

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
THE TOWN OF WINFIELD, LAKE )  
COUNTY, INDIANA, FOR APPROVAL OF )  
A REGULATORY ORDINANCE )  
ESTABLISHING A SERVICE TERRITORY )  
FOR THE TOWN'S MUNICIPAL SEWER )  
SYSTEM PURSUANT TO IND. CODE § 8- )  
1.5-6 *ET SEQ.* )

CAUSE NO.: 45992

**OBJECTION TO CITY OF CROWN POINT, INDIANA'S MOTION TO VACATE  
PROCEDURAL SCHEDULE AND TO CONSOLIDATE**

Petitioner, the Town of Winfield, Lake County, Indiana ("Winfield"), by counsel, respectfully objects to the City of Crown Point, Indiana's ("Crown Point") Motion to Vacate Procedural Schedule and Motion to Consolidate this Cause with Cause No. 46035. In support, Winfield states as follows:

1. For the reasons analyzed in this Objection, the Commission should deny Crown Point's belated attempt to vacate the procedural schedule and consolidate this Cause with Cause No. 46035 for the following reasons:

- a. Crown Point has known about Winfield's Regulatory Ordinance since at least February 8, 2024;
- b. Crown Point's multiple statements regarding its alleged lack of notice of Winfield's Regulatory Ordinance and this Cause lack candor and are misleading to the Commission;
- c. To the extent the Commission considers the Affidavit of Albert Stong P.E, filed by Crown Point, the Stong Affidavit contains misleading, incorrect, and false information about both Winfield and Crown Point;

- d. Intervenor take the case as it is when they intervene;
- e. Crown Point's requested consolidation of this Cause with Cause No. 46035 will unduly broaden the issues in this Cause, as Crown Point seeks approval of a regulatory ordinance for both its (1) water and (2) sewer territory, while Winfield only seeks approval of a regulatory ordinance for its sewer territory.

**I. The Commission Should Deny Crown Point's Motion to Vacate Procedural Schedule**

2. Winfield filed its Petition with the Commission on December 13, 2023, seeking Commission approval of a regulatory ordinance, Ordinance No. 358 ("Regulatory Ordinance"), that establishes a service territory for Winfield's municipal sewer utility.

3. Since this Cause was initiated, Winfield prefiled the testimony of Michael P. Duffy, Jr., Jeremy C. Lin, and Jennifer Z. Wilson; Winfield and the OUCC participated in discovery; and the OUCC ultimately filed its *Public's Notice of Intent Not to Pre-File Testimony* on March 22, 2024.

4. Now, at the eleventh hour before intervenor testimony was due on April 2, 2024,<sup>1</sup> Crown Point moved to intervene and to vacate the procedural schedule in this case, claiming, in relevant part, that:

- Crown Point did not receive notice of the passage of Winfield's Regulatory Ordinance or the filing of this Cause.
- Crown Point had not discovered this Cause until March 29, 2024.
- Crown Point's alleged lack of notice of the Regulatory Ordinance and this Cause "severely prejudices Crown Point, Commission and the provision of sewage service to the affected areas, promotes inefficiency and works an unnecessary hardship on all stakeholders."

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<sup>1</sup> In its *Motion to Vacate Procedural Schedule*, Crown Point incorrectly identifies the existing intervenor prefiling date as "April 4, 2024." Pursuant to the Procedural Schedule entered January 10, 2024, the OUCC and any intervenors must prefile testimony by April 2, 2024, not April 4, 2024.

*See City of Crown Point's Motion to Vacate Procedural Schedule* (file stamped April 1, 2024).

**A. Crown Point Incorrectly Claims Winfield Did Not Provide Notice to Crown Point.**

5. Crown Point's attempt to modify the procedural schedule at this late stage appears entirely based on incorrect and untrue allegations that Winfield has somehow acted nefariously by not providing notice to Crown Point.

6. As a preliminary note, Ind. Code § 8-1.5-6 et al. imposes no requirement on Winfield to provide notice of the Regulatory Ordinance or the filing of this Cause on Crown Point or any other municipality or utility.

7. Notwithstanding that Winfield has complied with the requirements of Ind. Code § 8-1.5-6 et al., Crown Point's claims of ignorance of the Regulatory Ordinance and this Cause are simply false.

8. Counsel for Winfield, David Austgen, hand-delivered copies of the Regulatory Ordinance, Winfield's Petition, exhibits, and certain prefiled testimony to counsel for Crown Point on **February 8, 2024**. See Exhibit A, Affidavit of David M. Austgen.

9. Specifically, on November 20, 2023, David Westland, an attorney representing Crown Point, submitted a public records request to Winfield seeking, among many other things:

1. Draft and final Town of Winfield Ordinance(s) regarding extension of utility jurisdiction, however described, and all exhibits, together with any amendments after initial adoption;

5. Town of Winfield Financing studies and reports for proposed sewer extension and improvements, all exhibits, and any amendments thereto, whether generated by City Employees of City Financial Advisor;

8. Town of Winfield engineering studies and reports for Town of Winfield Sewer Extension and Improvement Project for Collection System and Treatment Facility in the past 36-months;

16. All engineering, economic and financial studies, projections, feasibility analysis performed for on by Winfield within the last five years regarding: its

future extension of sanitary sewer collection mains. The improvements to or construction of sewage treatment facilities. The growth of new development or housing starts and the demands that growth will place on Winfield's sewage treatment and collection systems.

(the "Crown Point Records Request"). A true and accurate copy of the full Crown Point Records Request is attached to Exhibit A, the Affidavit of David M. Austgen, as Exhibit 1.

10. Notably, Alex Kutanovski, the Assistant City Attorney for Crown Point, is carbon copied on the Crown Point Records Request.

(See <https://www.crownpoint.in.gov/Directory.aspx?did=22>).

11. After corresponding with Mr. Westland on multiple occasions regarding the Crown Point Public Records Request, Mr. Austgen hand-delivered the following responsive documents (among others) directly to Crown Point Attorney Westland on February 8, 2024:

- a. Winfield Ordinance No. 358 – Regulatory Ordinance
- b. Winfield's Petition to IURC, Cause 45992
- c. Winfield's IURC Petition Exhibits, Cause 45992
- d. Winfield's IURC Petition 45992 Testimony of Jennifer Z. Wilson
- e. Winfield Ordinance No. 1735
- f. Winfield Ordinance No. 143-G – Sewer Rate Ordinance
- g. Sewer Rate Sufficiency and Financing Analysis
- h. Monthly Report of Operation for the past three (3) years
- i. Water Treatment Plant Improvement Engineering Report
- j. Comprehensive Master Plan, Downtown Master Plan, Sewer Master Plan
- k. WWTP Phase 1 Improvement Project. WWTP Phase 2 Improvement Project
- l. National Pollutant Discharge Elimination System Semi Public and Minor Municipal Permit Application
- m. IDEM Correspondences
- n. Crowe Preliminary Consultants Report

(See Exhibit A, Austgen Affidavit)



12. On multiple occasions, Mr. Westland represented to Mr. Austgen that he represented Crown Point regarding Crown Point sewer matters, including through the Crown Point Records Request, so Mr. Austgen was required to only communicate with Mr. Westland. *See* Ind. Rule 4.2 Professional Conduct (noting that a lawyer must only communicate with a represented party's lawyer when that lawyer knows the party is represented in the matter). (See also, Exhibit A, Austgen Affidavit, ¶4-8 Exhibits 1, 2, and 3 thereto).

13. In this instance, Crown Point retained at least one (1) lawyer (i.e. Crown Point Attorneys Westland and Kutanovski) for the purpose of seeking information directly relating to Winfield's sewage operations. Even though the Crown Point attorneys did, in fact, receive Winfield's Regulatory Ordinance, its Petition, and other filings in this Cause, Crown Point claims it had no notice of the Regulatory Ordinance or this Cause.

14. Despite its claims, Crown Point has had knowledge of Winfield's Regulatory Ordinance and this Cause since at least February 8, 2024.

15. Yet, Crown Point entirely ignored this fact in its Petition to Intervene, Motion to Vacate Procedural Schedule, and its Motion to Consolidate. To the contrary, Crown Point stated multiple times that Winfield failed to provide Crown Point notice of the Regulatory Ordinance or this Cause, and that Crown Point did not know about this Cause until March 29, 2024.

16. In addition to the notice Winfield provided to Crown Point, Winfield's Regulatory Ordinance was openly passed at a duly noticed public meeting, which was open to all persons, including any representative of Crown Point. Further, Winfield's filings in this Cause are all public record and are easily available online via the Commission's website.

17. Accordingly, Crown Point's claims of ignorance of the Regulatory Ordinance and this Cause should be rejected.

**B. The Affidavit of Albert Stong Contains Misleading, Incorrect, and False Information About Winfield and Crown Point.**

18. In support of its Motion to Vacate the Procedural Schedule, Crown Point filed an affidavit of Albert Stong, a third-party engineering consultant who is employed by Commonwealth Engineers, Inc., once again claiming that Winfield did not provide notice of a copy of the Regulatory Ordinance or notice of this Cause to Crown Point.

19. Mr. Stong is not an official or employee of Crown Point, and therefore, Mr. Stong cannot reliably speak on any notice provided to or on behalf of Crown Point.<sup>2</sup> However, even if he could, as demonstrated above, his statements that Winfield did not provide any notice to Crown Point are patently false and misleading to the Commission.

20. Winfield has contemporaneously moved to strike the Stong Affidavit, as the Stong Affidavit substantively operates as direct testimony that fails to comply with 170 IAC 1-1.1-18(g) and contains information outside of Mr. Stong's personal knowledge.

21. However, to the extent the Commission considers the Stong Affidavit in its evaluation of Crown Point's motion to vacate the procedural schedule, Winfield has attached Affidavits of Michael P. Duffy, Jr., P.E., and Jeremy C. Lin, P.E., to this Objection as Exhibit B and Exhibit C, respectively, to seek to provide accurate and more complete information to the Commission.

22. For example, the Stong Affidavit alleges that Crown Point is better positioned to serve what Mr. Stong describes as the "Disputed Area," and claims Winfield would need to spend "150-\$200 million" dollars in infrastructure improvements to serve the area. (Stong Affidavit,

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<sup>2</sup> Generally, affidavits must be made on personal knowledge, shall affirmatively show that maker is competent to testify on matters included therein and must set forth facts as would be admissible in evidence. *See Gallatin Group v. Central Life Assur. Co.*, 650 N.E.2d 70, 73 (Ind. Ct. App. 1995).

¶¶19(c), (d), (e), (f), (g)).

23. These allegations are simply untrue. Winfield has an existing lift station approximately four thousand feet (4,000) from the Disputed Area. (Exhibit B, Duffy Affidavit, ¶8; Duffy Affidavit, Exhibit 1). To serve the Disputed Area, Winfield will only need to install a force main (to the edge of Disputed Area). Winfield estimates that the cost of the improvements Winfield would need to make to serve the Disputed Area are approximately \$1 million dollars, not the \$150-200 million dollars presented by Crown Point Engineer Stong. Winfield also estimates that Winfield could make these improvements and provide service to the Disputed Area within nine (9) months. In short, Winfield can provide service to this area more quickly, more cost effectively, and without the construction of a new wastewater treatment plant as proposed by Crown Point. (Exhibit B, Duffy Affidavit, ¶8; *see also* Duffy Affidavit, Exhibit 1 depicting Winfield's existing lift station and the proposed 4,000 foot force main that would need to be extended to the Disputed Area).

24. Moreover, Winfield's existing Gibson Street Lift Station depicted on Exhibit 1 of Mr. Duffy's Affidavit has sufficient capacity to handle the anticipated flows from the Disputed Area. Because Winfield has existing facilities in close proximity to the Disputed Area and can extend a transmission main to the area within nine (9) months, the following non-exclusive paragraphs in Mr. Stong's affidavit are incorrect, misleading, and should be ignored by the Commission: paragraphs 18, 19(b), (c), (d), (e), (g), (h), (i), and (r). (Exhibit B, Duffy Affidavit, ¶10; *see also* Duffy Affidavit, Exhibit 1)

25. Mr. Stong indicates Crown Point's ability to serve the Disputed Area will require "over \$35 million in capital improvements" (Stong Affidavit, ¶19(l)), all of which hinges on the construction of a new wastewater treatment plant. As discussed in the affidavit (and prefiled

testimony of Michael Duffy), the construction of Crown Point's new wastewater treatment plant may never happen.

