

**WASTEWATER SERVICE AGREEMENT
BETWEEN THE TOWN OF YORKTOWN AND THE
DELAWARE COUNTY REGIONAL WASTEWATER DISTRICT**

THIS AGREEMENT, made and entered into this 13th day of May, 2020, by and between the Town of Yorktown, a municipal corporation in Delaware County, Indiana, by and through its Town Council (hereinafter referred to as "YORKTOWN" or the "TOWN") and the Delaware County Regional Wastewater District, a sewer district in Delaware County, Indiana, by and through its Board of Trustees (hereinafter referred to as the "DISTRICT");

WITNESSETH THAT:

WHEREAS, the District does not have adequate means of disposing of its wastewater, liquid wastes and sanitary sewage from the District;

WHEREAS, Yorktown has a sewage treatment and disposal facility and is making improvements and additions to said facility which will have a capacity in excess of that required to process its own wastewater, liquid wastes and sewage, and is willing to accept wastewater, liquid wastes and sewage from the District and process and dispose of the same; and

WHEREAS, the District has connected its sewer system of the District to the sewage treatment and disposal facilities of the Town and currently transports wastewater, liquid wastes and sewage generated within the jurisdiction of the District to the Town plant to be treated by the Town;

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that Yorktown will accept from the District the wastewater, liquid wastes and sewage of the District and will treat and dispose of the same in a proper manner at its sewage treatment plant subject to the following covenants and conditions:

1. The District agrees to continue to transport its wastewater, liquid wastes and sewage generated within the jurisdiction of the District to the Town plant to be treated by the Town.
2. Yorktown agrees to continue to accept, treat and process in a proper manner all wastewater, liquid wastes and sewage transported from the District to the Yorktown plant by means of such sewer subject to the conditions hereinafter set forth in this agreement.
3. The District agrees to continue to operate and maintain, at its own expense at the main Westbrook Lift Station, the necessary metering equipment and all appurtenant devices for properly measuring the quantity of wastewater delivered to Yorktown and to calibrate such metering equipment whenever requested by Yorktown but not less frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the two (2) months previous to such test in accordance with the

percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of wastewater treated during such period shall be deemed to be the amount of wastewater treated in the corresponding period immediately prior to the failure.

4. The duly authorized representatives of both the District and Yorktown shall have rights of access at all times to inspect and observe the operation of the meters provided for in the preceding paragraph hereof. The expense of operating and maintaining such meters shall be paid by the District and any records or charts from such meter or meters shall be kept by the District and shall be subject to examination by Yorktown.
5. The District agrees to continue to maintain a sewage collection system, including sewers and regulating stations and other structures, as may be required to deliver the flow of wastewater, liquid wastes and sewage from the District to Yorktown. The District agrees to use all necessary precautions and diligence to exclude from wastewater, liquid wastes and sewage transported to Yorktown, sand, gravel, street waste, grits, leaves, rags, paper, pickling liquor, cyanides, coal tar, oil, grease, acids, dry cleaning fluids, and any other foreign material and industrial wastes which are objectionable, dangerous and inhibitive to bacterial growth, or which for other reasons cannot readily be treated in the sewage treatment plant of Yorktown or may be injurious thereto.
6. The District agrees to maintain its sewer use ordinance as required by PL 92-500 and said ordinance shall remain compatible with the Yorktown sewage use ordinance as required by PL 92-500.
7. The District has enacted an ordinance which prohibits the introduction of surface water and ground water inflow into its sewage system and will otherwise enforce such prohibition.
8. The District agrees to report to Yorktown once each month, before the 7th day of each month, the volume and characteristics of the discharge of sewage into the Yorktown system during the preceding calendar month. This report shall be on a form prescribed by Yorktown. The characteristics measured or otherwise identified and reported shall include, but not be limited to volume and any waste constituents identified in Yorktown's rate ordinance and/or sewer use ordinance. Sampling and analysis of the District's wastewater, liquid wastes and sewage shall be conducted in a comprehensive way and in accordance with acceptable engineering practice so as to reflect an accurate profile of the sewage and to form the basis for fair and equitable variable charges.
9. Yorktown reserves the right to verify the reports submitted by the District and Yorktown shall conduct such verifications in accordance with the standards contained in this Agreement and shall have rights of ingress and egress onto the premises of the District as necessary and required to examine and verify documents, records and meters subject of such report.

