samples each day,  
379 consisting of a minimum of twelve (12) aliquots composited according to flows taken at  
380 flow-weighted intervals. Material samples, as received from the sampling devices, shall be  
381 available to both contracting parties. The results of tests on samples shall be provided to  
382 Schererville and St. John.

383 8(G) The records and reports from such measuring and sampling devices will be kept by  
384 Schererville and made available to St. John monthly for billing and analysis purposes.

385 8(H) Schererville may inspect such metering and sampling devices at any reasonable time  
386 and in the event such a device fails or malfunctions and is not repaired within a reasonable  
387 time by St. John, then Schererville may repair the same and St. John will pay Schererville all  
388 costs and expenses for said repair. If Schererville has reason to believe such metering and  
389 sampling devices are not properly maintained, Schererville shall give St. John notice of  
390 same. If within five (5) working days, St. John has not performed maintenance as  
391 notified, Schererville may perform such maintenance and St. John shall pay all costs and  
392 expenses for such maintenance.

393 8(I) St. John may inspect Schererville's metering and sampling devices at any  
394 reasonable time and in the event such a device fails or malfunctions, and is not repaired  
395 within a reasonable time by Schererville, St. John may give Schererville notice of the  
396 failure to correct. If, within 5 working days, Schererville has not performed appropriate  
397 maintenance and repair as it deems appropriate and necessary to restore accuracy  
398 function to the device, then St. John may invoke the Step II or Step III dispute resolution  
399 process. In the event the Arbitrators rule in favor of St. John, they may, as part of their  
400 award, enter an appropriate damage award, or assess a surcharge against Schererville for  
401 violation of this ¶8(I).

402 8(J) In the event of failure of St. John's metering or sampling devices, and during any  
403 period of repair, for the purposes of determining rates pursuant to this Agreement, it will  
404 be assumed that during the period of in-operation of the metering or sampling device, the  
405 flow and strength was at the average daily volume of the preceding twelve (12) calendar  
406 months and that loadings for BODs and Suspended Solids were at the average daily  
407 weight of the preceding twelve (12) calendar months unless other reliable and verifiable  
408 data is available.

409 8(K) Upon receipt of supporting documentation St. John shall reimburse Schererville to  
410 defray the cost of verifying, not more than twice per year, the devices metering the  
411 volume and strength of flow from St. John to Schererville. Both parties shall have access  
412 to the respective metering and sampling equipment of St. John or Schererville for  
413 purposes of verifying flow and collecting samples for verification of loadings. Notice of  
414 such sampling shall be given to St. John or Schererville and each party will be given  
415 adequate portions of any samples obtained for purposes of measuring and monitoring the  
416 strength of sewage being received by Schererville from St. John or from Schererville.

417 8(L) St. John shall calibrate its metering equipment on a semi-annual basis. Five (5)  
418 working days' notice of such calibration shall  
419 be provided to Schererville and the results of such calibration shall be delivered to  
420 Schererville within five (5) working days of calibration.

421 8(M) Schererville shall calibrate its metering equipment on a semi-annual basis. Five  
422 (5) working days' notice of such calibration shall be provided to St. John and the results  
423 of such calibration shall be delivered to St. John within five (5) working days of  
424 calibration.

425 8(N) In the event of a dispute over the results of sampling, independent samples shall  
426 be taken and submitted to Microbac Laboratories of Merrillville, Indiana for an  
427 independent test. The results of the independent test shall be final and in the event that  
428 such tests substantially corroborate the results of the Schererville test, St. John shall bear  
429 exclusively the cost of such additional testing. In the event that the independent tests do  
430 not substantially corroborate the questioned test results, Schererville shall bear  
431 exclusively the costs of the additional testing.

432 9. COST OF TREATMENT

433 9(A) Operation and Maintenance Costs. St. John shall pay to Schererville for operation  
434 and maintenance costs, as defined in ¶1(P) an amount as determined by the template  
435 identified as Exhibit "C" hereto, "Template for Calculation of Operation and Maintenance  
436 Costs". The operation and maintenance cost rate shall be reviewed every five (5) year  
437 period, or as determined needed by either Schererville or St. John upon written request  
438 thereafter, with the first period beginning January 1, 2016, and to be adjusted for said  
439 proceeding five (5) year period, by May 31, beginning June 1, 2021, according to actual  
440 expenditures for the preceding five-year period in each category under conditions and  
441 circumstances existing at the time of any such adjustment, and any pro-forma items  
442 identified in Exhibit "C" attached hereto and referenced throughout herein.

443 Notice of the proposed rate and supporting documentation shall be sent to St. John  
444 not later than April 1 of each five-year period. Any delay in notice shall extend the  
445 effective date by a corresponding number of days.

446 9(B) Capital Costs.

447 9(B)(1)(a) In recognition of the past local cost incurred by Schererville in the  
448 expansion of its sewage treatment plant, as well as its costs for payment of purchase of  
449 additional capacity and allocation, St. John has paid to Schererville sums sufficient to  
450 increase its capacity to seventy percent (70%) of 8.75 MGD.