26. Further, as explained in the prefiled testimony of Mr. Duffy and the Affidavit of Mr. Lin, before Crown Point is permitted to construct a new wastewater treatment plant, it must satisfy the required Antidegradation Standards and Implementation Procedures ("Antidegradation Standards"). The Antidegradation Standards require that before a new wastewater treatment plant is built, the utility must demonstrate (among other things) that it is not feasible for an existing treatment plant within the vicinity to effectively serve the area in question. Given that Winfield is willing and able to effectively serve the Disputed Area with its existing wastewater treatment plant, it is unclear whether Crown Point will be able to satisfy the requirements of the Antidegradation Standards. If Crown Point cannot satisfy the Antidegradation Standards, Crown Point's proposed plant may not be approved and Crown Point will be unable to meet any of its lofty service goals as set forth in the Stong Affidavit. (Exhibit C, Lin Affidavit, ¶¶7-9).

27. Mr. Stong states that "Crown Point has already received its effluent limits for its new WWTP." (Stong Affidavit, ¶19(s)). Mr. Stong failed to mention that IDEM specifically states in its Updated Preliminary Effluents Limitations letter that:

This letter also serves as notification that supplemental information is required to fully evaluate the proposed discharge. Construction and NPDES permitting may not proceed until the supplemental information specified herein has been submitted to, and been preliminarily approved by, this Office.

(Exhibit C, Lin Affidavit, ¶10; *see also* Lin Affidavit, Exhibit 2).

28. Mr. Stong's Affidavit conspicuously fails to mention or reference that Crown Point was subject to a recent enforcement action initiated by IDEM. (Exhibit C, Lin Affidavit, ¶12; *see also* Lin Affidavit, Exhibit 2).

29. Although Mr. Stong indicates a familiarity with Winfield's sewer system, many of

his statements describing Winfield's sewer system and its ability to serve the area he describes as the "Disputed Area" are simply inaccurate and misleading. By way of example, Mr. Stong suggests that Winfield's 2019 expansion to its wastewater treatment plant from .4 mgd to .8 mgd was necessary to serve increased flows within its current service area, not to accommodate flows from the Disputed Area. (See Stong Affidavit, p. 4, ¶19(f)). This plant expansion was completed many years ago and is not the basis for Winfield's requested relief in this Cause. (Exhibit C, Lin Affidavit, ¶13).

30. As described in the prefiled direct testimony and affidavits of Mr. Lin and Mr. Duffy, Winfield has planned, designed, obtained permits for, financed, and is now in the process of constructing an additional expansion to its wastewater treatment plant from .8 mgd to 1.6 mgd. Winfield anticipates this expansion will be completed within the next 10-12 months. In addition, IDEM has issued Preliminary Effluent Limitations for Winfield's next plant expansion to 4 mgd, noting that (unlike Crown Point) the Antidegradation Standards and Implementation Procedures do not apply to Winfield's plant expansion. (Exhibit C, Lin Affidavit, ¶14).

31. Moreover, Winfield has an existing lift station that is approximately 4,000 feet from the Disputed Area. After a main extension is completed, Winfield has current capacity in its existing plant to serve the anticipated development in the Disputed Area over the next year. Once the current expansion to 1.6 mgd is completed, Winfield will have ample capacity to serve the Disputed Area as it builds out. In fact, the new wastewater treatment plant expansion was designed and built with the goal of providing service to Winfield's proposed service area, including the Disputed Area. (Exhibit C, Lin Affidavit, ¶15; Exhibit B, Duffy Affidavit, ¶8).

32. In summary, the Stong Affidavit materially misstates the location and capacity of Winfield's existing facilities; contains information that is inaccurate and outdated; and misleads at

best or overstates at worst Crown Point's ability to serve the Disputed Area any time in the foreseeable future; fails to account for Crown Point's ability to comply with Antidegradation Standards for its proposed new treatment plant; contains misleading statements regarding Crown Point's proposed new treatment plant's effluent limits; and relies on other information that is entirely inaccurate with regard to Winfield's operations.

33. Therefore, to the extent the Commission considers the Stong Affidavit, Winfield has demonstrated that the Stong Affidavit is unreliable.

**C. As an Intervenor, Crown Point Takes This Case as it Finds it.**

34. In its Motion to Vacate Procedural Schedule, Crown Point alleges it would be "prejudiced" by the existing procedural schedule. There can be no "prejudice" to Crown Point by being bound by the existing procedural schedule in this case when Crown Point has had notice of this Cause for at least almost two (2) months before seeking to intervene in this Cause.

35. This is particularly true, given that under 170 IAC 1-1.1-11(e):

An intervenor is bound by rulings and other matters of record prior to the time the intervenor is made a **party and takes the case as the intervenor finds it as of the date of intervention.** (emphases added).

36. In addition, the Procedural Schedule in this very case specifically provides that Intervenor are bound by the record of this case:

11. **Intervenors.** Any party permitted to become an intervenor in this Cause shall be bound by the record as it stands at the time its Petition to Intervene is granted, pursuant to 170 IAC 1-1.1-11.<sup>3</sup>

37. For whatever reason, Crown Point did not file its Petition to Intervene in this Cause until April 1, 2024, despite having knowledge of this Cause since at least February 8, 2024.

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<sup>3</sup> See *Docket Entry Establishing a Procedural Schedule*, filed January 10, 2024.

38. As demonstrated above, Crown Point's repeated allegations of ignorance in its multiple filings with the Commission are demonstrably false and, at best, are misleading to the Commission. *See Order on Reconsideration*, Cause No. 45387, 2021 WL 1347368 (Ind. U.R.C. April 7, 2021) ("Candor toward the tribunal, whether the tribunal is a court or the Commission, is paramount.").

39. Crown Point should not be rewarded for their dilatory gamesmanship in seeking to modify the procedural schedule the day before the intervenor filing deadline – especially given that Crown Point has had knowledge of this Cause since at least February 8, 2024. Therefore, Crown Point's belated motion to vacate the procedural schedule should be denied.

## **II. The Commission Should Decline to Consolidate this Case with Cause No. 46035**

40. On April 1, 2024, Crown Point also separately filed its own Verified Petition seeking approval of a regulatory ordinance, Cause No. 46035, and has now filed a motion to consolidate this Cause with Cause No. 46035.<sup>4</sup>

41. Motions to consolidate Commission proceedings are authorized at the discretion of the Presiding Officer where there are common issues of fact or law. 170 IAC 1-1.1-19.

42. Consolidation is inappropriate for several reasons.

43. First, if this Cause is consolidated with Cause No. 46035, it would effectively operate the same as permitting Crown Point to modify the existing procedural schedule in this Cause, despite Crown Point's prior notice of this Cause. Therefore, for the same reasons that Crown Point's belated motion to amend the procedural schedule in this Cause should be denied, the Commission should also deny Crown Point's Motion to Consolidate.

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<sup>4</sup> *See City of Crown Point, Indiana's Motion to Consolidate this Cause With Cause No. 46035* (filed April 1, 2024).



44. Second, consolidation is inappropriate because Crown Point is seeking approval of an ordinance that may not be in its finalized form. Crown Point specifically stated in its Verified Petition that it had “reached agreement with the Merrillville Conservancy District, Lowel, and Saint John on adjustments to the border of Crown Points Regulated Territory that allows them to have no objections in the Cause.” (Crown Point Verified Petition, ¶15). Presumably, such agreements occurred after adoption of Crown Point’s ordinance. Further, as reflected in Crown Point Council’s meeting minutes from August 7, 2023 (the date the Crown Point Council passed Ordinance No. 2023-08-19):

Attorney Kutanovski stated he would follow up with Attorney Glennon, *as discussion of a final version was currently happening with neighboring municipalities.*

(emphases added). A copy of Crown Point’s meeting minutes from August 7, 2023, is attached as Exhibit D.

45. Based on Crown Point’s pleadings and minutes, it appears that Crown Point will be required to make changes to its current regulatory ordinance and then obtain approval of such changes from the Crown Point Common Council, thereby making Crown Point’s existing Verified Petition not ripe for a determination by the Commission. Accordingly, as acknowledged in Crown Point’s Verified Petition and the meeting minutes from August 7, 2023, the existing ordinance for which Crown Point seeks approval may not even be the finalized ordinance.

46. Third, consolidation would certainly unduly expand the issues in this Cause, as it would require the Commission to consider significant areas that Winfield’s Regulatory Ordinance has absolutely no impact on. The issues in this Cause are limited to Winfield’s proposed sewer regulatory ordinance area and the new infrastructure that is logically related to Winfield’s current sewage utility infrastructure.

47. By contrast, the Verified Petition filed by Crown Point seeks approval of **both** a regulated (1) water and (2) sewer territory, which encompasses areas that have absolutely no impact on Winfield's proposed sewer service area. Consolidating this Cause, which exclusively deals with Winfield's ***sewer territory***, with Crown Point's ordinance dealing with both (1) water and (2) sewer territories, would unduly broaden the issues in this case. Winfield does not have its own municipal water utility, and therefore, the propriety of Crown Point's water regulatory ordinance is not relevant to this Cause.<sup>5</sup>

48. Further, consolidation would unduly expand the universe of potential intervenors in this case, leading to further expansion and complication of the issues. Moreover, Crown Point's Petition in Cause No. 46035 identifies five additional utilities other than Winfield, including the Merrillville Conservancy District, the Town of Cedar Lake Utilities, Town of St. John Utilities, Town of Schererville Utilities, and Indiana American Water Co. as additional impacted utilities. This uncertainty regarding Crown Point's purported service area and the addition of other, possibly disputed territory that is not even remotely related to or contiguous with Winfield's Regulated Territory will unduly broaden the issues in this case, causing unreasonable delay in the resolution of this case.

49. Third, this Cause is procedurally much farther along than in Cause No. 46035. For example, Winfield filed its Petition on December 17, 2024, prefiled the testimony of Michael P. Duffy, Jr., Jeremy C. Lin, and Jennifer Z. Wilson on December 27, 2023, and Winfield participated in the discovery process with the OUCC. The OUCC ultimately filed its *Public's Notice of Intent Not to Pre-File Testimony* on March 22, 2024, and an evidentiary hearing is scheduled for May

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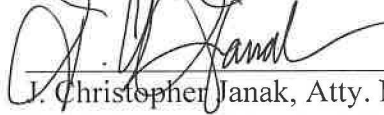
<sup>5</sup> Contrary to statements in Crown Point's Verified Petition, a "Winfield Municipal Water Utility" does not exist, as the area within Winfield's municipal boundaries are served by Indiana American Water Company.

21, 2024. Meanwhile, Crown Point only just filed its Petition in Cause No. 46035 on April 1, 2024, and there is absolutely no indication when Crown Point will file any supporting testimony of its Petition. Therefore, consolidation will undoubtedly delay an ultimate determination on Winfield's Regulatory Ordinance, and delay the time for the area sought in Winfield's Regulatory Ordinance to receive sewer service. This is particularly true if Crown Point's existing regulatory ordinance is not the finalized form of it, which would require further action from the Crown Point Council.

50. Accordingly, Winfield respectfully requests that the Commission deny Crown Point's Motion to Vacate Procedural Schedule and Motion to Consolidate, each filed on April 1, 2024.

WHEREFORE, the Town of Winfield, Indiana, by counsel, respectfully requests that the Commission deny Crown Point's request to modify the procedural schedule in this case, affirm the existing April 2, 2024 intervenor prefiling deadline, decline to consolidate this Cause with Cause No. 46035, and for all other necessary and proper relief.

Respectfully submitted,



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Jacob Antrim, Atty No. 36762-49  
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*Counsel for the Town of Winfield, Indiana*

### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was served upon the following by electronic mail this 4th day of April, 2024:

Indiana Office of Utility Consumer Counselor  
PNC Center, Suite 1500 South  
115 West Washington Street  
Indianapolis, IN 46204  
[infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov)

Robert M. Glennon – [robertglennonlaw@gmail.com](mailto:robertglennonlaw@gmail.com)  
Mark W. Cooper – [attymcooper@indy.rr.com](mailto:attymcooper@indy.rr.com)



J. Christopher Janak

Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204  
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# **Exhibit A**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
THE TOWN OF WINFIELD, LAKE )  
COUNTY, INDIANA, FOR APPROVAL OF )  
A REGULATORY ORDINANCE )  
ESTABLISHING A SERVICE TERRITORY )  
FOR THE TOWN'S MUNICIPAL SEWER )  
SYSTEM PURSUANT TO IND. CODE § 8- )  
1.5-6 *ET SEQ.* )

CAUSE NO.: 45992

AFFIDAVIT OF DAVID M. AUSTGEN

David M. Austgen, after being first duly sworn upon his oath or under the penalties of perjury, states the following:

1. I am over the age of twenty-one. My affidavit is based upon my personal knowledge, and I am competent to testify about the matters set forth herein.
2. I am an attorney at law admitted to practice by the Supreme Court of Indiana in 1981. Since 1993, I have been a partner at Austgen Kuiper Jasaitis P.C.
3. I represent the Town of Winfield, Lake County, Indiana ("Winfield"), as Town Attorney, and on various matters.
4. On November 20, 2023, I received a public records request ("Crown Point Records Request") from Mr. David Westland on behalf of his client, the City of Crown Point, Indiana ("Crown Point"). The Crown Point Records Request contained seventeen (17) requests seeking extensive documentation and information relating to Winfield's sewer utility and proposed expansions and improvements. A true and accurate copy of the Crown Point Records Request is attached as Exhibit 1.
5. Notably, the Crown Point Records Request carbon copies Mr. Alex Kutanovski who is listed on Crown Point's website as the Assistant City Attorney.