10. The reports from the District to Yorktown shall be made by the 7th day of each month or on a date as determined by Yorktown and shall be in addition to other reports as hereinafter provided.
11. In the event the District should for any reason fail to provide Yorktown with required reports and data as provided for hereinabove, Yorktown shall make an estimate of the charges due from the District based upon prior flows and loadings and bill the District therefor as provided in this Agreement. If the correct actual charges due should be later determined, Yorktown shall make appropriate adjustments in the next billing to the District.
12. The District agrees to pay to Yorktown for the treatment of wastewater, liquid wastes and sewage from the District an amount or amounts to be determined as follows:
 - a. Wholesale Treatment Rates
 - 1) The District shall pay to Yorktown for the treatment of wastewater, liquid wastes and sewage from the District an amount as determined on Exhibit A hereof, "Allocation of Revenue Requirements to Cost Function" and Exhibit B hereof, "Calculation of Wholesale Treatment Rate." This calculation shall be updated the first full calendar year following the completion of the proposed project funded by the 2020 Bonds (defined hereafter) and reviewed not less than biennially thereafter. So long as inflation, as measured by the Bureau of Labor Statistics, Midwest seasonally unadjusted consumer price index, does not exceed an average of 3% over a 2 year period, any future charge to the District for treatment expenses shall not be an increase of more than Five Percent (5%) and shall not occur more than once in a two-year period. For future biennial reviews, the total Pro Forma Amount as identified on Exhibit A shall be based upon a twelve-month historical test year ending not more than one year preceding an adjustment to the Wholesale Treatment Rate ("Historical Test Year"). Adjustments shall only be made to the Historical Test Year in development of a Pro Forma Operating Year to the extent such Pro Forma Operating Year is used in development of rates to be applied to **all** retail customers of Yorktown. "Adjustment for 3% inflation and Contingencies" as identified on Exhibit A shall not exceed Three Percent (3%) of Cash Operating Expenses unless otherwise agreed to by the District. The Wholesale Treatment Rate shall be adjusted according to conditions and circumstances existing at the time of any such adjustment. Yorktown shall, once each month, following the submission of the reports and data as heretofore provided in this Agreement, invoice the District for such charges and such amount shall be due from the District to Yorktown on the 10th day following receipt of such invoice by the District. In the event that the District should fail to make payment to Yorktown of the amount of such invoice within the time so limited, the District shall be liable for and shall pay to Yorktown, as a penalty for delinquency in such payment, the same percentage of such invoice, that the

sewage rate ordinance and schedule of Yorktown imposes upon all other users of Yorktown's sewage disposal facilities for similar delinquencies in payment.

- 2) Any future charge to the District for treatment expenses shall be based on the methodology shown on Exhibits A and Exhibit B.