451 9(B)(1)(b) In recognition of major or capital replacement costs, as defined in  
452 ¶1(L)(1), which may be incurred by Schererville, St. John agrees to pay monthly to  
453 Schererville the sum of Ten Cents (\$.10) per 1,000 gallons of flow. Said sum shall be  
454 escrowed by the Town of Schererville in an account reserved solely to the Town of St.  
455 John and to be used by the Town of Schererville to defray, pro-rata,<sup>1</sup> based upon  
456 capacity, the cost of major capital replacements, modifications, or additions provided

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<sup>1</sup> The percentage of capacity, thirty percent (30%) St. John and seventy percent (70%) Schererville, shall remain constant and not subject to change unless the ratio of capacity allocated shall change by virtue of additional capacity being added to the WWTP, or sale transfer of capacity percentage amounts between St. John and Schererville.

457 however that such funds shall not be used to provide additional capacity without the  
458 express written consent of St. John.

459 9(B)(1)(c) Sums in the escrow account shall accumulate until the aggregate of the  
460 capital replacement reserve, including interest, shall total Fifty Thousand Dollars  
461 (\$50,000), at which time such monthly payments shall cease. In the event such fund shall  
462 be depleted to Twenty Five Thousand Dollars (\$25,000), then such monthly capital  
463 replacement charge shall be reinstated. Such funds shall be escrowed by Schererville in  
464 a separate account, in the joint names of Schererville and St. John and shall be invested in  
465 instruments authorized by law governing the investment of public funds, the same being  
466 IC 1971, 5-13-9-1 et. seq., and may be withdrawn upon the joint signatures of the St.  
467 John Clerk/Treasurer on behalf of St. John and the Schererville Clerk/Treasurer on behalf  
468 of Schererville. It is understood that as of the date of this Agreement the sum of  
469 \$50,000.00 is currently in the escrow account.

470 9(B)(2) Local major or capital replacement costs (total costs less grant funds  
471 received, if any) necessary for future improvements to bring the facility into compliance  
472 with NPDES permit limitations, state or federal regulation, or to better accomplish its  
473 function, so long as such "betterment" is cost effective, shall be shared by St. John and  
474 Schererville on the basis of capacity reserved to each community.

475 9(B)(3) Prior to the expenditure of any funds from the St. John capital reserve  
476 account, identified in ¶9(B)(1)(b) above, Schererville shall provide notice to St. John,  
477 who shall, within forty-five days of such notice, consent or object to its pro-rata  
478 expenditure of such capital expense. In the event St. John objects to said expenditure, the  
479 parties shall proceed to a Step II dispute resolution process. If St. John fails to object  
480 within forty-five (45) days of such notice, such expenditure shall be deemed approved.

481 Upon the declaration of an emergency, as defined by IC 1985, 36-1-2-4.5,  
482 Schererville shall provide accelerated notice to St. John, who shall, within ten days of  
483 such notice, consent or object to its pro-rata expenditure of such capital expense. In the  
484 event St. John objects to said expenditure, the parties shall proceed to a Step II dispute  
485 resolution process. If St. John fails to object within ten (10) days of such notice, such

486 expenditure shall be deemed approved. Upon the declaration of an emergency,  
487 Schererville shall proceed under the provisions of IC 1971, 36-1-12-9.

488 9(B)(4) Both parties understand and agree that the payments by St. John, called for  
489 by Paragraphs 9(A) and 9(B) of this Agreement are intended to compensate and  
490 reimburse Schererville for services rendered in the treatment and disposal of wastewater,  
491 liquid wastes and sewage from St. John and capital costs expended in the construction of  
492 the wastewater treatment plant with a current Design Average Flow of 8.75 MGD.<sup>2</sup> Such  
493 payments shall not entitle St. John to any possessory or proprietary rights in the WWTP  
494 of Schererville. Schererville reserves the right to operate and maintain such facility and  
495 shall have sole discretion as to the methods of operation and the necessity for the nature  
496 and extent of improvements thereto.

497 9(B)(5) Nothing in this agreement shall prevent Schererville from expanding its  
498 WWTP or incurring other capital costs at its WWTP without financial participation by St.  
499 John. St. John shall not be obligated to pay any costs attributable to such expansion or  
500 capital costs, either in a lump sum, or as an additional charge for rates and services,  
501 unless it participates in such expansion.

502 9(C) Surcharges.

503 9(C)(1) It is agreed that at the commencement of this Agreement, thirty percent  
504 (30%) of Schererville's actual primary sewage treatment capacity of 8.75 MGD is  
505 allocated to St. John and seventy percent (70%) is allocated to Schererville. (Allocated  
506 Capacities) To utilize these percentages of such capacity, St. John is entitled to transport  
507 up to, but no greater than thirty percent (30%) of 8.75 MGD, calculated as a daily  
508 annualized flow, of wastewater, liquid wastes and sewage to Schererville.