6. Prior to the Crown Point Records Request, Winfield served its own public records request on Crown Point. Throughout that process, Attorney Westland represented Crown Point.

7. While working on the response for Winfield to the Crown Point Records Request, I corresponded with Mr. Westland on multiple occasions about the status of the response. A copy my correspondence with Crown Point Attorney Westland is attached as **Exhibit 2**.

8. On February 8, 2024, documents were hand-delivered to Crown Point Attorney Westland, at his Law Firm Office, which included, among other things, an executed copy of Winfield's territorial Ordinance dated December 13, 2023 (i.e. Ordinance No. 358) ("Territorial Ordinance"); a complete copy of the petition ("Petition") initiating Cause No. 45922; and a copy of certain testimony and exhibits filed with the Indiana Regulatory Commission ("Commission") in this Cause. A copy of my February 8, 2024, letter to Mr. Westland is included as part of **Exhibit 2** and an index of the documents provided to Crown Point Attorney Westland is attached as **Exhibit 3**.



9. I have reviewed the papers filed by Crown Point with the Commission since March 29, 2024, in which Crown Point repeatedly alleges that it had no notice of the Petition or the relief requested in this Cause. Because I hand-delivered documents to Crown Point Attorney Westland, including the Territorial Ordinance, Petition, testimony, and exhibits, I believe Crown Point's allegations that it had no notice of this proceeding are patently false.

I swear and affirm, under the penalties for perjury, that the foregoing representations are true and correct to the best of my knowledge.

Dated: April 4, 2024

David M. Austgen  
David M. Austgen

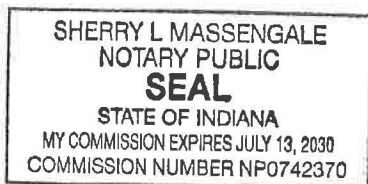
STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

Before me, the undersigned, a Notary Public in and for said County and State, on this 4<sup>th</sup> day of April, 2024, personally appeared David M. Austgen.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed my Official Seal.

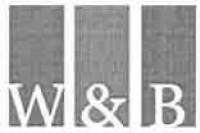
My Commission Expires:  
July 13, 2030

Sherry Massengale  
Notary Public  
Resident of Lake County,  
State of Indiana



4749362.2

# **Exhibit 1**



Westland & Bennett P.C.

November 20, 2023

**VIA EMAIL ONLY**     [akapc@austgenlaw.com](mailto:akapc@austgenlaw.com)

David M. Austgen  
130 North Main Street  
Crown Point, IN 46307

**RE:    TOWN OF WINFIELD ACCESS TO PUBLIC RECORDS ACT REQUEST**

Dear Mr. Austgen:

Enclosed herewith please find the topics and items that we are requesting that the Town of Winfield produce pursuant to the Indiana Access to Public Records Act. If you would like a more formal request or if you would like me to forward this request to the Town of Winfield directly, please let me know immediately and I will do so.

Otherwise, please let me know when you believe these records will be made available. Thank you for your attention to this matter.

Very truly yours,

David W. Westland  
E-mail [dwestland@westlandbennett.com](mailto:dwestland@westlandbennett.com)

DWW:dd

cc: Mr. Alex Kutanovski via email ([alex@kutanovskilaw.com](mailto:alex@kutanovskilaw.com))

**Privileged Confidential Atty Work Product, Deliberative document, Prepared in anticipation of litigation.**

1. Draft and final Town of Winfield Ordinance(s) regarding extension of utility service jurisdiction, however described, and all exhibits, together with any amendments after initial adoption;
2. Town of Winfield Sewer Use Ordinance, and all amendments, including exhibits;
3. Town of Winfield Sewer Rate Ordinance, and all amendments, including exhibits thereto;
4. Town of Winfield latest Sewer Rate Sufficiency Report(s), all exhibits, and any workpapers upon which said Sufficiency Report(s) is premised upon;
5. Town of Winfield Financing studies and reports for proposed sewer extension and improvements, all exhibits, and any amendments thereto, whether generated by City Employees or City Financial Advisor;
6. Town of Winfield Grant Applications for any future Sewer Services Extension Initiative in the Town of Winfield, and all attachments;
7. Town of Winfield Y2021, Y2022 and Y2023, to date, Monthly Report of Operations to IDEM;
8. Town of Winfield engineering studies and reports for Town of Winfield Sewer Extension and Improvement Project for Collection System and Treatment Facility in the past 36-months;
9. Town of Winfield survey documentation and legal descriptions for the proposed parcel or parcels upon which any planed extension of Collection System and/or Wastewater Treatment Facility equipment and structures are to be constructed;
10. Town of Winfield Comprehensive Master Plan, latest version, and any such plan for the previous five (5) years, including sewer services and related components;
11. All Town of Winfield Sewer Engineering reports for past 36-months for any Town of Winfield Collection System and Wastewater Treatment Plant Facility extensions, construction, initiative or undertaking;
12. All Town of Winfield reports to IDEM of non-compliance with City NPDES Permit(s), including all exhibits related to same;
13. All Town of Winfield communications with IDEM, or any other government body, regarding any planed sewer main extensions, Wastewater Treatment Plant Facility Improvements and sewer Jurisdiction Extension Project/Initiative for the last five (5) years;

**Privileged Confidential Atty Work Product, Deliberative document, Prepared in anticipation of litigation.**

14. Town of Winfield Sanitary Sewer NPDES Permit(s), and any attachments or exhibits thereto currently in effect;
15. Town of Winfield communications with any and all units of local government adjoining Town of Winfield, or governmental units, and any elected or appointed or employed representatives of each of such units and adjacent governmental entities pertaining to Municipal Utility Extension and Jurisdiction including, but not limited to, any and all Developers, Lake County Government, and any other units.
16. All engineering, economic and financial studies, projections, feasibility analysis performed for or by Winfield within the last five years regarding: its future extension of sanitary sewer collection mains. The improvements to or construction of sewage treatment facilities. The growth of new development or housing starts and the demands that growth will place on Winfield's sewage treatment and collection systems.
17. Winfield's most recent 5, 10, 20, and 30 years engineering and financial plans to provide sewer and water service to area residents and business.

## **Exhibit 2**

DAVID M. AUSTGEN  
TIMOTHY R. KUIPER  
MICHAEL J. JASAITIS

RYAN A. DEUTMEYER  
JEFF K. WILLIAMS

DANETTE GARZA  
DAVID K. RANICH  
DONALD R. O'DELL  
1924-2013 Deceased  
MICHAEL L. MUENICH  
1946-2022 Deceased



AUSTGEN KUIPER JASAITIS P.C.

ATTORNEYS AT LAW

AMY S. BENJAMIN  
Paralegal

SHERRY L. GREEN  
Office Administrator

\*Licensed in IN & IL  
#660 License/CP in IL

November 27, 2023

**PRIVILEGED COMMUNICATION**

**VIA E-MAIL ONLY**

Westland & Bennett P.C.  
Attorneys at Law  
2929 Carlson Drive, Suite 300  
Hammond, IN 46323

Attn: David W. Westland, Esq.

**RE: Winfield/Town-Y2023 Miscellaneous  
Winfield/Sewer-Y2023 Miscellaneous  
Crown Point APRA Request for Public Records, and Related  
(Attorney Westland Request dated November 20, 2023)**

Dear Counsel:

This letter will acknowledge your e-mail only letter communication to the undersigned on behalf of the Town of Winfield pursuant to the Indiana Access to Public Records Act. The letter request with attached list of Public Records sought are sufficient documents for same. I note with interest the reference to privileged confidential attorney work product, deliberative document, prepared in anticipation of litigation, as specified in the first page of the document category purposes, and am confused, as you are seeking public records which would purportedly would not be confidential, attorney work product, deliberative or litigation, unless some item of litigation has been commenced. Please advise.

Additionally, we note the breadth and volume of records, and will require some time to assess same for response purposes. I think we can agree these requests are similar to the requests Winfield made to Crown Point, and that the time involved will likely be similar. As such, I will follow-up with you on status of response activities in mid-December, anticipating that I will be able to provide a relatively accurate response time period at that time. If you have questions or want to discuss these matters, of course, please do so and give me a call. Otherwise, I will proceed as noted above.

Thank you.

Very truly yours,

AUSTGEN KUIPER JASAITIS P.C.

By: David M. Austgen

DMA/slm

cc: File/Staff; DEC & SLM; JKW

\*\*Dictated but not read

130 NORTH MAIN ST. • CROWN POINT, IN 46307  
(219) 663-5600 • FAX (219) 662-3519 • www.austgenlaw.com

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DAVID M. AUSTGEN  
TIMOTHY R. KUIPER\*  
MICHAEL J. JASAITIS\*

RYAN A. DEUTMEYER\*  
JEFF K. WILLIAMS

DANETTE GARZA†  
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AUSTGEN KUIPER JASAITIS P.C.

ATTORNEYS AT LAW

AMY S. BENJAMIN  
Paralegal

SHERRY L. GREEN  
Office Administrator

\*Licensed in IN & IL  
†Also Licensed CPA in IN

January 3, 2024

**PRIVILEGED COMMUNICATION**

**VIA E-MAIL ONLY**

Westland & Bennett P.C.  
Attorneys at Law  
2929 Carlson Drive, Suite 300  
Hammond, IN 46323

Attn: David W. Westland, Esq.

**RE: Winfield/Town-Y2023 Miscellaneous  
Winfield/Sewer-Y2023 Miscellaneous  
Crown Point APRA Request for Public Records, and Related  
(Attorney Westland Request dated November 20, 2023)**


Dear Counsel:

This letter will serve as a status update on the above. We are diligently working on gathering all requested information. We will follow-up with you again on status in two (2) weeks.

Thank you.

Very truly yours,

AUSTGEN KUIPER JASAITIS P.C.

By:  David M. Austgen

DMA/slm

cc: File/Staff; DEC & SLM; JKW

DAVID M. AUSTGEN  
TIMOTHY R. KUIPER\*  
MICHAEL J. JASAITIS\*

RYAN A. DEUTMEYER\*  
JEFF K. WILLIAMS

DANETTE GARZA†  
DAVID K. RANICH†  
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MICHAEL L. MUENICH  
1946-2022 Deceased



AMY S. BENJAMIN  
Paralegal

SHERRY L. GREEN  
Office Administrator

\*Licensed in IN & IL  
†Also Licensed CPA in IN

January 24, 2024

**PRIVILEGED COMMUNICATION**

**VIA E-MAIL ONLY**

Westland & Bennett P.C.  
Attorneys at Law  
2929 Carlson Drive, Suite 300  
Hammond, IN 46323

Attn: David W. Westland, Esq.

**RE: Winfield/Town-Y2023 Miscellaneous  
Winfield/Sewer-Y2023 Miscellaneous  
Crown Point APRA Request for Public Records, and Related  
(Attorney Westland Request dated November 20, 2023)**

Dear Counsel:

This letter will serve as a status update on the above. We are still working on same and nearing conclusion.

Thank you.

Very truly yours,

AUSTGEN KUIPER JASAITIS P.C.

By: David M. Austgen

DMA/slm

cc: File/Staff; DEC & SLM; JKW

DAVID M. AUSTGEN  
TIMOTHY R. KUIPER\*  
MICHAEL J. JASAITIS\*

RYAN A. DEUTMEYER\*  
JEFF K. WILLIAMS

DANETTE GARZAI  
DAVID K. RANICH  
DONALD R. O'DELL  
1994-2013 Licensed  
MICHAEL L. MUENICH  
1996-2022 Licensed



AUSTGEN KUIPER JASAITIS P.C.

