

RAW WATER PURCHASE AGREEMENT

This Raw Water Purchase Agreement (“Agreement”) is entered into this _____ day of _____, 2007 (“Effective Date”), between the Department of Waterworks, Consolidated City of Indianapolis, Indiana (“DOW”), and the Town of Westfield, Indiana (“Westfield”) (collectively, the “Parties”).

WITNESSETH THAT:

WHEREAS, Westfield, as successor to a certain portion of the assets of the former Hamilton Western Utilities, Inc. (“Westfield’s Predecessor”), and DOW, as successor to the former Harbour Water Corporation (“DOW’s Predecessor”), each own and operate separate utilities that provide public water utility services; and

WHEREAS, Westfield, DOW, and their respective predecessors have cooperated with one another to assure the timely and efficient provision of water service to area residents and to promote the economic growth of central Indiana; and

WHEREAS, such cooperation is evident from DOW’s purchase of treated water from Westfield, Westfield’s purchase of treated water from DOW (collectively, the “Water Agreements”), and memorandums of understanding regarding service territories, as further detailed below (“Territory Agreements”); as set forth in detail below:

I. DOW’s Purchase of Treated Water from Westfield

WHEREAS, DOW’s Predecessor and Westfield’s Predecessor entered into a water purchase agreement dated March 31, 2000, pursuant to which Westfield’s Predecessor provided treated water to DOW’s Predecessor, at a rate not to exceed two million gallons in any one calendar day nor more than one thousand five hundred gallons per minute, and at a price of \$0.57 per thousand gallons of water and a minimum monthly payment of \$17,100 (“Predecessor Agreement”); and

WHEREAS, the Predecessor Agreement was not assigned by Westfield’s Predecessor to Westfield at the time of Westfield’s acquisition of Westfield’s Predecessor; and

WHEREAS, Westfield and DOW entered into a Water Purchase Agreement dated November 5, 2003, pursuant to which Westfield provided treated water to DOW, at the same rate as set forth in the Predecessor Agreement, and at a price of \$1.15 per thousand gallons of water and a Monthly Minimum Guaranteed Payment of \$34,500 (“Original Water Purchase Agreement”); and

WHEREAS, Westfield and DOW entered into an Amendment to the Original Water Purchase Agreement, dated March 18, 2004, pursuant to which the Monthly Minimum Guaranteed Payment was reduced to \$17,100 during the months of September

through April, and maintained the Monthly Minimum Guaranteed Payment of \$34,500 during the months of May through August (“First Amendment to Original Water Purchase Agreement”); and

WHEREAS, Westfield and DOW entered into a second Amendment to the Original Water Purchase Agreement, dated April 14, 2005, pursuant to which Westfield agreed that the form of the water sold by Westfield to DOW shall be provided in a form compatible with and acceptable to the DOW, provided that Westfield could give DOW one hundred eighty days written notice of its intent to relieve itself of its water supply obligations if the condition of the water required by the DOW would obligate Westfield to many any unreasonable technological, treatment and/or regulatory required upgrades solely to meet the DOW’s needs, and which further provided that if Westfield so relieved itself of its obligation, the delivery point would remain available and metered for emergency purposes (“Second Amendment to Original Water Purchase Agreement”);

II. Westfield’s Purchase of Treated Water from DOW

WHEREAS, DOW’s Predecessor and Westfield entered into a water purchase agreement, dated December 13, 1993, pursuant to which DOW’s Predecessor provided treated water to Westfield, and pursuant to which Westfield purchased water at a rate of four hundred gallons per minute (the “Moontown Road Agreement”); and

WHEREAS, DOW’s Predecessor and Westfield entered into a Special Main Extension and Guaranteed Revenue Contract, dated August 28, 2001, pursuant to which DOW’s Predecessor agreed to provide a second delivery point near the intersection of Gray Road and 169th Street (“Delivery Point #2”), at a rate of at least two million gallons of water per day and at no more than two thousand eight hundred gallons per minute, and at a price determined under the DOW’s Predecessor’s rate schedule, or at least the Monthly Minimum Guaranteed Revenue Payment of \$20,700 per month, in addition to a Contribution In Aid of Construction in the amount of \$288,000 (“CIAC”); and