509 9(C)(2) In the event that St. John shall transport wastewater, liquid wastes and  
510 sewage to the Schererville plant in excess of its allocated capacity of thirty percent (30%)  
511 of 8.75 MGD, excluding peak flows, and thereby uses in excess of its thirty percent  
512 (30%) of capacity before such plant is increased in capacity, and in the event the  
513 Schererville plant has capacity sufficient to accept such increased amount of sewage, then

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<sup>2</sup> The permitted capacity for the WWTP is 8.75 MGD pursuant to the current NPDES for the POTW.



514 St. John agrees to pay to Schererville a surcharge appropriate to the additional plant  
515 capacity used by St. John on account of this increased amount of sewage. Such surcharge  
516 is hereby determined to be twenty-five cents (\$0.25) per 1,000 gallons of flow in excess  
517 of allocated capacity. The payment of a surcharge is due upon the first monthly  
518 occurrence, and each subsequent monthly occurrence by St. John into Schererville's  
519 allocated capacity based upon daily annualized flow, as billed monthly.

520 9(C)(3) In the event Schererville shall transport wastewater, liquid wastes and  
521 sewage to the Schererville plant in excess of Six Million One Hundred and Twenty Five  
522 Thousand gallons per day (6.125 MGD), excluding peaking flows, and thereby use in  
523 excess of its Seventy percent (70%) of capacity before such plant is increased in capacity,  
524 and in the event the Schererville plant has capacity sufficient to accept such increased  
525 amount of sewage, then Schererville agrees to credit to St. John a surcharge appropriate  
526 to the additional plant capacity used by Schererville on account of this increased amount  
527 of sewage. Such surcharge is hereby determined to be twenty-five cents (\$0.25) per 1,000  
528 gallons of flow in excess of allocated capacity. The credit for a surcharge is due upon the  
529 first monthly occurrence, and each subsequent monthly occurrence by Schererville into  
530 St. John's allocated capacity based upon daily annualized flow, as reported monthly.

531 9(C)(4) The payment of a surcharge by either party under ¶¶9(C) (2) or (3) above,  
532 shall not operate to allocate additional capacity to either party without express written  
533 consent. The payment of, or credit for surcharges, for exceeding allocated capacity shall  
534 be paid or credited monthly irrespective of whether or not plant expansion has been  
535 initiated. The payment of, or credit for surcharges is understood to be a short term  
536 solution to the need for additional plant capacity.

537 9(D) Plant Expansion.

538 9(D)(1) No less than twelve (12) months prior to the date projections indicate that  
539 St. John and/or Schererville might transport to the Schererville WWTP for treatment,  
540 wastewater, liquid wastes and sewage in excess of ninety percent (90%) of its allocated  
541 capacity, calculated as a daily annualized flow, and in any event prior to St. John or  
542 Schererville transporting a maximum annual flow in excess of its allocated capacity, St.  
543 John and Schererville shall reach an agreement as to additional plant capacity.

544 9(D)(2) In the event that St. John and/or Schererville reaches ninety percent (90%)  
545 of its allocated capacity, the agreement referred to in paragraph 9(B)(5) above shall be  
546 based upon one of the following three options:

547 9(D)(2)(a) In the event Schererville elects to expand its current facility beyond 8.75  
548 MGD, Schererville shall offer the Town of St. John the opportunity to participate in such  
549 additional expansion, provided however, that St. John shall bear its pro-rata costs for  
550 capital charges and administrative expenses of such expansion, if St. John elects to  
551 participate in such expansion. St. John shall make its election within sixty (60) days of  
552 notice of the engineer's cost estimate based upon preliminary design.

553 9(D)(2)(b) In lieu of ¶9(D)(2)(a) above, or in the event Schererville has not elected to  
554 expand its current facility, St. John may elect to build additional capacity, at its sole cost,  
555 in such amount as it may deem necessary and Schererville agrees to allow such  
556 construction provided however that such construction, shall meet at a minimum any  
557 requirements of United States EPA or IDEM together with the approval of any consulting  
558 engineers retained by the Town of Schererville, further provided however that such  
559 approval shall not be unreasonably withheld and the basis of any such review shall be the  
560 quality of construction and treatment as now exists in the Schererville waste water  
561 treatment facility.

562 9(D)(2)(c) In the event that Schererville has elected not to expand its current facility  
563 and in the event Schererville has excess capacity available, St. John may, in lieu of  
564 9(D)(2)(a) or 9(D)(2)(b) above, demand, and Schererville will provide to St. John,  
565 additional capacity not to exceed thirty percent (30%) of any remaining hydraulic  
566 capacity (based upon plant capacity in excess of 8.75 MGD) available at the Schererville  
567 waste water treatment plant. In exchange St. John will pay additional capital costs, based  
568 upon the cost per gallon of any plant expansion in excess of 8.75 MGD, together with any  
569 interest accrued thereon at the time St. John acquires such additional capacity.