ATTORNEYS AT LAW

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SHERRY L. GREEN  
Office Administrator

\*Licensed in IN & IL  
Also Licensed CPA in IN

February 8, 2024

**PRIVILEGED COMMUNICATION**

**VIA HAND-DELIVERY**

Westland & Bennett P.C.  
Attorneys at Law  
2929 Carlson Drive, Suite 300  
Hammond, IN 46323

Attn: David W. Westland, Esq.

**RE: Winfield/Town-Y2024 Miscellaneous  
Winfield/Sewer-Y2024 Miscellaneous  
Crown Point APRA Request for Public Records, and Related  
(Attorney Westland Request dated November 20, 2023)**

Dear Counsel:

Enclosed herewith please find the responsive documents relating to the above-referenced Public Records request. We trust the foregoing satisfies your inquiry. If there are questions, please contact the undersigned.

Thank you.

Very truly yours,

AUSTGEN KUIPER JASAITIS P.C.

By: David M. Austgen

DMA/slm

Enclosure: as noted

cc: Clients

File/Staff; DEC & SLM; JKW

130 NORTH MAIN ST. • CROWN POINT, IN 46307  
(219) 663-5600 • FAX (219) 662-3519 • [www.austgenlaw.com](http://www.austgenlaw.com)

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# **Exhibit 3**

**City of Crown Point Public Records Request dated November 20, 2023**

1. Ordinance No. 358
2. Ordinance No. 1735
3. Ordinance No. 143-G
4. Rate Sufficiency and Financing Analysis
5. IURC Petition 45992 Testimony of Jennifer Z. Wilson
6. N/A
7. Monthly Report of Operation for the past three (3) years
8. Water Treatment Plant Improvement Engineering Report
9. IURC Petition 45992 Exhibits
10. Comprehensive Master Plan, Downtown Master Plan, Sewer Master Plan
11. WWTP Phase 1 Improvement Project. WWTP Phase 2 Improvement Project
12. Petition to IURC 45992
13. National Pollutant Discharge Elimination System Semi Public and Minor Municipal Permit Application, and See Response #5
14. IDEM Correspondence
15. See Response #5
16. Crowe Preliminary Consultants Report
17. Letter to Westland

# **Exhibit B**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
THE TOWN OF WINFIELD, LAKE )  
COUNTY, INDIANA, FOR APPROVAL OF )  
A REGULATORY ORDINANCE )  
ESTABLISHING A SERVICE TERRITORY )  
FOR THE TOWN'S MUNICIPAL SEWER )  
SYSTEM PURSUANT TO IND. CODE § 8- )  
1.5-6 *ET SEQ.* )

CAUSE NO.: 45992

AFFIDAVIT OF MICHAEL P. DUFFY, JR., P.E.

Michael P. Duffy, Jr., P.E., duly sworn upon his oath or under the penalties of perjury, states the following:

1. I am over the age of twenty-one. My affidavit is based upon my personal knowledge, and I am competent to testify about the matters set forth herein.

2. I am the same Michael P. Duffy, Jr. that prefiled testimony and exhibits on behalf of the Town of Winfield, Indiana ("Winfield"), in this case.

3. It is my understanding that the City of Crown Point, Indiana ("Crown Point"), has requested to intervene in this case, vacate the procedural schedule, and then consolidate this case with a separate case that Crown Point initiated regarding its own regulatory water and sewer ordinance.

4. I have reviewed the "Affidavit of Albert Stong P.E. in Support of City of Crown Point's Petition to Intervene and Motion to Vacate Procedural Schedule" ("Stong Affidavit") filed by Crown Point on April 2, 2024.

5. As a preliminary note, Mr. Stong indicates he is "generally familiar" with Winfield's utility operations. (Stong Affidavit, ¶6). After reviewing the Stong Affidavit, I believe this is false, as Mr. Stong uses outdated information on multiple occasions regarding the status of

Winfield's sewage operations as part of his analysis.

6. Indeed, while I disagree with much of the Stong Affidavit, there are a number of inaccuracies and misstatements that I need to promptly correct at this time to assist the Commission in evaluating Crown Point's attempted participation in this Cause and its request to vacate the existing procedural schedule.

7. The bulk of the Stong Affidavit alleges that Crown Point is better positioned to serve what Mr. Stong describes as the "Disputed Area," and claims Winfield would need to spend "150-\$200 million" dollars in infrastructure improvements to serve the area. (Stong Affidavit, ¶¶19(c), (d), (e), (f), (g)).

8. These allegations are simply untrue. Winfield has an existing lift station approximately four thousand feet (4,000) from the Disputed Area. (Please see Exhibit 1). To serve the Disputed Area, Winfield will only need to install a force main (to the edge of Disputed Area). I estimate that the cost of the improvements Winfield would need to make to serve the Disputed Area are approximately \$1 million dollars, not the \$150-200 million dollars presented by Crown Pont Engineer Stong. I also estimate that Winfield could make these improvements and provide service to the Disputed Area within nine (9) months. In short, Winfield can provide service to this area more quickly, more cost effectively, and without the construction of a new wastewater treatment plant as proposed by Crown Point.

9. For the Commission's review, I have included a map as Exhibit 1 which depicts Winfield's existing lift station and the proposed 4,000 foot force main that would need to be extended to the Disputed Area. Specifically, Winfield would use its existing Gibson Street lift station and from there extend 4,000 feet of force main southward to the edge of the Disputed Area. While my original testimony presented a plan to serve the entire service area, Winfield can easily



use its existing lift station and the proposed force main described on Exhibit 1 to meet the needs of the Disputed Area if such area develops more quickly than the southern portion of Winfield's proposed service area.

10. Winfield's existing lift station depicted on Exhibit 1 has sufficient capacity to handle the anticipated flows from the Disputed Area. Because Winfield has existing facilities in close proximity to the Disputed Area and can extend a transmission main to the area within nine (9) months, the following paragraphs in Mr. Stong's affidavit are incorrect, misleading, and should be ignored by the Commission: paragraphs 18, 19(b), (c), (d), (e), (g), (h), (i), and (r).

11. Winfield also has or will have collection, transmission, and treatment facilities with sufficient capacity to address the various septic elimination issues referenced on p. 4 of Mr. Stong's affidavit.

12. Meanwhile, Mr. Stong indicates Crown Point's ability to serve the Disputed Area will require "over \$35 million in capital improvements" (Stong Affidavit, ¶19(l)), and all of which hinges on the construction of a new wastewater treatment plant. As discussed in the affidavit (and prefiled testimony) of Jeremy C. Lin, the construction of Crown Point's new wastewater treatment plan may never happen.

13. Moreover, Mr. Stong's Affidavit, particularly in Paragraph 19(l), suggests that Crown Point has existing facilities ready and able to serve the Disputed Area. This is not true as most of Crown Point's improvements are proposals that may never come to fruition.

14. In summary, the Stong Affidavit materially misstates the location and capacity of Winfield's existing facilities; contains information that is inaccurate and outdated; and misleads at best or overstates at worst Crown Point's ability to serve the Disputed Area any time in the foreseeable future.

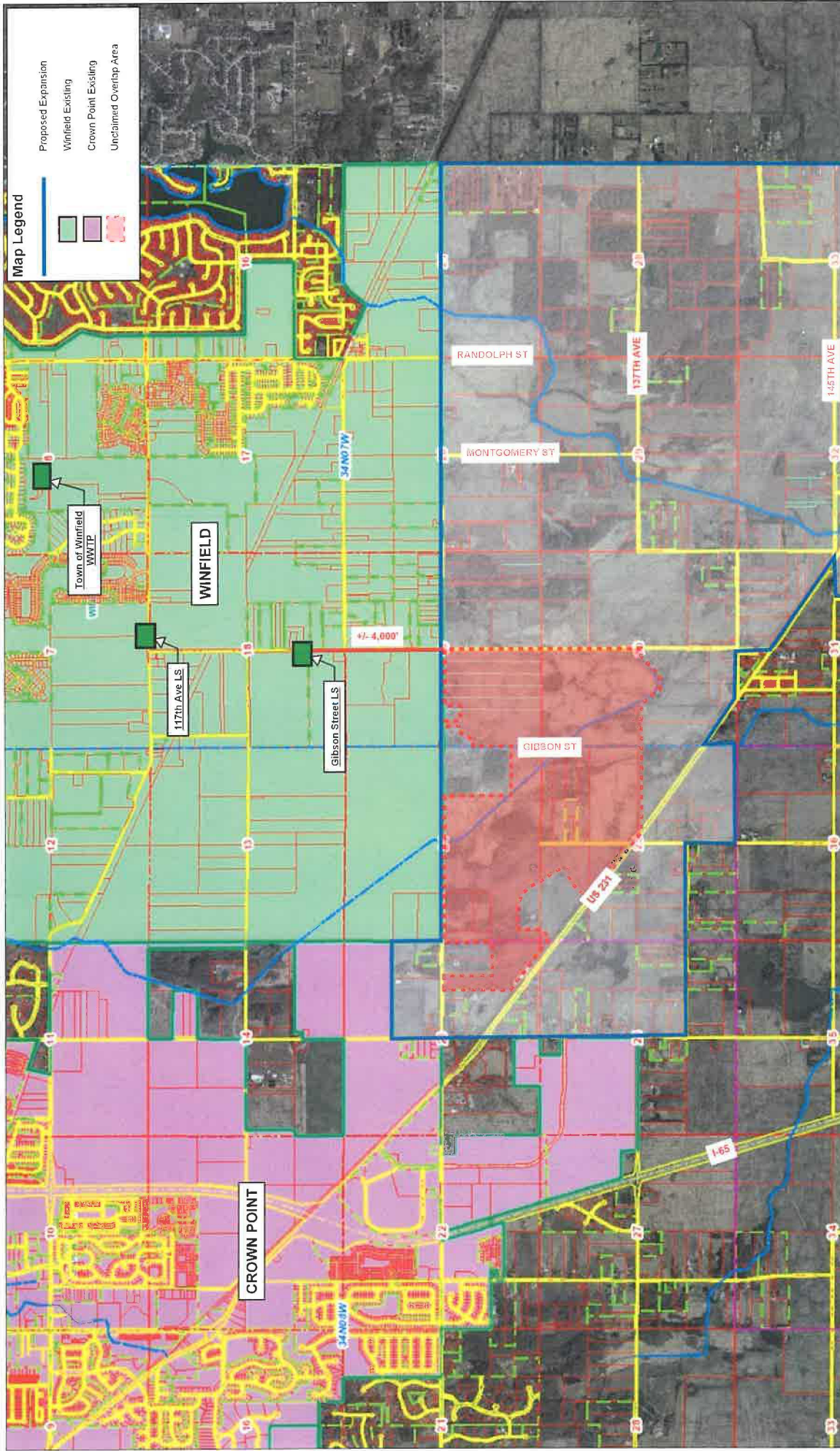
I affirm, under the penalties for perjury, that the foregoing representations are true.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael Duffy, Jr., P.E.

4749362.1

# **Exhibit 1**



**Map Legend**

- Proposed Expansion
- Winfield Existing
- Crown Point Existing
- Unclaimed Overlay Area

**WINFIELD (LAKE COUNTY) LIFT STATION SERVICE EXTENSION TO OVERLAP AREA**

Web Print: 04/04/2024



This map is a water generated map. It is not a legal document. It is for informational purposes only. It is not a legal document. It is not a legal document. It is not a legal document.

# **Exhibit C**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
THE TOWN OF WINFIELD, LAKE )  
COUNTY, INDIANA, FOR APPROVAL OF )  
A REGULATORY ORDINANCE )  
ESTABLISHING A SERVICE TERRITORY )  
FOR THE TOWN'S MUNICIPAL SEWER )  
SYSTEM PURSUANT TO IND. CODE § 8- )  
1.5-6 *ET SEQ.* )

CAUSE NO.: 45992

AFFIDAVIT OF JEREMY C. LIN, P.E.

Jeremy C. Lin, P.E., duly sworn upon his oath or under the penalties of perjury, states the following:

1. I am over the age of twenty-one. My affidavit is based upon my personal knowledge, and I am competent to testify about the matters set forth herein.

2. I am the same Jeremy C. Lin, P.E., that prefiled testimony and exhibits on behalf of the Town of Winfield, Indiana ("Winfield"), in this case.

