

BE IT REMEMBERED THE HENRY COUNTY COMMISSIONERS and COUNTY COUNCIL, met in special joint session with the CITY COUNCIL, in the Courthouse Circuit Courtroom, in the City of New Castle, Indiana on Wednesday, May 10, 2018, at 7:00 P.M., to discuss the White Estates project, the following members were present: **Commissioners:** Butch Baker, Kim L. Cronk, Ed Yanos. **Council members:** Nate LaMar, Richard Bouslog, Michael Thalls, Robin Reno-Fleming, Steve Dugger, Clay Morgan and Auditor, Patricia A. French and Joel Harvey, County Attorney.

Mr. Lamar, Council President, brought the meeting to order. He proceeded to introduce Angela Cox, Health Administrator. Mrs. Cox gave the background on how the investigation began into the sewer issues for the residents of White Estates, stating her department had received a complaint. After investigating the situation her department issued a violation after finding bacterial waste from humans and animals contaminating the water supply. At that time it was turned over to the County Attorney, who submitted notes of violation to IDEM. In September of 2017, IDEM, City and County officials began to meet to work out a plan to fix the problem.

Doug Baldessari, representing H.J. Umbaugh, presented the financial plan agreed upon by the City and County, stating the total project would cost \$6,430,000, financed with bonds, city and county funds and the residents themselves. Lisa Lee, attorney for Ice Miller, discussed further the financial plan, regarding the bond issue and Keith Bryant from United Consulting discussed the engineering aspect of the project.

Mayor Greg York stated the White Estates area is valuable to the City and County and there is no other option but to fix this problem. After several meetings with IDEM, City and County officials felt positive about the financial plan and will proceed with public meetings for the residents of White Estates to answer any questions they may have. Those public meetings will be held Thursday June 7th and Tuesday, June 12th 2018.

Resolution #2018-1 was presented for approval. A resolution of the Henry County Council, approving an interlocal agreement between Henry County and the City of New Castle. A motion was made by Council member Mr. Thalls and seconded by Mr. Dugger to approve the resolution as presented. Motion carried 6-0.

RESOLUTION NO. 2018-1

A Resolution of the Henry County Council approving an interlocal agreement between Henry County, Indiana and the City of New Castle, Indiana WHEREAS, Henry County, Indiana ("County") is a county established and operating pursuant to IC 36-2-1 *et seq.*, a municipal corporation, an Indiana political subdivision and a governmental entity;

WHEREAS, the City of New Castle is a municipal corporation, an Indiana political subdivision and city established and operating pursuant to IC 36-4-1 *et seq.*, and a governmental entity;

WHEREAS, IC 36-1-7-1 *et seq.* ("Act") authorizes Indiana political subdivisions to enter into written interlocal cooperation agreements for the shared exercise of powers that may be exercised by each of them; and

WHEREAS, a proposed interlocal agreement ("Agreement") has been presented to this County Council for its approval;

NOW, THEREFORE, BE IT RESOLVED BY THE HENRY COUNTY COUNCIL, THAT:

Section 1. The final form of Agreement attached hereto as Exhibit A is hereby approved.

Section 2. The Board of Commissioners, the County Council and the County Auditor are authorized and directed to execute the Agreement on behalf of the County.

Section 3. This resolution shall be in full force and effect from and after the date of its passage.

Passed and adopted this 10th day of May, 2018.

Also presented for approval was the Interlocal Cooperation Agreement between the City and County regarding the project. A motion was made by Commissioner Cronk and seconded by Commissioner Yanos to approve the agreement as presented. Motion carried 3-0.

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement ("Agreement") is entered into this ____ day of _____, 2018 by and between Henry County, Indiana and the City of New Castle, Indiana (collectively, "Parties").

Recitals:

WHEREAS, Henry County, Indiana ("County") is a county established and operating and pursuant to IC 36-2-1 *et seq.*, a municipal corporation, an Indiana political subdivision and a governmental entity;

WHEREAS, the City of New Castle ("City") is a municipal corporation, an Indiana political subdivision and a governmental entity established and operating pursuant to IC 36-4-1 *et seq.*;

WHEREAS, the Parties have the authority and power to enter into this Agreement;

WHEREAS, the White Estates Subdivision area is a residential development with approximately two hundred twenty-nine (229) residential lots and thirteen (13) unimproved lots located in an unincorporated area of the County near the City's corporate limits, which is hereinafter referred to as "White Estates Subdivision";