570 9(D)(2)(d) In lieu of ¶¶9(D)(2)(a), (b), or (c) above, St. John and Schererville may  
571 reach any other arrangement for the sharing of treatment capacity or construction of  
572 additional capacity.

573 9(D)(3) In order to provide advance notice of future WWTP expansion,  
574 Schererville shall provide notice to St. John of the issuance of any Request For Proposal  
575 (RFP) for design or consulting engineering services for such expansion.

576 9(D)(4) Schererville shall, upon delivery to the United States EPA and/or IDEM of  
577 any facilities plan, construction drawings, application fee, construction permits or other  
578 documents evidencing such construction, provide St. John with copies of such documents  
579 for which Schererville intends to request participation by the Town of St. John. Upon the  
580 submission of plans and specifications for such facility to IDEM, copies shall also be  
581 provided to St. John.

582 St. John shall be given notice, not less than four (4) weeks in advance, of any  
583 meeting in which a proposed bond ordinance or resolution which may affect the  
584 treatment rate structure, capital charges or allocated capacities charged to St. John may be  
585 placed on an agenda for adoption by Schererville, so as to allow St. John to remonstrate  
586 or otherwise voice its opinions concerning such proposal, provided however, that any  
587 right of remonstrance shall not be retroactive to events or actions which pre-date January  
588 1, 2017.

589 10. BILLING AND PAYMENT

590 The volume and strength of sewage accepted by Schererville into its sewage  
591 system for processing from St. John as measured by metering and sampling devices,  
592 identified above, shall be determined monthly and Schererville shall bill St. John within  
593 thirty (30) days thereafter for the charges applicable under rate schedules then in effect  
594 for the previous thirty (30) day metered period, with said bill showing appropriate flow  
595 meter readings. Such charges shall commence on the first date sewage is accepted by  
596 Schererville into its sewage system from St. John for processing. In the event that St.  
597 John should fail to make payment to Schererville of the amount of such invoice within  
598 the time so limited, St. John shall be liable for and shall pay to Schererville, as a penalty  
599 for delinquency in such payment, the same percentage of such invoice that the sewage  
600 rate ordinance and schedule of Schererville imposes upon all other users of Schererville's  
601 sewage disposal facilities for similar delinquencies.

602

603 11. RATE COVENANTS OF ST. JOHN

604 St. John has instituted and will maintain and enforce a system of charges in  
605 accordance with Section 204(b)(1), Public Law 92-500, as amended and supplemented  
606 and the guidelines and regulations promulgated from time to time by the United States  
607 EPA.

608 12. ADJUSTMENT OF COSTS AND PRIOR ADJUSTMENTS

609 This Agreement shall be effective as to the determination of the cost of sewage  
610 transportation and treatment for services provided on and after \_\_\_\_\_. The  
611 cost of sewage transportation and treatment together with capital costs for services  
612 provided for the years prior to January 1, 2016, are reflected on the schedules attached  
613 hereto, made a part hereof and marked as Exhibit (D) Capital costs accruing after January  
614 1, 2021, shall be paid pursuant to ¶9(B).

615 13. DISPUTE RESOLUTION

616 The parties agree that an organized and graduated method for resolving disputes,  
617 if and when they might arise, is appropriate and in the best interest of the parties. The  
618 following process will govern the resolution of all disputes, other than the arithmetic  
619 computation of rates and this section regarding dispute resolution procedures. The issue  
620 of rate computation is provided for in separate provisions of the Agreement between the  
621 parties. This procedure shall, however, govern the establishment of, or proposed revision,  
622 in the template or formula for rate calculation, except for the timetable on the  
623 establishment of the initial template, which is also governed by other provisions of the  
624 Agreement between the parties. The parties hereby agree that if either party believe the  
625 effect of this Agreement in any way is inequitable or unfair to its citizens, such party  
626 may, by thirty (30) days written notice, request re-negotiation of any part of this  
627 Agreement and the other party will in good faith participate in such negotiations. Any  
628 proposed amendment to the Agreement, excepting this dispute resolution procedure, shall  
629 be included in the topics subject to this dispute resolution process.

630 Nothing in these provisions shall limit or otherwise restrict the parties, by means  
631 of their informal meetings and quarterly review meetings, with proceeding in those

632 forums to anticipate or resolve matters. Either party may, however, remove a matter from  
633 those forums to this process, at the Step II level, upon thirty (30) days written notice to  
634 the other party.

635 13(A) For purpose of definition concerning dispute resolution, the following special  
636 definitions shall apply:

637 13(A)(1) "Notice" Notice shall be a written document, identifying or redefining an  
638 issue or dispute between the parties, which shall be delivered to the Clerk-Treasurer of  
639 either Town by certified mail, return receipt requested. Each Clerk-Treasurer shall, upon  
640 receipt of such document, deliver same to the responsible jurisdictional Body of each  
641 Town, to the Administrator and Town Manager of each responsible Body, and to the  
642 attorney of each responsible Body. Notice shall be deemed effective on the date of receipt  
643 by the Clerk-Treasurer.