3. It is my understanding that the City of Crown Point, Indiana ("Crown Point"), has sought to intervene in this case, vacate the procedural schedule, and consolidate this case with a separate case that Crown Point initiated regarding its own regulatory water and sewer ordinance.

4. I have reviewed the "Affidavit of Albert Stong P.E. in Support of City of Crown Point's Petition to Intervene and Motion to Vacate Procedural Schedule" ("Stong Affidavit") filed by Crown Point on April 2, 2024.

5. Based on my experience with Winfield's sewer facilities, much of the Stong Affidavit is inaccurate and misleading. For this stage of the proceeding, I will focus on four (4) particularly pertinent inaccuracies that need to be promptly corrected to assist the Commission in evaluating Crown Point's attempted participation in this Cause and its request to vacate the

existing procedural schedule.

6. First, as Mr. Michael Duffy explained in his prefiled testimony (see Petitioner's Exhibit 1, p. 9, lines 3-7), before Crown Point is permitted to construct a new wastewater treatment plant, it must satisfy the required Antidegradation Standards and Implementation Procedures ("Antidegradation Standards").

7. While I am not an attorney, I am basing my opinions on my nearly twenty-eight (28) years of experience in wastewater treatment plant engineering. It is my understanding that the Antidegradation Standards require that before a new wastewater treatment plant is built, the utility must demonstrate (among other things) that it is not feasible for an existing treatment plant within the vicinity to effectively serve the area in question. A true and accurate copy of a letter from IDEM that was sent to Crown Point describing the Antidegradation Standards is attached as Exhibit 1, which was accessed via IDEM's Virtual File Cabinet.

8. In particular, I would point to Exhibit 1 (see p. 3 of 8; 327 IAC 2-1.3-5(a)(2)(B)) which requires Crown Point to evaluate the cost and feasibility of connecting to an existing system such as Winfield's. 327 IAC 2-1.3-5(a)(2)(B) specifically states:

An evaluation of the feasibility and costs of connecting to an existing POTW or privately owned treatment works, within the vicinity of the proposed new or increased loading that:

- (i) Will effectively treat the proposed discharge; and
- (ii) Is willing to accept wastewater from other entities.

9. Exhibit 1 further provides, in pertinent part (see Exhibit 1, p.2, ¶2):

Before approving a new discharge of treated wastewater, alternatives to the proposed discharge must be evaluated to satisfy antidegradation requirements

...

If this office determines the discharge is not necessary on the basis of economic or social factors, the proposed new discharge will not be allowed,



and construction and NPDES permits will not be issued.” The IDEM letter continues to list several items that Crown Point needs to demonstrate as part of the antidegradation analysis including social and economic analysis, impact on endangered or threatened species, and adverse impacts by lowered water quality.

10. Given that Winfield is willing and able to effectively serve the Disputed Area with its existing wastewater treatment plant (for much less than the \$35 million expense that Crown Point would incur to build a new plant), I question whether Crown Point will be able to satisfy the requirements of the Antidegradation Standards. If Crown Point cannot satisfy the Antidegradation Standards, Crown Point’s proposed plant may not be approved and Crown Point will be unable to meet any of its lofty service goals as set forth in the Stong affidavit.

11. Second, Mr. Stong states that “Crown Point has already received its effluent limits for its new WWTP.” (Stong Affidavit, ¶19(s)). What Mr. Strong fails to mention is that IDEM specifically states in its Updated Preliminary Effluents Limitations letter “This letter also serves as notification that supplemental information is required to fully evaluate the proposed discharge. Construction and NPDES permitting may not proceed until the supplemental information specified herein has been submitted to, and been preliminarily approved by, this Office.”

12. Mr. Stong’s statement is also misleading (at best) in that it suggests that Crown Point’s effluent limits are finalized and construction of its new wastewater treatment plant is imminent. Crown Point has only received “preliminary” effluent limits, and still needs to demonstrate the lengthy Antidegradation requirements for a new treatment plant which include: The availability, cost-effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, along with a public participation process as IDEM noted “It should be noted that the public participation process and/or permit appeal process included in the rules for the issuance of NPDES permits could alter (and possibly make more stringent) the limits



that are established in the final NPDES permit, or result in the denial of the request. Thereafter, it appears that Crown Point still needs to complete several steps to demonstrate they can meet the Antidegradation Standards. The public documents on file in IDEM's virtual filing cabinet reveal that Crown Point has made very little progress on satisfying the Antidegradation Standards over the last year.

13. Third, while Mr. Stong is very critical of Winfield's sewer capabilities, Mr. Stong's affidavit conspicuously failed to mention that Crown Point was subject to a recent enforcement action initiated by IDEM. A copy of an enforcement letter provided from IDEM to Crown Point is attached as Exhibit 2, which was accessed via IDEM's Virtual File Cabinet.

14. Fourth, although Mr. Stong indicates a familiarity with Winfield's sewer system, many of his statements describing Winfield's sewer system and its ability to serve the area he describes as the "Disputed Area" are simply inaccurate and misleading. By way of example, Mr. Stong suggests that Winfield's 2019 expansion to its wastewater treatment plant from .4 mgd to .8 mgd was necessary to serve increased flows within its current service area, not to accommodate flows from the Disputed Area. (See Stong Affidavit, p. 4, ¶19(f)). This plant expansion was completed many years ago and is not the basis for Winfield's requested relief in this Cause. (See, e.g., Petitioner's Exhibit 7, p. 3, line 10 to p. 5, line 19)

15. As I described in my prefiled direct testimony (Petitioner's Exhibit 7, p. 3, line 10 to p. 5, line 19), Winfield has planned, designed, obtained permits for, financed, and is now in the process of constructing an additional expansion to its wastewater treatment plant from .8 mgd to 1.6 mgd. I anticipate this expansion will be completed within the next 10-12 months. In addition, IDEM has issued Preliminary Effluent Limitations for Winfield's next plant expansion to 4 mgd, noting that (unlike Crown Point) the Antidegradation Standards and Implementation Procedures

do not apply to Winfield's plant expansion. (See also Petitioner's Exhibit 10)

16. As Mr. Duffy explains in his affidavit, Winfield has an existing lift station that is approximately 4,000 feet from the Disputed Area. After a main extension is completed, Winfield has current capacity in its existing plant to serve the anticipated development in the Disputed Area over the next year. Once the current expansion to 1.6 mgd is completed, Winfield will have ample capacity to serve the Disputed Area as it builds out. In fact, the new wastewater treatment plant expansion was designed and built with the goal of providing service to Winfield's proposed service area, including the Disputed Area.

17. In summary, the Stong Affidavit fails to account for Crown Point's ability to comply with Antidegradation Standards for its proposed new treatment plant; contains misleading statements regarding Crown Point's proposed new treatment plant's effluent limits; and relies on other information that is entirely inaccurate with regard to Winfield's operations. For these reasons, I believe much of the Stong Affidavit is unreliable.

I affirm, under the penalties for perjury, that the foregoing representations are true.

Dated: 4/4/24

  
\_\_\_\_\_  
Jeremy C. Lin, P.E.

# **Exhibit 1**



## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • [www.idem.IN.gov](http://www.idem.IN.gov)

Eric J. Holcomb  
Governor

Brian Rockensuess  
Commissioner

January 19, 2024

### VIA ELECTRONIC MAIL

Mr. Brady Dryer, Partner, Environmental Compliance Manager  
Commonwealth Engineering, Inc.  
7256 Company Drive  
Indianapolis, Indiana 46237

Dear Mr. Dryer:

Re: Updated Preliminary Effluent Limitations for the  
Proposed City of Crown Point 121<sup>st</sup> Street  
Wastewater Treatment Plant  
Lake County

This letter serves as an update to the Preliminary Effluent Limitation (PEL) letter sent on February 10, 2023 regarding a proposed new City of Crown Point 121<sup>st</sup> Street Wastewater Treatment Plant (WWTP). This would be a new southeast WWTP for the City. The City of Crown Point already has an existing treatment plant (IN0025763) with a discharge to Main Beaver Dam Ditch. As indicated in your original request, the average design flow of the new southeast WWTP would be 2.0 MGD, with a potential maximum capacity of 11.5 MGD pending future upgrades. The new plant would be a biomechanical treatment plant with ultraviolet light disinfection. The proposed discharge location will be to Niles Ditch near 121<sup>st</sup> Street (see attached map). The Q7,10 low-flow of the receiving stream on Niles Ditch is considered to be zero cfs.

Following the issuance of the aforementioned PEL letter, it was discovered the proposed new WWTP would be located within a subwatershed that is included in an existing Total Maximum Daily Load (TMDL) Study. The proposed plant is located in the Main Beaver Dam Ditch subwatershed, which is assigned a total phosphorus TMDL as part of the Deep River-Portage Burns TMDL Report. IDEM is required to ensure any new discharges located within a watershed that a TMDL Report has been developed for comply with the TMDL. Therefore, the PEL letter for the proposed City of Crown Point 121<sup>st</sup> Street WWTP is being updated to reflect the phosphorus limitations required to comply with the Deep River-Portage Burns TMDL Report.

**This letter also serves as notification that supplemental information is required to fully evaluate the proposed discharge. Construction and NPDES permitting may not proceed until the supplemental information specified herein has been submitted to, and been preliminarily approved by, this Office.**

Preliminary effluent limitations are impacted by numeric and narrative water quality criteria as well as antidegradation requirements. Current Indiana Antidegradation Standards at 327 IAC 2-1.3-3 contain a provision for all surface waters of the State. The existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The antidegradation rules for Indiana are found in 327 IAC 2-1.3.

Before approving a new discharge of treated wastewater, alternatives to the proposed discharge must be evaluated to satisfy antidegradation requirements. If this office makes a preliminary determination that the new discharge is necessary on the basis of economic or social factors, the effluent limitations contained herein (developed to minimize the potential lowering of water quality) may be utilized for construction and NPDES permitting. If this office determines the discharge is not necessary on the basis of economic or social factors, the proposed new discharge will not be allowed, and construction and NPDES permits will not be issued.

#### ANTIDEGRADATION DEMONSTRATION REQUIREMENTS FOR AMMONIA-NITROGEN

327 IAC 2-1.3-5(a) requires every antidegradation demonstration shall include the following basic information:

- (1) The regulated pollutants known or believed to be present in the wastewater and proposed to be discharged.
- (2) The estimated concentration and mass loading of all regulated pollutants proposed to be discharged.
- (3) The location of the proposed discharge and a map of the area of the proposed discharge that shows the receiving water or waters that would be affected by the new or increased loading, including the area downstream of the proposed discharge.

Every antidegradation demonstration shall include the following necessary information:

- (1) The availability, reliability, cost-effectiveness, and technical feasibility of the following:
  - (A) No degradation.
  - (B) Minimal degradation.
  - (C) Degradation mitigation techniques or alternatives.
- (2) An analysis of the effluent reduction benefits and water quality benefits associated with the degradation mitigation techniques or alternatives required to be assessed under subdivision (1)(C), including the following:
  - (A) A review of pollution prevention alternatives and techniques that includes the following:
    - (i) A listing of alternatives and techniques, including new and innovative technologies.
    - (ii) A description of how the alternatives and techniques available to the applicant would minimize or prevent the proposed significant lowering of water quality.

- (iii) The effluent concentrations attainable by employing the alternatives and techniques.
    - (iv) The costs associated with employing the alternatives and techniques.
    - (v) An identification of the pollution prevention alternatives and techniques selected to be employed and an explanation of why those selections were made.
  - (B) An evaluation of the feasibility and costs of connecting to an existing POTW or privately owned treatment works, within the vicinity of the proposed new or increased loading, that:
    - (i) will effectively treat the proposed discharge; and
    - (ii) is willing to accept wastewater from other entities.
  - (C) For POTWs, if the proposed significant lowering of water quality is a result of a proposed new or increased loading from one (1) or more indirect dischargers, the analysis shall also include the following:
    - (i) The requirements of clause (A) shall be completed for the indirect discharger or dischargers as well as for the POTW. The POTW may require the indirect dischargers to prepare this information.
    - (ii) If one (1) or more of the indirect dischargers proposes or does discharge to a combined sewer or sanitary sewer that is connected to a combined sewer, all combined sewer overflows (CSOs) between the point of discharge to the sewer and the POTW shall be identified.
- (3) The availability, cost-effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans for discharges outlined in:
  - (A) state or local water quality management planning documents; and
  - (B) applicable facility planning documents.
- (4) The availability, cost-effectiveness, and technical feasibility of discharging to another waterbody that:
  - (A) is not an OSRW; or
  - (B) has a higher assimilative capacity for the regulated pollutant.