b. Capital Costs

- 1) The District agrees to pay to Yorktown a monthly capital cost of \$2,493 with the final payment in August 2040. Calculation of the annual capital cost amount is shown on Exhibit B, in the “Allocated Costs – Capacity Related” section of the calculation. Such Annual Capital Costs shall be paid in equal monthly installments.
 - 2) Future local costs (total costs less any grant funds received) necessary for future improvements to the Yorktown wastewater treatment plant shall be shared by the District and Yorktown on the basis of the peak pumping capacity of the district relative to the max design flow of the treatment plant. Such future capital costs and the responsibility of each party hereto therefore shall be negotiated and agreed upon between the parties at such time as improvements become necessary.
 - 3) Yorktown reserves the right to operate and maintain such facility and shall have sole discretion as to the methods of operation and the necessity for and nature and extent of improvements thereto.
 - 4) The District shall not convey to Yorktown for treatment more than an average of 430,000 GPD, measured monthly. If the District exceeds this limitation, it shall be assessed a surcharge of an additional 50% of the then applicable rates for all flow in excess of the maximum allowed.
13. In the event wastewater, liquid wastes and sewage is received by Yorktown from the District in excess of domestic loadings, BOD and suspended solids now established, then the District shall pay to Yorktown the rate per pound therefor as established in the Yorktown rate ordinance. In the event of future changes in the cost of treatment of suspended solids and BOD based upon the studies in conformity with EPA requirements, then the District shall be subject to any such increased or decreased charges for such excessive pollutants. In the event that future charges are made for other excessive pollutants received by Yorktown and such charges are uniformly applied throughout the region served by Yorktown, then the District shall be subject to such charges.
14. The District agrees to comply with all applicable provisions of the Federal Water Pollution Control Act, and Indiana statutes relating to pollution abatement. Further, the District will implement any requirements of the U. S. Environmental Protection

Agency with respect to conditions and limitations of grants sought by Yorktown that are applicable to the District and being within the jurisdiction of Yorktown.

15. In the event any dispute should arise between the parties to this Agreement as to any terms and conditions thereof, including any dispute as to amounts payable hereunder, Yorktown and the District shall agree upon an arbitrator who shall hear and resolve said dispute and show decision shall be final and binding upon both parties. The expense of such arbitration shall be borne jointly and equally by both Yorktown and the District. It is the intent of the parties hereto that any arbitrator selected pursuant hereto shall have experience and expertise in the particular area of the disagreement.
16. This Agreement shall commence on the date first set forth above and shall continue until the Sewage Works Revenue Bonds of 2020 ("2020 Bonds") and any bonds issued to refund the 2020 Bonds issued by the Town are paid in full and no longer outstanding ("Initial Term"), a date not to exceed September 1, 2040.
17. This Agreement shall continue in full force and effect for an indeterminate number of 1 year terms after the Initial Term subject to the same terms and conditions, unless either of the parties hereto shall notify the other in writing of intention to terminate the same at least 12 months prior to the expiration of the Initial Term or any additional 1 year term. The parties may then desire to renegotiate the terms hereof by reason of governmental changes or requirements, changes in physical conditions, rates, costs or expenses of any kind applicable within the 12-month period prior to the expiration of the original term or additional term. Any such renegotiation shall reflect, in good faith, changes in terms and conditions based on the reasons hereinabove set forth.
18. This Agreement is expressly made binding upon the successors and assigns of the parties hereto.

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IN WITNESS WHEREOF, the parties have hereunto affixed their names and seals on the day and date first above written.

TOWN OF YORKTOWN,
COMMON COUNCIL

DELAWARE COUNTY REGIONAL
WASTEWATER DISTRICT, BOARD OF
TRUSTEES

ATTEST:

ATTEST:

Clerk-Treasurer

Secretary

EXHIBIT A

ALLOCATION OF REVENUE REQUIREMENTS TO COST FUNCTION

USER CHARGE REQUIREMENTS:	Total	Allocated To:				Ref.
	Pro Forma Amount	Treatment and Flow	Collection System	Customer Accounts	Administrative and General	
Cash Operating Expenses:						
Salaries and wages	\$463,100	\$280,685	\$94,582	\$74,183	\$13,650	(1)
Employee pensions and benefits	185,838	112,633	37,957	29,771	5,477	(2)
Purchased power	105,195	80,844	24,351	-	-	(1)
Contractual services	112,547	14,935	74,029	-	23,583	(1)
Materials and supplies	67,755	29,169	38,586	-	-	(1)
Chemicals	145,000	145,000	-	-	-	(1)
Office supplies	13,497	640	-	12,857	-	(1)
Insurance	37,813	-	-	-	37,813	(1)
Transportation	2,072	2,072	-	-	-	(1)
Communications	14,050	4,640	-	4,705	4,705	(4)
Fuel	8,375	-	-	-	8,375	(1)
Sludge removal	28,939	28,939	-	-	-	(1)
Rent	15,600	-	-	7,800	7,800	(3)
Miscellaneous disbursements	39,390	16,515	-	-	22,875	(1)
Sub-totals	1,239,171	716,072	269,505	129,316	124,278	
Adjustment for 3% inflation in contingencies	37,175	21,482	8,085	3,880	3,728	
Sub-totals	1,276,346	737,554	277,590	133,196	128,006	
Reallocate administrative costs pro rata	-	82,215	30,943	14,848	(128,006)	
Sub-totals Forward	\$1,276,346	\$819,769	\$308,533	\$148,044	\$0	