644 13(B) Step I - Initial Resolution

645 13(B)(1) Step I parties are the Town Managers, Directors and the Superintendents.  
646 The Directors, Town Managers or the Superintendents may identify an issue and initiate a  
647 Step I dispute resolution by delivery of a written notice to the other party.

648 13(B)(2) Within ten (10) business days of notification, the Directors, Town  
649 Managers and Superintendents shall meet to discuss the issue and attempt a mutually  
650 acceptable resolution. The Directors, Town Managers and Superintendents may mutually  
651 agree to an extension of time in which to meet, continue to meet, or attempt resolution.  
652 Authority to extend the time for resolution shall be presumed. Any resolution between the  
653 Directors, Town Managers and Superintendents shall not be contrary to this agreement as  
654 it may, from time to time be amended.

655 13(B)(3) Upon resolution of the issue, and within five (5) business days of  
656 resolution, the Directors, Town Managers and the Superintendents shall notify the  
657 Administrators. The Administrators shall have ten (10) business days, after notice, to  
658 review the resolution for consistency with this agreement.

659 13(B)(4) Unless the Administrators, within ten (10) business days after notice,  
660 determine in writing, with notice to the other party, that the resolution is inconsistent with

661 this agreement or requires approval by their respective boards, the resolution shall be  
662 accepted for implementation. Each party to this agreement may assume that the  
663 Administrators have the authority of their respective governing boards to review and  
664 accept the proposed resolution.

665 13(B)(5) If the Directors, Town Managers and Superintendents are unable to  
666 resolve the issue, an impasse may be declared. An impasse shall be declared in writing  
667 and delivered to the Clerk-Treasurer by certified mail, return receipt requested, with a  
668 copy mailed to the Administrators of each Town.

669 13(B)(6) At any time, and for any reason, the Administrators may direct that any  
670 issue be addressed by a Step II proceeding, in which event such instructions shall be  
671 delivered to the Directors, Town Managers and Superintendents in writing as the  
672 Administrators may determine.

673 13 (C) Step II - Intermediate Review

674 13(C)(1) If the parties identified in Step I are unable to resolve the issue; or if the  
675 administrators over-ride or object to any resolution agreed to by the Directors, Town  
676 Managers, and Superintendents; or if the Administrators elect to address any issue as  
677 provided by ¶13(B) (6) then the dispute escalates to Step II.

678 13(C)(2) Step II parties are the President and Town or Utility Attorney of the St.  
679 John Sanitary District and the President and Town or Utility Attorney of the Schererville  
680 Municipal Sewer Utility. In the event any of the parties are unavailable, then the  
681 President of the respective party may name a replacement, so long as the replacement is  
682 either an elected or appointed official of St. John or Schererville, and that official has  
683 sufficient knowledge and experience with both this Agreement and operations of the  
684 respective sewage utilities of the parties to adequately represent the interests of that party.

685 13(C)(3) Upon receipt of a Step I impasse, receipt of notice of the Administrator's  
686 assumption of jurisdiction, or the receipt of rejection, by either party, of a Step I  
687 resolution, either party may identify or redefine an issue and initiate a Step II dispute  
688 resolution by delivery of a notice. When an issue arises the Administrators will notify  
689 their respective Boards, together with the attorneys for the respective Boards.

690 13(C)(4) Within ten (10) business days of notice, the Administrators and their  
691 respective counsel shall meet to discuss the issue and attempt a mutually acceptable  
692 resolution. The Administrators may mutually agree to an extension of time in which to  
693 meet, continue to meet, or attempt resolution. Any resolution between the Administrators  
694 shall not be contrary to this agreement as it may, from time to time, be amended.

695 13(C)(5) Within five (5) business days following resolution of the issue, the  
696 Administrators shall notify their respective Boards. The Boards shall have thirty (30)  
697 days thereafter to review the resolution.

698 13(C)(6) Unless the Boards, within thirty (30) days, determine that the resolution is  
699 unacceptable, or requires their approval, the resolution shall be deemed accepted. Each  
700 party to this agreement may assume that the Administrators have the authority of their  
701 respective governing boards to implement the resolution after the thirty (30) day period.

702 13(C)(7) If the Administrators are not able to resolve the issue, either one (1) of  
703 them may declare an impasse. An impasse shall be declared in writing and delivered to  
704 the Clerk-Treasurer by certified mail, return receipt requested with a copy to the  
705 responsible jurisdictional Board of each Town.

706 13(D) Step III - Final Arbitration

707 13(D)(1) If the parties identified in Step II are unable to resolve the issue; or if the  
708 respective boards over-ride or object to any resolution agreed to by the Directors, Town  
709 Managers and Superintendents (Step I); or by the Administrators (Step II); or if any  
710 Administrator or Board elects to address the issue by binding arbitration, then the dispute  
711 escalates to Step III.