WHEREAS, on June 9, 2017, the Indiana Department of Environmental Management ("IDEM") issued a Notice of Violation to the County alleging that the County was responsible for prohibited discharges of sewage in the White Estates Subdivision because sewers located within the White Estates Subdivision are "not owned by any developer, corporation, business, individual or homeowners association";

WHEREAS, the County does not own or operate sewage treatment facilities;

WHEREAS, the City owns and operates a sewage treatment plant and a sewer collection system that currently receives and treats sewage and wastewater from properties in the City and some of the properties located within or near the White Estates Subdivision;

WHEREAS, pursuant to IC 36-9-23-36, the City has jurisdiction to provide sewer service to the White Estates Subdivision;

WHEREAS, On September 21, 2017, IDEM and the County entered into an Agreed Order under which the County must eliminate prohibited discharges in the White Estates Subdivision;

WHEREAS, the Parties have initiated a process to engineer, design and finance a capital project that will allow the property owners of the White Estates Subdivision to connect to the sewage works of the City ("Project");

WHEREAS, the City is willing to finance the Project provided that its existing ratepayers do not subsidize the cost of the Project;

WHEREAS, the City plans to issue its Sewage Works Revenue Bonds of 2018 ("Bonds") and Bond Anticipation Notes ("BANs") to partially fund the construction of the Project, which Bonds will be payable from the revenues of the City's sewage works as more particularly described in a bond ordinance to be adopted by the Common Council of the City ("Bond Ordinance") and which BANs are anticipated to be forgiven;

WHEREAS, the Indiana Finance Authority (“IFA”) has indicated that it is willing to purchase the Bonds and/or BANs through its State Revolving Loan Fund Program and/or its Supplemental Fund Program (each an “IFA Program”) provided that the sources of security for repayment of the Bonds is acceptable to the IFA and the Parties;

WHEREAS, the Parties have agreed to work together to eliminate prohibited discharges in the White Estates Subdivision through the construction and financing of the Project, the issuance of Bonds by the City and a joint obligation of the City and the County for repayment of the Bonds, and wish to reduce the terms of their agreement to writing;

NOW THEREFORE, IT IS AGREED:

1. Construction of the Project. The City and the County will cause to be constructed the Project which shall consist of a new lower pressure sanitary sewer system, consisting of approximately 19,500 linear feet in the White Estates Subdivision. The City shall be responsible for the design and oversight of the construction of the Project. Upon completion of construction, the Project shall belong to the City and shall be incorporated into, become a part of the City's sewage works, and shall be maintained by the City.

2. Financing the Project. The Parties anticipate that the construction of the Project will be partially funded by the City's issuance of its Bonds to an IFA Program. The estimated principal amount of the Bonds is approximately Two Million Four Hundred Thirty Thousand Dollars (\$2,430,000). The Parties anticipate receiving a forgivable loan from an IFA Program, to be evidenced with a forgivable BAN issued by the City, in the amount of Four Million Dollars (\$4,000,000).

3. Security and Sources of Payment of the Bonds.

(a) The primary source of repayment for the Bonds and the pledge to be created under the City's Bond Ordinance will include the Net Revenues (as defined in the Bond Ordinance) of the City's sewage works; provided, however, that such Net Revenues shall be limited to an account created under the Bond Ordinance which shall receive monthly surcharges added to the regular sewer billings from the City to the owners of each developed parcel in the White Estates Subdivision.

(b) The Parties agree to cooperate and take all steps necessary to cause the monthly surcharges to be sufficient to produce Net Revenues that are one hundred twenty-five percent (125%) of the amount necessary to pay annual debt service on the Bonds. The City shall ensure that the additional surcharges are included on all applicable billings and that such payment amounts received from property owners of the White Estates Subdivision are properly deposited into the accounts created under the Bond Ordinance. Such accounts shall consist of a Bond and Interest Account and a Reserve Account. The Bond and Interest Account shall be used to pay principal and interest on the Bonds as such payments are due. Net Revenues shall be deposited into the Bond and Interest Account and to the extent there are Net Revenues remaining after making a debt service payment on the Bonds, such excess shall be applied first to any deficiency in the required Reserve Requirement (as hereinafter defined) balance held in the Reserve Account, and second, to the prepayment of Bonds, in inverse order of maturity. Such transfers to the Reserve Account and any prepayments on the Bonds from the excess Net Revenues shall be affected every twelve months on the last day of June. The Reserve Account shall only be used to pay debt service on the Bonds if the amounts on deposit in the Bond and Interest Account are not sufficient. The Reserve Account shall have two required balance measurements for purposes of the Bond Ordinance and this Agreement. The first measurement for the Reserve Account shall equal the maximum annual debt service on the Bonds ("Reserve Requirement"). After the Reserve Requirement is attained, the