327 IAC 2-1.3-5(g) requires the antidegradation demonstration include the following social and economic analysis information:(g) For each regulated pollutant in the proposed new or increased loading associated with activities in subsection (f), each antidegradation demonstration shall include the following social and economic analysis information:

- (1) The anticipated impact on aquatic life and wildlife, considering the following:
  - (A) Endangered or threatened species.
  - (B) Important commercial or recreational sport fish species.
  - (C) Other individual species.
  - (D) The overall aquatic community structure and function.
- (2) The anticipated impact on human health.
- (3) The degree to which water quality may be lowered in waters located within the following:
  - (A) National, state, or local parks.

- (B) Preserves or wildlife areas.
- (C) OSRWs or ONRWs.
- (4) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state.
- (5) Where relevant, the anticipated impact on economic and social factors, including the following:
  - (A) Creation, expansion, or maintenance of employment.
  - (B) The unemployment rate.
  - (C) The median household income.
  - (D) The number of households below the poverty level.
  - (E) Community housing needs.
  - (F) Change in population.
  - (G) The impact on the community tax base.
  - (H) Provision of fire departments, schools, infrastructure, and other necessary public services.
  - (I) Correction of a public health, safety, or environmental problem.
  - (J) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.
  - (K) The impact on the quality of life for residents in the area.
  - (L) The impact on the fishing, recreation, and tourism industries.
  - (M) The impact on endangered or threatened species.
  - (N) The impact on economic competitiveness.
  - (O) Demonstration by the applicant that the factors identified and reviewed under clauses (A) through (N) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.
  - (P) Inclusion by the applicant of additional factors that may enhance the social or economic importance associated with the proposed discharge, such as an approval that recognizes social or economic importance and is given to the applicant by:
    - (i) a legislative body; or
    - (ii) other government officials.

In determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located under antidegradation standards and implementation procedures, the commissioner will give substantial weight to any applicable determinations by governmental entities.

Once an antidegradation demonstration has been received by this Office and determined complete, the antidegradation demonstration will be public noticed for a thirty day period requesting comment in accordance with 327 IAC 5-2-11.2. If this office makes a tentative determination to approve the submitted antidegradation demonstration, then construction and NPDES permitting may proceed with the understanding that a final determination will not be made until public input on the tentative decision has been considered. This office will seek public input on the tentative decision during the public participation process for the issuance of the NPDES permit.

It should be noted that the public participation process and/or permit appeal process included in the rules for the issuance of NPDES permits could alter (and possibly make more stringent) the limits that are established in the final NPDES permit, or result in the denial of the request. Should the tentative decision be to deny the antidegradation demonstration, the tentative decision for denial will be public noticed for a thirty day period requesting comment in accordance with 327 IAC 5-2-11.2. The public process for an antidegradation demonstration can be found at 327 IAC 2-1.3-6.

### Preliminary Effluent Limitations for Sanitary-Type Wastewater

Parameter	Summer		Winter		Units
	Monthly Average (or daily max for mercury**)	Weekly Average	Monthly Average (or daily max for mercury*)	Weekly Average	
CBOD5	10	15	10	15	mg/l
TSS	12	18	12	18	mg/l
Total Phosphorus*	0.6	----	0.6	----	mg/l
Total Nitrogen	Report	----	Report	----	mg/l
Mercury**	Report*	----	Report*	----	ng/l

Table 2

Parameter	Daily Minimum	Monthly Average	Daily Maximum	Units
pH	6.0	----	9.0	s.u
Dissolved Oxygen	6.0	----	----	mg/l
<i>E. coli</i> †	----	125	235	count/100mL

Table 3

Parameter	Summer		Winter		Units
	Monthly Average	Daily Maximum	Monthly Average	Daily Maximum	
Ammonia-N	1.1	2.6	1.6	3.7	mg/l

\*The included total phosphorus limitations are required to comply with the TMDL developed for the Main Beaver Dam Ditch subwatershed as part of the Deep River-Portage Burns TMDL Report. The included limitation of 0.6 mg/l applies for a WWTP with an average design flow of 2.0 MGD and allows the requirements of the TMDL to be met at that capacity.

Note: Should the City of Crown Point wish to expand the WWTP in the future, more stringent total phosphorus limitations will be required. For example, the future potential



maximum capacity of the WWTP was stated to be 11.5 MGD; at this average design flow, a limitation of 0.31 mg/l would be required.

\*\*In accordance with this Office's policy concerning mercury, all new major facilities are required to monitor for mercury for at least one permit cycle. Mercury shall be monitored six (6) times annually by grab sampling. If the facility's discharge shows reasonable potential to exceed (RPE) the water quality criterion for mercury upon the subsequent renewal, water quality based effluent limitations for mercury will be inserted into the permit. For informational purposes, the table below includes the effluent limitations for mercury that would be applicable to the proposed discharge, if the effluent data exhibit RPE:

Table 4

Pollutant	Monthly Average		Daily Maximum	
	(ng/l)	(lbs/day)	(ng/l)	(lbs/day)
Mercury	1.3	0.000013	3.2	0.000032

+The effluent limitations for *E. coli* are 125 colonies/100 ml as a monthly average calculated as a geometric mean and 235 colonies/100 ml as a daily maximum.

**Ultraviolet light disinfection or disinfection by other non-halogen compounds is required as a consideration in antidegradation. Disinfection by chlorination or other halogen compounds will require the applicant to demonstrate that disinfection by ultraviolet light is either not technically feasible or that it is not affordable.**

The effluent flow must be measured. The mass limits for CBOD<sub>5</sub>, NH<sub>3</sub>-N, and TSS are calculated by multiplying the average design flow (in MGD) by the concentration value and by 8.345. Summer effluent limits apply from May 1 through November 30 of each year. Winter effluent limits apply December 1 through April 30 of each year.

The water quality-based limits set forth in this letter are based on the Indiana water quality standards in effect at this time and may not be the final limits once the NPDES permit is issued. If the water quality standards are modified by the Water Pollution Control Board and new water quality standards become effective prior to the date the NPDES permit for your facility is actually issued, then the IDEM is required by law to issue the NPDES permit with limits based on the new standards.

If the preliminary effluent limitations specified above are not acceptable to the discharger, then alternate limitations may be pursued. To pursue alternate limitations, an assessment of alternative feasible treatment technologies comparing the expected effluent concentrations with the expected capital and maintenance costs for each alternative, and the corresponding expected new or increased loading above the level generated by the effluent limits specified above must be submitted for review. The assessment must also include an affordability analysis and justification for selecting the most cost-effective treatment plant design that is affordable. In no case will limitations be approved which will result in exceedances of State water quality standards.

In addition, Indiana Code 13-18-26 requires the permit applicant to certify that the following documents have been prepared and completed for new facilities and/or facility expansions with a design capacity above 0.10 MGD:

- A Life Cycle Cost-Benefit Analysis, as described in IC 13-18-26-3;
- A Capital Asset Management Plan, as described in IC 13-18-26-4; and
- A Cybersecurity Plan, as described in IC 13-18-26-5.

The certification of completion must be submitted to IDEM along with the permit application, and must be notarized. IDEM will not issue a permit to an applicant that is subject to IC 13-18-26 if the required certification is not included with the application packet, as required by IC 13-18-26-1(b).

The plans and analyses must be reviewed and revised (as necessary) at least once every five years. A new certification must be submitted to IDEM (with the NPDES renewal application) if any plan or analysis is revised during the five-year review.

If there are any questions regarding design requirements of the construction permit, please contact Ms. Missy Nunnery at 317/232-5579. The NPDES permit will not be issued until the construction permit is finalized.

If there are any questions regarding the antidegradation requirements or NPDES permit requirements, please feel free to contact Alyce Klein at [aklein@idem.in.gov](mailto:aklein@idem.in.gov) or 317/233-6728.

Sincerely,

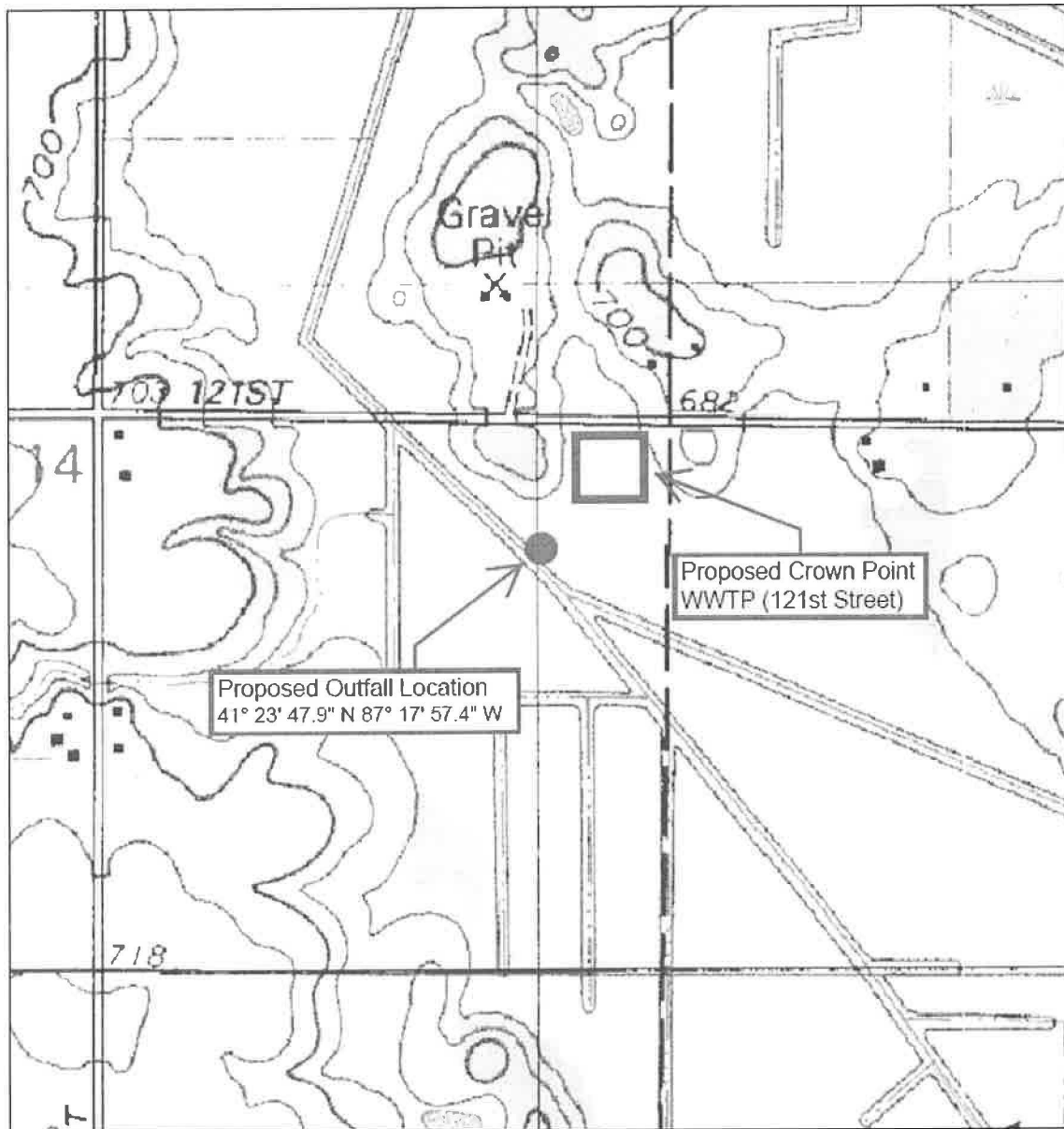
A handwritten signature in black ink, appearing to read "Leigh Voss".

Leigh Voss, Chief  
Municipal NPDES Permits Section  
Office of Water Quality

Enclosures

CC: Terry Ciciora, Director of Public Works, Crown Point POTW

### Crown Point Proposed 121st Street WWTP



## **Exhibit 2**



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • [www.idem.IN.gov](http://www.idem.IN.gov)

Eric J. Holcomb  
Governor

Brian C. Rockensuess  
Commissioner

**May 25, 2023**

Via Certified Mail No.:  
7017 0190 0000 9502 4975

Honorable Peter D. Land, Mayor  
City of Crown Point  
101 North End Street  
Crown Point, IN 46078

Dear Mayor Land:

Re: Adoption of Agreed Order  
Commissioner, Indiana Department  
of Environmental Management  
v.  
City of Crown Point  
NPDES No. IN0025763  
Case No. 2022-28739-W  
Crown Point, Lake County

This is to inform you that the Agreed Order in the above-referenced case has been approved and adopted by the Indiana Department of Environmental Management. A copy of the Agreed Order is enclosed.