712 13(D)(2) Step III shall be binding arbitration and shall be governed by the  
713 provisions of IC 1971, 34-4-2-1 et. seq.

714 13(D)(3) Upon receipt of a Step II impasse or the receipt of a notice of rejection, by  
715 either party, of a Step II resolution, either party may identify or redefine an issue and  
716 initiate a Step III dispute resolution by delivery of a notice.

717 13(D)(4) Within ten (10) business days of notice, the Administrators, or Boards,  
718 shall each name an Arbitrator. Such arbitrator shall preferably be an engineer, accountant,

719 or other professional familiar with sewer utilities and their operations, preferably with  
720 expertise in the disputed area. The parties, their respective board members, board  
721 attorneys, board utility accountants and their agents, servants and/or employees shall not  
722 be eligible to serve as arbitrators. The two (2) named arbitrators shall, within thirty (30)  
723 days, name a third person to serve, and the three arbitrators shall determine the  
724 unresolved issues between the parties. The judgment or findings of a majority of the  
725 arbitrators shall be binding upon the parties as a final determination of all issues before  
726 the arbitrators.

727 14. LITIGATION

728 St. John agrees and undertakes to hold harmless and indemnify Schererville from  
729 any liability damage losses, expenses or costs and from any action, negligence, or failure  
730 to act on the part of St. John in operation of its sewage system.

731 Schererville agrees and undertakes to hold harmless and indemnify St. John from  
732 any liability damage losses, expenses or costs and from any action, negligence or failure  
733 to act on the part of Schererville in operation of its sewage system and treatment facility.

734 The parties agree that this agreement in whole or in part, and in particular the rate  
735 template attached as an exhibit hereto and dispute resolution procedures set forth in ¶13  
736 preceding, is intended to wholly replace litigation except for purposes of injunctive relief  
737 to enforce compliance with the terms of this agreement or any decision by an arbitrator  
738 made under the provisions of ¶13 above, and to pay such sums of money as they shall  
739 become due hereunder.

740 The provisions of I.C. 1971, 36-9-23-26 and 26.1, as amended are hereby  
741 acknowledged and disregarded, it being the intent of this agreement to govern the rate  
742 structure between the parties, as hereinabove set forth, by the procedures set forth in this  
743 Agreement. To the extent necessary to give full force and effect to the provisions of this  
744 ¶14, St. John is hereby deemed to be a special contract customer, not a "user", and this  
745 agreement, in addition to other statutory authority, is to be governed by the provisions of  
746 the Interlocal Cooperation Act, the same being I.C. 1971, 36-1-7-1 et seq., as amended.

747



748 15. OPERATIONS

749 15(A) Both parties will at all times use reasonable and diligent care to keep their sewer  
750 systems and treatment facilities in good operating condition.

751 15(B) All parts of the sewage works and all records and accounts relating to the matters  
752 covered by this Agreement and the applicable sewer ordinances shall be made available  
753 for inspection by either party at any reasonable time.

754 15(C) Both parties will cooperate with each other in the enforcement of their sewer  
755 related ordinances.

756 15(D) Neither party shall be liable to the other for damages in case of an operational or  
757 system failure not due to its negligence or which is caused by an event beyond its control.

758 15(E) In order that continuing cost data may be available as to the annual cash operation  
759 expenses of the wastewater treatment plant, transmission facilities, collections systems,  
760 etc., Schererville shall maintain such records as may be necessary to accurately reflect the  
761 functional costs of the system. Such functional costs categories shall include, but not be  
762 limited to the following:

763 15(E)(1) Wastewater treatment plant costs including those specific costs associated  
764 with the treatment of BOD<sub>5</sub>, Suspended Solids and other pollutants.

765 15(E)(2) General administrative costs of the system.

766 15(E)(3) Costs of capital equipment.

767 15(E)(4) Annual replacement costs of the treatment plant.

768 15(F) The categories identified above shall be documented monthly or annually by  
769 Schererville as follows:

770 15(F)(1) Contemporaneously with its submission to London Witte, or any successor  
771 utility accountant the monthly claims docket for the sewage utility of Schererville shall  
772 be submitted to St. John.

773 15(F)(2) Contemporaneously with its submission to Schererville, the monthly  
774 report of operations prepared from the monthly claims docket by London Witte or any  
775 successor utility accountant shall be submitted to St. John.

776 15(F)(3) Contemporaneously with its preparation, the modifications to the monthly  
777 budget<sup>3</sup> of the sewer utility, as allocated by London Witte, or any successor utility  
778 accountant, to various expense categories and reflecting the amount spent to date and the  
779 projected amount remaining for the balance of the year shall be submitted to St. John.

780 15(F)(4) In the event St. John questions the allocation of any claim, Schererville  
781 agrees to provide within thirty (30) days of any request, the purchase orders, invoices, or  
782 other description or documentation of work or expense to justify its allocation to the  
783 WWTP of Schererville. St. John shall have the right, through designated representatives,  
784 at any reasonable time, to review the records of Schererville for the purpose of  
785 determining compliance with this Agreement and to obtain such information as may be  
786 pertinent thereto. In the event of a dispute concerning the propriety of an allocation to the  
787 WWTP such dispute shall be resolved beginning with Step II of the dispute resolution  
788 procedure.