second measurement for the Reserve Account, which includes the Reserve Requirement, shall equal \$180,000 ("Additional Reserve"). The Reserve Account (including both the Reserve Requirement and the Additional Reserve) shall be funded by making fifteen (15) equal annual payments of \$12,000 per year commencing on last day of January 2019 and ending on last day of January 2033 with moneys provided by the County as described below in Subsection (d). The Reserve Account may also receive additional deposits of Net Revenues and the Additional County Funding (as hereinafter defined) if the funding described above does not allow the balance in the Reserve Account to equal the Reserve Requirement within five (5) years following the date of delivery of the Bonds or thereafter, if the balance in the Reserve Account shall not equal the Reserve Requirement due to withdraws and is not able to be replenished from the funding described above. The City will allow such Bond and Interest Account and the Reserve Account to be held in trust by a financial institution as directed by IFA.

(c) The Parties shall ensure that all surcharges are collected and agree to take all steps permitted under IC 36-9-23 to enforce payment by the property owners of the White Estates Subdivision. The City agrees that it will shut off the water supply to any property owners of the White Estates Subdivision for lack of payment of such billings by the City's sewage works, which the City represents is an action permitted by IC 8-1.5-3-4, IC 36-9-23-6 and other applicable law.

(d) The County agrees to contribute to the City annually by the last business day of each January for a period of fifteen years a sum no less than Twelve Thousand Dollars (\$12,000) for the funding of the Reserve Account ("County Reserve Contribution"). Such annual payments by the County shall not be subject to appropriation.

(e) The Parties have engaged H.J. Umbaugh & Associates, Certified Public Accountants, LLP to prepare a report that displays the economic feasibility of the Project and the repayment of the Bonds ("Report"). The Report attached hereto and incorporated herein by reference contains the required coverage amounts to be maintained by the surcharges paid by the property owners of the White Estates Subdivision and the minimum balances to be held in the Bond and Interest Account used to pay debt service on the Bonds and the Reserve Account. The Parties agree to annually determine if there will be sufficient funds to pay debt service on the Bonds in the upcoming calendar year. Each June, the City shall review the balance of funds available to pay debt service in the upcoming calendar year and determine if those funds, together with projected revenues expected to be received in the next calendar year, will be sufficient to pay such debt service while maintaining the minimum required balance to be held in the Bond and Interest Account used to pay debt service on the Bonds and a balance equal to the Reserve Requirement in the Reserve Account. To the extent a deficiency is projected, the City agrees to notify the County by July 1 of the deficiency and its projected amount. The County agrees to include in its budget for the calendar year in which a deficiency is projected an amount up to \$20,000 annually if such funds are legally available to the County for such use ("Additional County Funding"). Such Additional County Funding shall be separate from and in addition to the County Reserve Contribution and will be transferred to the City no later than June 1 and December 1 in respect of any deficiency projected for the immediately following July 1 and January 1 Bond payment, respectively and used to first eliminate the deficiency in the payments on the Bonds and second to replenish the Reserve Account to attain a balance equal to the Reserve Requirement. If the County fails to make payments under this Agreement, the County will permit the IFA to take all actions necessary to collect payment due on the Bonds, including obtaining a judgment against the County in an amount equal to all County Reserve Contributions and Additional County Funding that have not been transferred to the City as described in Subsection (d) and this Subsection (e). If any Additional County Funding is used to pay debt service on the Bonds or to fund the Reserve Account, then

the City shall cause Net Revenues to be accumulated in the Reserve Account in accordance with the Bond Ordinance until the amount on deposit therein shall equal the Reserve Requirement together with the aggregate amount of any Additional County Funding not recovered and paid to the County pursuant to Subsection (f) ("Additional Net Revenue Reserve Deposits").

(f) The City will permit the County to recover any Additional County Funding made under this Agreement as follows: (1) in June of 2033 any Additional County Funding that has been replenished by the Additional Net Revenue Reserve Deposits shall be paid to the County by the last day of June, 2033 (provided that no such payment to the County shall be in an amount that causes the balance held in the Reserve Account to be less than the Reserve Requirement); and (2) at the final maturity of the Bonds, or upon redemption of all the Bonds, the balance in the Reserve Account which is in excess of the County Reserve Contribution shall be paid to the County.