Please note the terms of compliance contained in the Agreed Order. The time frames for compliance are effective upon your receipt of this correspondence (Effective Date). The invoice for payment of the civil penalty is attached. Payment should be made payable to the "Environmental Management Special Fund" and include the Case Number 2022-28739-W for processing.

If you have any questions, please contact Ryan Julian, Environmental Manager, Water Enforcement Section, at (317) 234-3123 or [rjulian@idem.in.gov](mailto:rjulian@idem.in.gov).

Sincerely,

Amari Farren, Chief  
Water Enforcement Section  
Office of Water Quality

Enclosures



Adoption of Agreed Order Cover Letter  
Case No. 20XX-28739-W  
City of Crown Point  
NPDES No. IN0025763  
Crown Point, Lake County  
Page 2

cc: Lake County Health Department  
<http://www.in.gov/ideh>



5. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation (NOV) via Certified Mail/personal service to:

Peter D. Land, Mayor  
City of Crown Point  
101 North End Street  
Crown Point, IN 46078

6. During an investigation conducted by a representative of IDEM, violations were found, as described below.
7. 327 Indiana Administrative Code (IAC) 5-2-8(1), states the permittee shall comply with all terms and conditions of the Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and Indiana Code (IC) 13 and is grounds for enforcement action by IDEM.
8. Pursuant to Part I.A.1 of the Permit, the permittee is required to comply with the monitoring requirements contained in the Permit, including effluent limitations.

Discharge Monitoring Reports (DMRs) and Monthly Reports of Operation (MROs) submitted by Respondent for the period of October 2019 through May 2022 revealed violations of effluent limitations contained in Part I.A.1 of the Permit as follows:

- A. The weekly maximum average concentration limitation for total suspended solids (TSS) was exceeded during January and December 2020, April, June and August 2021, and April and May 2022.
- B. The monthly average concentration limitation for TSS was exceeded during December 2019, January 2020, June and August 2021, and May 2022.
- C. The monthly average loading limitation for TSS was exceeded during January 2020.
- D. The weekly maximum average loading limitation for TSS was exceeded during January 2020 and April 2021.
- E. The daily maximum concentration limitation for ammonia (as nitrogen) was exceeded during December 2019, and February and March 2021.
- F. The monthly average concentration limitation for ammonia (as nitrogen) was exceeded during December 2019, January, February and March 2021, and May 2022.
- G. The daily maximum loading limitation for ammonia (as nitrogen) was exceeded during March 2021.
- H. The monthly average concentration limitation for Phosphorus was exceeded during June, July, and September 2021.

Respondent failed to comply with the effluent limitations from Outfall 001 contained in the Permit, in violation of Part I.A.1 of the Permit.



9. Pursuant to 327 IAC 5-2-8(9) and Part II.B.1 of the Permit, the permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for the collection and treatment which are installed or used by the permittee, and which are necessary for achieving compliance with the terms and conditions of the permit.

During the inspection on November 23, 2021, IDEM staff observed and documented inadequate maintenance and operation of the facilities, specifically:

- A. problems with the media disk filters, including general breakdowns and torn media in December 2020 and April 2021, which can be attributed as the cause of the Ammonia-Nitrogen exceedences;
- B. problems with the blowers which contributed to Ammonia-Nitrogen exceedences; and
- C. problems with the influent control panels causing erratic influent sewage flows, which may have contributed to the Phosphorus exceedences in May 2021 through September 2021.

Each in violation of 327 IAC 5-2-8(9) and Part II.B.1 of the Permit.

10. On October 29, 2020, June 3, 2021, and December 2, 2021, IDEM sent Inspection Summary and/or Noncompliance Letters to Respondent outlining violations at the WWTP. The letters required a response detailing actions taken to correct the violations. IDEM received responses to the letter(s) explaining compliance actions Respondent took or would take to address the violations. However, the responses did not adequately address the violations noted above at the WWTP.
11. Orders of the Commissioner are subject to administrative review by the Office of Environmental Adjudication under IC 4-21.5; however, in recognition of the settlement reached, Respondent acknowledges notice of this right and waives any right to administrative and judicial review of this Agreed Order.

## **II. ORDER**

1. This Agreed Order shall be effective (Effective Date) when it is adopted by Complainant or Complainant's delegate (as evidenced by signature), and the adopted Agreed Order has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date. In addition to addressing the violations cited in Paragraphs 8 through 9 of the Findings of Fact above, this Agreed Order also addresses any additional violations of these same rules that may have occurred subsequent to the issuance of the NOV and prior to the Effective Date.
2. Respondent shall comply with rules and statutes listed in the findings above at issue.

3. Within 30 days of the Effective Date, Respondent shall develop and submit to IDEM for approval a Compliance Plan (CP) which identifies actions that Respondent will take to achieve and maintain compliance with its Permit, specifically including the actions Respondent will take to:
  - A. Achieve and maintain compliance with effluent limitations contained in the Permit, specifically TSS, ammonia (as nitrogen), and phosphorus.
  - B. Address Operation and Maintenance issues identified at the facility by developing a maintenance Standard Operating Procedure (SOP) and/or an engineering study to determine source of ammonia and phosphorus exceedances.;

The CP shall include an implementation and completion schedule, including specific milestone dates.

Respondent shall notify IDEM in writing of variations to the approved CP.

4. Respondent shall, after completion of the work required pursuant to the approved CP from Paragraph 3 above, demonstrate 12 consecutive months of compliance (Compliance Demonstration) with the terms and conditions of the Permit.
5. In the event that violation(s) occur during the Compliance Demonstration, within 30 days of the violation, Respondent shall develop and submit to IDEM, for approval, an Additional Action Plan (AAP) which identifies the additional actions that Respondent will take to achieve and maintain compliance with the terms and conditions of the Permit. The AAP, if required, shall include an implementation and completion schedule, including specific milestone dates.
6. The plans required by Order Paragraphs 3 and 5 are subject to IDEM approval. In the event IDEM determines that any plan or any modified plan submitted by Respondent is deficient or otherwise unacceptable, Respondent shall revise and resubmit the plan to IDEM in accordance with IDEM's notice. After three submissions of such plan by Respondent, IDEM may seek civil enforcement of this Order.
7. Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved plan(s) and adhere to the milestone dates therein. The approved CP and AAP shall be incorporated into the Agreed Order and shall be deemed an enforceable part thereof.

Following completion of the actions included in the AAP, the 12-month Compliance Demonstration, as specified in Paragraph 4 above, will re-start. Failure to achieve compliance at the conclusion of work under an AAP may subject Respondent to additional enforcement action.

8. Beginning upon receipt of approval of the CP or AAP and continuing until the successful completion of implementation of the approved CP or AAP, Respondent shall submit to IDEM regular progress reports identifying compliance actions

implemented and completion of each required milestone in the CP or AAP. The frequency of progress report submittals shall be specified in IDEM's written notification to Respondent of the plan approval and will be based on the proposed milestones in the approved plan(s).

9. Beginning on the Effective Date and continuing until the successful completion of the approved CP, Respondent shall, at all times, operate its existing WWTP as efficiently and effectively as possible.
10. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Ryan Julian, Enforcement Case Manager  
Office of Water Quality – IGCN 1255  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

11. Respondent is assessed and agrees to pay a civil penalty of Seven Thousand Seven Hundred and Fifty Dollars (\$7,750). Said penalty amount shall be due and payable to the "Environmental Management Special Fund" within 30 days of the Effective Date, the 30<sup>th</sup> day being a "Due Date."
12. In the event the terms and conditions of the following paragraphs are violated, IDEM may assess, and Respondent shall pay the corresponding stipulated penalty:

Paragraph	Violation	Stipulated Penalty
3	Failure to submit the CP within the required time period.	\$250 per week late, or part thereof.
4	For violations of terms and conditions of the Permit during the Compliance Demonstration.	\$400 per violation
5	Failure to submit the AAP, if required, within the given time period.	\$500 per week late, or part thereof.
6	Failure to modify the CP and/or AAP, if required, within the given time period.	\$500 per week late, or part thereof.
7	Failure to meet and/or implement any milestone date set forth in the approved CP or AAP.	\$500 per week late, or part thereof.
8	Failure to submit to IDEM a written progress report as specified in the CP or AAP approval letter.	\$150 per week late, or part thereof.
9	Failure to operate the WWTP as efficiently and effectively as possible prior to Compliance Demonstration.	\$200 per violation.

13. Stipulated penalties shall be due and payable no later than the 30<sup>th</sup> day after Respondent receives written notice that IDEM has determined a stipulated penalty is due, the 30<sup>th</sup> day being a "Due Date." IDEM may notify Respondent at any time that a stipulated penalty is due. Failure to notify Respondent in writing in a timely manner of a stipulated penalty assessment shall not waive IDEM's right to collect such stipulated penalty or preclude IDEM from seeking additional relief against Respondent for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude IDEM from seeking additional relief against Respondent for a violation of this Agreed Order. Such additional relief includes any remedies or sanctions available pursuant to Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.
14. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2022-28739-W of this action and shall be mailed to:  
  
Indiana Department of Environmental Management  
Accounts Receivable  
IGCN, Room 1340  
100 North Senate Avenue  
Indianapolis, Indiana 46204
15. This Agreed Order shall apply to and be binding upon Respondent, its successors and assigns. Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter its status or responsibilities under this Agreed Order.
16. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondent shall pay interest on the unpaid balance and any accrued interest at the rate established by IC 24-4.6-1. The interest shall be computed as having accrued from the Due Date until the date that Respondent pays any unpaid balance. The interest shall continue to accrue on the first of each month until the civil penalty and any interest accrued are paid in full. Such interest shall be payable to the "Environmental Management Special Fund," and shall be payable to IDEM in the manner specified above.
17. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
18. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred.

Respondent shall ensure that all contractors, firms, and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.

19. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of its obligation to comply with the requirements of its applicable permits or any applicable Federal or State law or regulation.
20. Complainant does not, by his approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
21. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to seek additional civil penalties for the same violations specified in the Notice of Violation.
22. Nothing in this Agreed Order shall prevent IDEM (or anyone acting on its behalf) from communicating with the United States Environmental Protection Agency (US EPA) or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the US EPA or any other agency or entity.
23. This Agreed Order shall remain in effect until Respondent has complied with the terms and conditions of this Agreed Order and IDEM issues a Resolution of Case (close out) letter to Respondent.

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**TECHNICAL RECOMMENDATION:**  
Department of Environmental Management

By: Amari Farren

Amari Farren, Chief  
Water Enforcement Section  
Office of Water Quality

Date: October 12, 2022

**RESPONDENT:**  
City of Crown Point

By: [Signature]

Printed: PETER D. LAND  
Title: MAYOR  
\_\_\_\_\_  
\_\_\_\_\_

Date: MAY 16 2023

**COUNSEL FOR RESPONDENT:**

By: [Signature]

Date: MAY 16, 2023

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT THIS 24th DAY OF May, 2023

For the Commissioner:

Martha Clark Mettler

Martha Clark Mettler  
Assistant Commissioner  
Office of Water Quality

# INVOICE

**Please Remit To:**

INDIANA DEPT. OF ENVIRONMENTAL MANAGEMENT  
PO BOX 3295  
INDIANAPOLIS IN 46206-3295

Page: 1  
Invoice No: 000355261  
Invoice Date: 05/24/2023  
Customer Number: CST100010226  
Bill Type: 075  
Payment Terms: NET 30  
Due Date: 06/23/2023

**Bill To:**

CITY OF CROWN POINT  
PETER D LAND  
101 NORTH EAST STREET  
CROWN POINT IN 46307

AMOUNT DUE: 7,750.00 USD

Amount Remitted

☐ Note Address Changes Above

☐ Email Address: \_\_\_\_\_

Write the invoice number on your check and return the upper portion of this invoice.