789 15(F)(5) Within thirty (30) days of its preparation and contemporaneously with its  
790 submission for legal publication as required by law, Schererville shall provide St. John  
791 with its annual financial report for its sewer utility.

792 15(F)(6) Within thirty (30) days after receipt Schererville shall provide St. John  
793 with copies of any audit of the Schererville sewer utility as prepared by the Indiana State  
794 Board of Accounts.

795 15(F)(7) Schererville shall supply contemporaneously to St. John, copies of the  
796 Monthly Report of Operations and Discharge Monitoring Report as submitted to the  
797 United States EPA or IDEM.

798 15(G) Records shall be maintained disclosing the gross volume of flow and loadings  
799 reaching the wastewater treatment plant, together with such other flow factors as in-flow  
800 and infiltration amounts (in-flow and infiltration amounts may be assumed) received  
801 within Schererville, volume of use of specific lift stations by Schererville versus volume

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<sup>3</sup> "Budget" shall mean the internal reporting form prepared by the Clerk/Treasurer of the Town of Schererville which allocates expenditures to line item categories in the general format of a municipal budget. It is understood by St. John that the budget is a working document, not an official document, prepared by the Town of Schererville annually at the beginning of each year for the purpose of projecting expenses and income of the sewer utility.

802 used by St. John and such other data as may be necessary to determine the fair share of  
803 costs payable by St. John. St. John shall have the right to request, on an annual basis, the  
804 calibration of the volumetric metering equipment of Schererville and the right to be  
805 present during such calibration and shall be provided with a copy of any reports issued to  
806 Schererville regarding such calibration.

807 16. COMPLIANCE WITH RULES, REGULATIONS, STANDARDS AND LAWS

808 The parties to this Agreement shall comply with all state and federal regulations,  
809 standards and laws regarding the collection and treatment of sewage and the operation of  
810 their respective systems. In the event studies and/or rehabilitations are necessary or  
811 required as a condition of Schererville receiving a sewage grant, St. John shall fully  
812 cooperate with Schererville to satisfy such requirements.

813 17. ANNUAL AND QUARTERLY MEETINGS

814 There may be a quarterly meeting held by the Administrators of the Schererville  
815 Sanitary District and the St. John Sanitary District, together with their Town Managers,  
816 respective counsel and necessary staff. Such quarterly meetings may be held upon request  
817 of either Party. It is contemplated that the topics of discussion shall include the monthly  
818 financial reports identified above, monthly reports of operation, major or capital  
819 replacements, requests for capital allocation, status of dispute resolution, if any then  
820 pending, or other matters of operational or financial concern. It is contemplated that these  
821 meetings shall constitute a working group for the purpose of identifying potential  
822 conflicts or disputes and resolving same prior to the initiation of a formal dispute  
823 resolution process. It is also contemplated that future capacity needs, capital  
824 improvements, or plant expansions shall be reviewed and updated so as to keep all parties  
825 apprised of concerns with capacity, planning for additional capacity, population growth,  
826 infiltration or inflow analysis, or other topics of general and relevant concern.

827 Schererville and St. John agree that the foregoing meeting terms are essential for  
828 the purpose of reviewing matters of interest to all parties and to promote better  
829 understanding and a harmonious relationship between the communities in regard to the  
830 mutual problems associated with the collection and disposition of sanitary wastes.  
831 Discussions at such meetings may include plans of Schererville and St. John as to

832 additional facilities and the financing thereof, requirements of federal and state agencies  
833 and other subject matters to assist in the abatement of pollution in the area. If necessary,  
834 the next meeting may be hosted by St. John in January, 2017. All future meetings shall  
835 alternate between the two (2) parties' offices. In the event that the parties agree to conduct  
836 an annual meeting, the same shall be held during the month of June.

837 **18. NOTICES**

838 Any notices, except notices under ~13 above concerning dispute resolution  
839 procedures, required or desired to be given under this Agreement shall be served by  
840 certified mail, return receipt requested. Any notice, except notices under ¶13 above,  
841 concerning dispute resolution procedures, shall be deemed to have been served upon  
842 mailing. At the date of execution of this Agreement, Schererville's official address is 10  
843 E. Joliet Street; St. John's official address is 10955 West 93<sup>rd</sup> Avenue.

844 **19. BENEFITS**

845 All of the provisions of this Agreement shall inure to the benefit of, and shall be  
846 binding upon, the successors and assigns of this Agreement.

847 **20. CHANGES IN REGULATORY AUTHORITY**

848 Reference has been made throughout this Agreement to the Indiana State Board of  
849 Health, IDEM, the United States EPA, and to other regulatory agencies, either by name  
850 or description. It is understood that any such reference to any regulatory agency shall  
851 apply not only to each regulatory agency as presently exists but also to any other agency  
852 which may assume the functions of such agency in the future.