WHEREAS, Westfield and DOW entered into an Amendment to the Special Main Extension and Guaranteed Revenue Contract, dated March 18, 2004, pursuant to which: (i) Westfield’s Monthly Minimum Guaranteed Revenue Payment was reduced to \$5,037; (ii) DOW’s guaranteed rate of delivery was reduced to eight hundred sixty thousand gallons of water per day and at least six hundred gallons per minute, each at the point of delivery specified in the Moontown Road Agreement; (iii) deferred for a period of one year DOW’s obligation to provide Delivery Point #2; and (iv) deferred for a period of one year Westfield’s obligation to pay additional amounts of the CIAC (“First Amendment to the Special Main Extension and Guaranteed Revenue Contract”); and

WHEREAS, Westfield and DOW entered into a Second Amendment to the Special Main Extension and Guaranteed Revenue Contract, dated April 14, 2005, pursuant to which: (i) Westfield’s Monthly Minimum Guaranteed Revenue Payment was reduced to \$4,945; (ii) DOW’s guaranteed rate of delivery was reduced to 4.3 million gallons of treated water per month, an average of 141,370 gallons per day; (iii) deferred

indefinitely DOW's obligation to provide Delivery Point #2; and (iv) deferred indefinitely Westfield's obligation to pay additional amounts of the CIAC; and

WHEREAS, Westfield and DOW entered into a Third Amendment to the Special Main Extension and Guaranteed Revenue Contract, dated _____, 2006, pursuant to which the Service Territory Agreement by and between Westfield and DOW was amended pursuant to which Westfield acquired additional service territory for and in consideration of a payment to the DOW of \$96,000;

III. Memorandums of Understanding Regarding Service Territories

WHEREAS, the Special Main Extension and Guaranteed Revenue Contract included a Service Territory Agreement that depicted those areas in Washington Township, Hamilton County, to be provided public water supply service by Westfield ("Service Territory"); and

WHEREAS, Westfield and DOW entered into a Memorandum of Understanding Regarding Service Territory dated April 14, 2005, which modified the Service Territory; and

WHEREAS, the Service Territory was last amended by the Third Amendment to the Special Main Extension and Guaranteed Revenue Contract;

IV. Future Cooperation

WHEREAS, Westfield and DOW, in continuation of the cooperative efforts embodied within the Water Agreements and Territory Agreements, desire to cooperate with one another to assure the timely and efficient provision of water service to area residents and to promote the economic growth of central Indiana; and

WHEREAS, the needs of Westfield and DOW have changed substantially since the time the Water Agreements and Territory Agreements were executed, such that a new agreement is warranted; and

WHEREAS, DOW is interested in acquiring additional sources of raw water from Westfield; and

WHEREAS, Westfield is interested in supplying additional sources of raw water to DOW;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and conditions hereinafter described, the Parties agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein by reference.

2. Termination of Water Agreements; Exceptions. The Water Agreements are hereby terminated and of no further effect, except to the extent that the Water Agreements set forth an agreement by the Parties as to the areas to be provided public water supply service. The Parties agree that the map in Exhibit A accurately shows the service territories outlined in the previous Water Agreements.

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3. Existing Service Connections to be Maintained. The service connections through which the Parties exchange water pursuant to the Water Agreements, one of which is near Westfield's Wilfong Treatment Plant (the "Wilfong Connection") and the other of which is near the intersection of Moontown Road and State Road 32 (the "Moontown Connection"), shall be maintained, and finished water shall remain available and metered, for emergency purposes, including fire suppression. For such emergency purposes, the Party taking water shall pay the Party providing water DOW's then-current metered-use rate, as approved by the Indiana Utility Regulatory Commission ("IURC") from time to time.