For billing questions, please email us at [BILLING@IDEM.IN.GOV](mailto:BILLING@IDEM.IN.GOV)

Line	Adj	Identifier	Description	Quantity	UOM	Unit Amt	Net Amount
1		2022-28739-W	AGREED ORDER	1.00	EA	7,750.00	7,750.00
<p>- Accounts Receivable is accepting payments online by e-Check, MasterCard, Visa, American Express or Discover. Please visit <a href="http://www.in.gov/idem">www.in.gov/idem</a>. Under Online Services, click Online Payment options and follow the prompts.</p> <p>-You may also call us at 317-234-3099 to pay by MasterCard, Visa, American Express or Discover.</p> <p>-A processing fee of \$0.40 plus 2.06% will be charged for credit card payments. A processing fee of \$0.15 will be charged for eCheck payments.</p> <p>- Pursuant to the Agreed Order for the Case Number noted above in the identifier field, please remit payment immediately.</p>							
TOTAL AMOUNT DUE :						7,750.00	

Please write the invoice number on your check and return the upper portion of this invoice with remittance.

PeopleSoft BI  
INVOICE PRINT SUMMARY - SELECTED BILLS

Report ID: BIIVCPN  
Report Action: INVOICE

Page No. 1  
Run Date 05/24/2023  
Run Time 14:45:20

<u>Business Unit</u>	<u>Number of Bills</u>	<u>Total Invoice Amount</u>	<u>Currency</u>
00495	1	7,750.00	USD

---

Total number of bills printed: 1



## **Exhibit D**

Regular Council Meeting

August 7, 2023

**THE COMMON COUNCIL OF THE CITY OF CROWN POINT**

Met in a **REGULAR MEETING** in the Council Chambers

Located at 101 N. East Street

On Monday, August 7, 2023 at 7:00 p.m.

Pursuant to and in accordance with the Rules of the Common Council

<https://us02web.zoom.us/j/89566850445>

**A. PLEDGE OF ALLEGIANCE**

Mayor Land called the meeting to order at 7:00 P.M. with the Pledge of Allegiance.

**B. ROLL CALL OF MEMBERS**

Mayor Land asked for a roll call of Members. The call of the roll was as follows:

Members Present: Chad Jeffries, Council President Dawn Stokes, Andrew Kyres, Laura Sauerman, Carol Drasga, and Zack Bryan.

Members Absent: Scott Evorik

Also present were City Attorney David Nicholls, Council Attorney Pat Schuster, and Clerk-Treasurer Dave Benson.

**C. APPROVAL OF MINUTES OF PREVIOUS MEETINGS:** Regular Meeting on July 10, 2023.

Member Andrew Kyres made a motion to approve, seconded by Member Zack Bryan.

Motion passed by unanimous voice vote.

**D. READING OF AGENDA**

Mayor Land read the agenda.

**E. ADDITION OF NEW ITEMS TO THE AGENDA**

Mayor Land explained there was one item requested to be added to the Agenda; the Transfer of a Historic Alcohol License at 116 N. Main St.

Member Zack Bryan made a motion to approve the addition of the item, seconded by Council President Dawn Stokes.

Motion passed by unanimous voice vote.

Item added to the Agenda as Item #5 under New Business.

**F. APPROVAL OF CLAIMS AND SRF DISTRIBUTIONS**

Member Zack Bryan reported he had reviewed all Claims and SRF Distributions for the period. He confirmed all appeared to be in the normal course of City business and therefore moved to approve as presented, seconded by Council President Dawn Stokes.

Motion passed by unanimous voice vote.

## Regular Council Meeting

August 7, 2023

**G. PETITIONS, REMONSTRANCES AND PUBLIC STATEMENTS**

Julie Wendorf, 478 E. 114<sup>th</sup> Ave, came before the Council to speak as the Crown Point Commissioner on the Shared Ethics Advisory Commission (SEAC). She stated the SEAC 2023 Ethics Summit is scheduled for Tuesday, October 24, 2023 at Avalon Manor in Merrillville, IN. The summit is open to the public and registration will open soon on the SEAC website.

She wished to share that SEAC was currently working to train all municipal employees by using the updated Ethics training video materials. The goal is to have all municipal employees trained by mid-2024.

Lastly, Julie explained SEAC would be taking Candidate Ethics Pledges again for the November 7, 2023 General Election. She stated all seated members in the City of Crown Point had already signed up.

Member Andrew Kyres wished to thank Julie for accepting the position to represent the City of Crown Point. He also wanted to note for those unaware, the City of Crown Point is one of the charter members for the Shared Ethics Advisory Commission.

Communications/Media Manager Mary Freda-Flores stated there was one comment on the livestream of the meeting on Facebook by Kara Graper, stating her husband, Adam Graper, had helped to create the Shared Ethics Advisory Commission and maintained the website for years.

**H. SPECIAL RECOGNITION**

None

**I. REPORTS OF DEPARTMENT HEADS, BOARDS, AND COMMITTEES**

None

**J. APPOINTMENTS**

None

**K. PRESENTATIONS**

None

**L. OLD AND DEFERRED BUSINESS**

None

**M. NEW BUSINESS**

**Resolution No. 2023-08-19R** - A Resolution Approving or Denying Action of the BZA for a Variance of Use, to allow Commercial Recreation/Assembly use in a B-1 Zone. (238 S. Main St.) Abby Otterman, Petitioner / Philip and Cynthia Struebig, Owner received a **4-1 Favorable** Recommendation.

Planning Administrator Joshua Watson read the staff report.

Abby Otterman, 5920 W. 172<sup>nd</sup> Ave., Lowell, the owner of 2 Old Goats, was in attendance to request a variance of use at her store, located at 238 S. Main St.

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Ms. Otterman stated she has been in business at her Cedar Lake location for 7½ years. The variance for the Crown Point location would allow the space under the Quonset Hut in the rear of the building to hold outdoor workshops, such as furniture painting, floral arrangements, and kid's workshops. On average there would be around 12-16 people per workshop.

Council President Dawn Stokes stated she loved 2 Old Goats in Cedar Lake and was looking forward to the location here in Crown Point. She also inquired what the "no" vote was regarding at the BZA Meeting.

Member Carol Drasga stated Ms. Otterman should possibly consider placing some type of fencing in the rear of the property in reference to the kid's workshops, as the business was near a busy street.

Ms. Otterman stated she had been working with the Historical Society and would come before the Council to present a solution for some sort of aesthetically pleasing fencing around the workshop area and Quonset Hut as she understood the store is in the Historic District.

Member Laura Sauerman, also being a chairwoman on the Historic Preservation Committee, stated some concerns had been raised about compliance in the Historic District. She stated suggestions had been given to 2 Old Goats and Planning Administrator Joshua Watson was working closely with the shop to remedy and mitigate some of the issues.

Mayor Land stated he and Anthony Schlueter, his Chief of Staff, had gone to the shop to discuss some of the issues at hand. He stated Ms. Otterman had been very accommodating and took all issues to heart. He commended Ms. Otterman for all attempts taking place to meet the standards set by the Historic District.

Member Zack Bryan made a motion to approve Resolution No. 2023-08-19R, seconded by Council President Dawn Stokes.

Motion passed by unanimous voice vote.

**Resolution No. 2023-08-20R** – A Resolution Authorizing the Acquisition of Real Property.

First Assistant City Attorney Alex Kutanovski stated a parcel had recently been acquired for the bike trail, which included the underpass under I-65. This property is the adjoining parcel to the East. The parcel owner approached the City of Crown Point to inquire if there was any interest in purchasing.

After some preliminary research on the parcel and approval from the Engineering Department that the purchase of the adjoining property would be a shrewd decision, Attorney Kutanovski was requesting the Council's authorization to acquire the parcel located at 2300 E. 109<sup>th</sup> Ave.

Member Laura Sauerman made a motion to approve Resolution No. 2023-08-20R, seconded by Member Carol Drasga.

Motion passed by unanimous voice vote.

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**Ordinance No. 2023-08-19** – Amending Ordinances Establishing the City's Water and Wastewater Service Areas. **(First Reading)**

First Assistant City Attorney Alex Kutanovski explained this Ordinance had been presented to the Council several times. After discussions with Attorney Bob Glennon in Indianapolis who handles the water/wastewater rate cases, the City has been advised to change the term "Service Areas" to "Regulated Territories" within the Ordinance.

Member Chad Jeffries made a motion to Read in Title Only and Hold Over for a Second Reading Ordinance No. 2023-08-19, seconded by Member Laura Sauerman.

Member Zack Bryan inquired if there was a timeline regarding this Ordinance.

Attorney Kutanovski stated he would follow up with Attorney Glennon, as discussion of a final version was currently happening with neighboring municipalities. He stated there was no deadline or time-period for submittal described in the statute.

Motion passed by unanimous voice vote.

Member Andrew Kyres made a motion to Suspend the Rules, seconded by Member Chad Jeffries.

**Rules are suspended.**

Member Chad Jeffries made a motion to adopt Ordinance No. 2023-08-19, seconded by Member Zack Bryan.

Roll call vote was as follows:

Ayes: Members Chad Jeffries, Council President Dawn Stokes, Andrew Kyres, Laura Sauerman, Carol Drasga, and Zack Bryan.

Nays: None

Motion passed 6-0.

Member Andrew Kyres made a motion to Reinstate the Rules, seconded by Council President Dawn Stokes.

Motion passed by unanimous voice vote.

**Rules are reinstated.****Ordinance No. 2023-08-20** –An Ordinance Amending Municipal Codes Regarding Purchasing Agency. **(First Reading)**

Council President Dawn Stokes made a motion to Defer Ordinance No. 2023-08-20, seconded by Member Carol Drasga.

Member Laura Sauerman stated this was an important Ordinance. She clarified the Council wanted to be sure they'd done their research thoroughly and all the information needed was obtained. This was the reason for the deferral.

Member Carol Drasga stated if there were any questions, she would send all Council Members the number to the State Auditor.

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Motion passed by unanimous voice vote.

**Ordinance No. 2023-08-20 Deferred to October 2, 2023 Meeting.**

**Request to Transfer a Historic Alcohol License at 116 N. Main St. – Veleros Mexican Restaurant**

Attorney Amanda Hires, with the Law Office of Weiss, Schmidgall and Hires, 6 W. 73<sup>rd</sup> Ave., Merrillville, IN, stated she and her client Venancio "Vene" Valle, owner of Veleros Management Group 2, LLC, commonly known as and doing business as Veleros Mexican Food, 902 W. Calumet Ave., Valparaiso, IN, were in attendance to request the transfer of a Historic Alcohol License, previously held by True BBQ.

Attorney Hires stated she and her client were present to propose a Historic Alcohol License transfer, currently titled in the name of True BBQ. She presented the Council with a photo of the client with his family, along with sample menus for the proposed restaurant including brunch, appetizers, traditional Mexican fare, and a drink menu.

Attorney Hires stated what makes Veleros Mexican Restaurant stand out from some of the current options throughout the Crown Point Square is their traditional Mexican fare. Also incorporated are upscale seafood dining experiences and upscale service. She clarified Ricochet Tacos was more of a craft restaurant and Provecho was more of a Latin inspired cuisine.

Planning Administrator Joshua Watson read the staff report, confirming this would be the second location of Veleros Mexican Restaurant. He also stated due to the interior already being suitable for a restaurant/bar business, the layout would remain similar to what was already presented to the Council five years ago. The submission was reviewed by the Historic Alcohol Review Board and received a unanimous favorable recommendation.

Member Laura Sauerman inquired as to an opening date for the restaurant. Attorney Hires and Mr. Valle stated they were hopeful for an opening date of September 16, 2023.

Council President Dawn Stokes stated she was excited for the Crown Point location, as she loves to frequent the Valparaiso location.

Member Carol Drasga echoed, stating she was happy to welcome Veleros to the Square.

Member Zack Bryan made a motion to approve the Application for Transfer of the Historic Alcohol License, seconded by Member Carol Drasga.

Motion passed by unanimous voice vote.

**N. REPORTS AND MISCELLANEOUS MATTERS**

Member Carol Drasga stated Council Members had received a letter from Attorney General Todd Rokita. She inquired how the settlement regarding opioids would be spent. Mayor Land stated the Members of the Council could collaborate and discussion could possibly be held at the next meeting.

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Member Chad Jeffries wished to note the Ordinance Committee Meeting would be scheduled for 6:15 P.M. August 15, 2023, immediately following the Special Budget Meeting at 6:00 P.M.

**Special Budget Meeting Tuesday, August 15, 2023, at 6:00 p.m. (Introduction of the 2024 Budget.)**

**Next Regular Meeting Tuesday, September 5, 2023, at 6:00 p.m.**

**O. ADJOURNMENT**

Member Andrew Kyres made a motion to adjourn, seconded by Member Chad Jeffries.

Motion passed by unanimous voice vote.

The meeting adjourned at 7:30 P.M.

SUBMITTED:



David B. Benson, Clerk-Treasurer

APPROVED:



Peter D. Land, Mayor

**\*Audio available upon request\***