853 **21. COMPLETE AGREEMENT**

854 The terms and provisions herein contained constitute the entire Agreement  
855 between the parties and shall replace all terms and provisions of all previous Agreements  
856 and/or Contracts between the Parties hereto. All terms and provisions of previous  
857 Agreement which are not replaced or repealed and not restated herein are ratified and  
858 reaffirmed hereby to remain in full force and effect with this current First Amendment  
859 and Restatement of Agreement.

**SCHERERVILLE PUBLIC ACTION.** This AGREEMENT has been approved by affirmative action of the Town Council of the Town of Schererville, Lake County, Indiana, at a Public Meeting of the Town Council, after motion duly made and seconded, on the \_\_\_ day of \_\_\_\_\_, 2016.

IN WITNESS WHEREOF, the Town of Schererville, Lake County, Indiana, acting by and through its duly authorized and elected Town Council, has executed this Agreement this \_\_\_ day of \_\_\_\_\_, 2016.

**TOWN OF SCHERERVILLE, LAKE COUNTY,  
INDIANA, TOWN COUNCIL**

\_\_\_\_\_  
MICHAEL A. TROXELL, President

\_\_\_\_\_  
THOMAS J. SCHMITT, Vice-President

\_\_\_\_\_  
ROB GUETZLOFF, Councilmember

\_\_\_\_\_  
KEVIN CONNELLY, Councilmember

\_\_\_\_\_  
JERRY TIPPY, Councilmember

ATTEST:

\_\_\_\_\_  
JANICE M. MALINOWSKI, IAMC, MMC  
Clerk Treasurer

**SCHERERVILLE PUBLIC ACTION.** This AGREEMENT has been approved by affirmative action of the Utility Board of the Town of Schererville, Lake County, Indiana, at a Public Meeting of the Utility Board, after motion duly made and seconded, on the \_\_\_ day of \_\_\_\_\_, 2016.

IN WITNESS WHEREOF, the Town of Schererville, Lake County, Indiana, acting by and through its duly authorized Officers, has executed this instrument this \_\_\_ day of \_\_\_\_\_, 2016.

**TOWN OF SCHERERVILLE, LAKE COUNTY,  
INDIANA, UTILITY BOARD**

\_\_\_\_\_  
MICHAEL A. TROXELL, President

\_\_\_\_\_  
THOMAS J. SCHMITT, Vice-President

\_\_\_\_\_  
ROB GUETZLOFF, Councilmember

\_\_\_\_\_  
KEVIN CONNELLY, Councilmember

\_\_\_\_\_  
JERRY TIPPY, Councilmember

ATTEST:

\_\_\_\_\_  
JANICE M. MALINOWSKI, IAMC, MMC  
Clerk Treasurer

**ST. JOHN PUBLIC ACTION.** This AGREEMENT has been approved by affirmative action of the Town Council of the Town of St. John, Lake County, Indiana, a Public Meeting of the Town Council, after motion duly made and seconded, on the \_\_\_ day of \_\_\_\_\_, 2016.

IN WITNESS WHEREOF, the Town of St. John, Lake County, Indiana, acting by and through its duly authorized and elected Officers, has executed this instrument this \_\_\_ day of \_\_\_\_\_, 2016.

**TOWN OF ST. JOHN,  
LAKE COUNTY, INDIANA,  
TOWN COUNCIL**

\_\_\_\_\_  
Michael S. Forbes, President

\_\_\_\_\_  
Mark Barenie, Vice-President

\_\_\_\_\_  
Stephen Hastings, Member

\_\_\_\_\_  
Christian J. Jorgensen, Member

\_\_\_\_\_  
Gregory J. Volk, Member

ATTEST:

\_\_\_\_\_  
Beth R. Hernandez, Clerk Treasurer

**ST. JOHN PUBLIC ACTION.** This AGREEMENT has been approved by affirmative action of the Board of Sanitary Commissioners of the Sanitary District of the Town of St. John, Lake County, Indiana, at a Public Meeting of the Sanitary District Board, after motion duly made and seconded, on the \_\_\_ day of \_\_\_\_\_, 2016.

IN WITNESS WHEREOF, the Town of St. John, Lake County, Indiana, acting by and through its duly appointed and authorized Officers, has executed this instrument this \_\_\_ day of \_\_\_\_\_, 2016.

**TOWN OF ST. JOHN,  
LAKE COUNTY, INDIANA,  
SANITARY DISTRICT BOARD**

\_\_\_\_\_  
Frank Bradtke, President

\_\_\_\_\_  
Patricia Sims-Smierciak, Vice-President

\_\_\_\_\_  
Kenneth D. Gembala, Member

\_\_\_\_\_  
Robert Kmetz, Member

\_\_\_\_\_  
Richard Setlak, Member

ATTEST:

\_\_\_\_\_  
Beth R. Hernandez, Clerk Treasurer