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4. Term. The term of this Water Purchase Agreement (the "Agreement") shall begin upon full execution by all parties, and shall terminate ten (10) years following the Initial Delivery Date, as hereinafter defined.

5. Raw Water Delivery Point. Westfield, at its expense, shall connect to DOW's raw water main near the intersection of 160th Street and River Road ("Delivery Point") and DOW shall permit Westfield to make the connection in DOW's River Road easement. The connection plans and work shall be subject to the approval of the DOW or its contract operator, Veolia Water Indianapolis, LLC ("Veolia"). The Delivery Point shall consist of a meter pit followed by an isolation valve just before connecting to the DOW raw water main. Westfield shall own and maintain the Delivery Point up to the isolation valve. DOW shall own and maintain the isolation valve and connection point to the DOW raw water main. Westfield shall meter the raw water to DOW and shall provide metered data to the DOW with each monthly bill. Westfield shall allow DOW to install compatible telemetry equipment, at DOW's expense, so that DOW can monitor the raw water flow and pressure from Westfield to DOW from DOW's Central Control System ("CCS"). On an annual basis, Westfield shall have an independent party calibrate the meter to ensure accuracy of data at Westfield's expense. A copy of the independent calibration shall be provided to DOW.

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6. Daily Minimum Guaranteed Output. Westfield shall provide a minimum of five (5.0) million gallons per day ("MGD") of raw water at the Delivery Point beginning May 1, 2008 (the "Initial Delivery Date"), through the end of the Term. At no time shall Westfield provide more than six (6.0) millions gallons per day.

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If Westfield is unable to provide such quantity of water on the Initial Delivery Date, Westfield shall provide as much of the 5.0 MGD as possible and shall provide DOW written notice 30 days prior to Initial Delivery Date of the

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projected decreased amount. DOW shall pay for decreased amount per Paragraph 9.

Both parties agree that annual maintenance and/or cleaning is anticipated on the wells that will serve DOW. Westfield shall coordinate with DOW to perform such maintenance annually during the December to March timeframe for a fifteen day period ("Maintenance Timeframe"). During the Maintenance Timeframe, Westfield shall provide as much of the 5.0 MGD Daily Minimum Guaranteed Output as possible. Should the Maintenance Timeframe result in Westfield providing less than the Daily Minimum Guaranteed Output for the month, then the Minimum Monthly Guaranteed Revenue Payment from the DOW outlined in Paragraph 9 shall be reduced by an equal percentage.

Both parties agree that from time to time emergency situations may disrupt the power supply to the wells providing raw water to the DOW ("Power Outage"). Upon discovery of a Power Outage, Westfield shall have 24 hours to reestablish the 5.0 MGD Daily Minimum Guaranteed Output.

7. Price. Beginning June 1, 2008, the DOW shall pay to Westfield \$0.30 per thousand gallons for raw water delivered to the DOW through the Delivery Point described above in Paragraph 5. Beginning on June 1, 2009 and every year after the Agreement is in effect, the price per thousand gallons shall be adjusted by 3.0%.

8. Manner of Payment. Westfield shall prepare a monthly invoice for raw water purchased pursuant to this agreement for all water delivered to the DOW at the applicable rate per thousand described in Paragraph 7 of this agreement. DOW will be required to provide payment to Westfield within 15 days receipt of the stated invoice.

9. Minimum Monthly Guaranteed Revenue Payment. Each month that the Agreement is in effect, the DOW agrees to pay Westfield a minimum of \$45,625 ("Minimum Monthly Guaranteed Revenue Payment"). Beginning on June 1, 2009 the Minimum Monthly Guaranteed Revenue Payment will be adjusted by 3.0% and every year after the Agreement is in place. At any time raw water delivered to the DOW, on a monthly basis, is less than the required Daily Minimum Guaranteed Output per Paragraph 6 of this Agreement at no fault of the DOW, Westfield shall adjust the monthly bill accordingly.