Explanation of References:

- (1) Direct allocation to cost function.
- (2) Allocated based on the percentage of salaries and wages directly allocated to each respective cost function.
- (3) Allocated 50/50 between customer accounts and administrative and general.
- (4) Portion not directly allocated to treatment and flow has been allocated 50/50 between customer accounts and administrative and general.

(Continued on the next page)

EXHIBIT A

(Cont'd)

ALLOCATION OF REVENUE REQUIREMENTS TO COST FUNCTION

PRO FORMA REVENUE REQUIREMENTS:	Total	Allocated To:		
	Pro Forma Amount	Treatment	Collection System	Customer Accounts
Operation and maintenance disbursements (1)	\$1,276,346	\$819,769	\$308,533	\$148,044
Debt service: (2)				
Sewage Works Refunding Revenue Bonds of 2017	268,644	-	268,644	-
Sewage Works Revenue Bonds of 2020 (3)	626,421	626,421	-	-
Sub-totals	895,065	626,421	268,644	-
Replacements costs and debt service reserves (4)	313,273	219,247	94,026	-
Total Revenue Requirements	\$2,484,684	\$1,665,437	\$671,203	\$148,044

Explanation of References:

- (1) See "Allocation of Operation and Maintenance Expenses to Cost Function", prior page.
- (2) Debt service is allocated to cost function based on the project(s) financed with the respective bond issue.
- (3) \$10,000,000 bond issue amortized over 20 years at an interest rate of 2.25%. Assumes 32.9% of the project would be allocated to capacity and 67.1% to treatment and flow.
- (4) An allowance equal to 35% of the total debt service to provide for replacement costs of equipment, debt service reserves and bond coverage.

EXHIBIT B

CALCULATION OF WHOLESALE TREATMENT RATE

Allocated Costs - Flow Related:

Treatment operation and maintenance disbursements (1):	\$819,769
Allocated debt service (1)	420,328
Allocated replacement costs and debt service reserves (35%)	<u>147,115</u>
 Total Annual Treatment Related Disbursements	 1,387,212
 Divided by average total annual influent flow at Yorktown treatment plant in the prior two calendar years (per 1,000 gallons)	 + <u>494,750</u>
 Flow charge to Delaware County Regional Wastewater District (per 1,000 gallons)	 <u>\$2.80</u>

Allocated Costs - Capacity Related:

Total annual debt service	\$206,093
Allocated replacement costs and debt service reserves (35%)	<u>72,133</u>
 Total Annual Capacity Related Disbursements	 278,226
Times percentage allocated to DCRWD (2)	<u>10.75%</u>
 Total Annual Capital Cost of Yorktown 2020 Project	 <u>\$29,909</u>
 Total Estimated Annual Charge	 <u>\$313,644</u>

References:

(1) See "Allocation of Revenue Requirements to Cost Function", see Exhibit A.

(2) Total debt service allocated as follows:

Proposed SRF debt service	\$626,421
Time % of project related to treatment and flow	<u>67.10%</u>
 Total treatment and flow debt service	 <u>\$420,328</u>

(3) Allocated based on actual peak pumping capacity provided by the District of 0.43 MGD*.

* Maximum day pumping capacity as provided by the DCRWD's Executive Director.

DCRWD peak pumping capacity	0.43
Total Yorktown WWTP max design flow	<u>4.00</u>
 Percentage allocated to DCRWD	 <u>10.75%</u>