4. Property Owner Responsibilities. Proceeds received from an IFA Program, either Bond proceeds, BAN proceeds, or both, will be used to pay for any lateral sewer lines necessary to allow property owners to connect to the Project and the individual grinder pump station to be installed for each connection. Each owner of an improved lot within the White Estates Subdivision shall be responsible, at the owner's cost, to properly clean, disconnect and abandon any private septic systems or unpermitted wastewater connection. Each property owner shall be responsible for the operation, maintenance and replacement costs of the individual grinder pump station up to the point of connection with the valve station at or near the right-of-way where the sewer line of the Project shall be installed. The City will inspect and approve the installation of all individual grinder pump stations. The City shall not charge a fee to property owners of currently improved lots who voluntarily connect to the Project. The City agrees to enact a connection fee to be paid by any property owner in the White Estates Subdivision that does not voluntarily connect to the Project. Such connection fees will be designated as Net Revenues under the Bond Ordinance and will be pledged to payment of the Bonds.

5. Required Connections. The City shall enact any ordinances reasonably necessary to require owners of developed lots within White Estates Subdivision to connect to the City's sewage works. The City shall take all steps set out in IC 36-9-23 and any other action permitted by law or in equity to ensure that all owners of developed lots in the White Estates Subdivision connect to the City's sewage works. The County shall cooperate with the City in any effort or legal proceeding to compel connection to the City's sewage works, including obtaining orders from the County's health department.

6. Modification due to Change in Financing Conditions. In the event the structure of the financing to construct the Project changes upon the advice of the parties' bond counsel or financial advisor, the Parties shall amend this Agreement in a manner necessary to address the change in structure of the financing.

7. Administration of Agreement. This Agreement shall not be administered by a separate board and shall be administered solely by the Parties. This Agreement shall be jointly administered by the City's Board of Works and the County's Board of Commissioners.

8. Notification Regarding Communications from IDEM. Each Party will inform the other and the IFA of any communication from IDEM regarding the Project or the Agreed Order.

9. Term of Agreement. This Agreement shall continue in effect until such time as the Project is operational, the Bonds have been paid in full and the County is discharged from any obligation under the Agreed Order.

10. Obligations Contingent upon Approvals. The obligations of the Parties under this Agreement are contingent upon, and subject to, each obtaining all necessary approvals from all boards, commissions, agencies or other instrumentalities necessary to carry out the intent of this Agreement. The Parties shall each work diligently and in good faith to timely obtain the consent of any necessary body, agency, group, or instrumentality necessary to perform the obligations under this Agreement. The City agrees to obtain a resolution from the Common Council or include such provision in the Bond Ordinance which approves the execution and delivery of this Agreement. The County agrees to obtain a resolution from the Board of Commissioners which approves the execution and delivery of this Agreement.

11. Authorized Signatures. This Agreement shall be executed on behalf of the City by the Mayor and attested by the Clerk-Treasurer, and on behalf of the County by the Board of Commissioners and attested by the Auditor.

12. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

13. Severability. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of the Agreement shall be construed as if such invalid part were never included herein and the Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

14. No Waiver. No waiver by either of the Parties to this Agreement of any term or condition of this Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase, or other provision of this Agreement.

15. Third Party Beneficiaries. This Agreement and the transactions contemplated by this Agreement are for the benefit of the Parties and their respective successors and assigns. The IFA is specifically designated as a third party beneficiary under this Agreement. No other party is deemed as a third party beneficiary under this Agreement.

16. Modification. This Agreement may only be modified by a written instrument executed and properly approved by the Parties and subject to the written consent of the IFA. Any purported modification or amendment of this Agreement that is not evidenced by a written instrument and is not entered into after obtaining all necessary approvals shall be void.

All of which is agreed and binding as of the date set forth above.

Motion by Mrs. Fleming to adjourn the meeting seconded by Mr. Thalls. Motion carried 6-0.

COUNCIL

COMMISSIONERS

Nate LaMar, President

Butch Baker, President

Richard Bouslog

Kim L. Cronk

Michael Thalls

Ed Yanos

Robin Reno-Fleming

Steve Dugger

Clay Morgan

ATTESTED BY: _____

Patricia A. French, Henry County Auditor