10. Water Shortages and Diminished Supply. With the exception of the Maintenance Timeframe described in Paragraph 6, Westfield shall, at all times, endeavor to deliver the Daily Minimum Guaranteed Output, irrespective of any diminished supply concerns to Westfield's treated water customers. In the event Westfield's supply of raw water or Westfield's facilities are not sufficient to deliver the Daily Minimum Guaranteed Output, Westfield shall provide written notice of the amount of raw water Westfield can deliver (the "Adjusted Output"), the

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anticipated duration of Westfield's departure from the Daily Minimum Guaranteed Output, and what reasonable steps, if any, Westfield is taking to deliver the Daily Minimum Guaranteed Output. Westfield shall make available for inspection by DOW all documentation supporting the conclusions set forth in such notice. Upon receipt of such notice, DOW may elect in writing to terminate the Agreement or accept delivery of the Adjusted Output. If DOW elects to accept delivery of the Adjusted Output, the Minimum Monthly Guaranteed Revenue Payment shall be reduced by the same percentage that the Adjusted Output is reduced from the Daily Minimum Guaranteed Output.

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11. Water Quality. Westfield shall permit DOW to sample the raw water at the Delivery Point and DOW shall provide Westfield with any and all test results upon request. If during the Term the DOW determines that the raw water is not appropriate or advisable for DOW's purification or distribution process, then DOW shall notify Westfield in writing. The notification shall provide a listing of capital improvements, if any, and the associated costs necessary to make the raw water appropriate or advisable for DOW's purification or distribution process. Westfield shall have 60 days from the date of notice to determine whether to 1) reimburse DOW for the capital investment to be completed per DOW's specifications, or 2) renegotiate the Agreement for a reduced amount of raw water that is acceptable to the DOW, or 3) release the DOW from the Agreement. If the quality of the raw water is such that the DOW cannot accept the raw water from Westfield, or must accept a diminished amount, then the Minimum Monthly Guaranteed Revenue Payment from DOW to Westfield outlined in Paragraph 9 shall be adjusted by the same percent decrease from the Daily Minimum Guaranteed Output.

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12. Notifications. The address for all matters mailed to DOW is:

Consolidated City of Indianapolis, Department of Waterworks
1601 City-County Building
200 East Washington, St.
Indianapolis, Indiana 46204

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The address for all matters to be mailed to Westfield is:

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Town of Westfield, Public Works Department
2706 East 171st St.
Westfield, Indiana
46074-9544

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13. Amendments. The Agreement may be amended by written amendment executed by both parties to the Agreement.

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14. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken,

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and all other provisions of this Agreement which can operate independently of such stricken provision shall continue in full force and effect.

- ~~15.~~ Force Majeure. Except as set forth in Paragraph 10, in the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

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- ~~16.~~ Waiver. DOW's or Westfield's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of DOW's rights or remedies.

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- ~~17.~~ Successors and Assigns. DOW and Westfield each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Westfield shall not assign, sublet or transfer its interest in this Agreement without the written consent of DOW. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of DOW or Westfield.

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- ~~18.~~ Authority to Bind. Notwithstanding anything in this Agreement to the contrary, the signatories for DOW and Westfield represents that they have been duly authorized to execute agreements on behalf of their respective authorities.

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- ~~19.~~ Non-discrimination. Westfield and its agents and subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

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- ~~20.~~ Regulatory Approval. The Indiana Department of Environmental Management's ("IDEM") approval of DOW's plan to serve its Harbour service territory from DOW's White River North facility is a condition precedent to DOW's and Westfield's obligations hereunder.

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CONSOLIDATED CITY OF INDIANAPOLIS,
DEPARTMENT OF WATERWORKS

By: _____
Mike Borchers,
Acting Director of Contracts and Operations

Approved as to legal form:

CITY OF INDIANAPOLIS,
OFFICE OF CORPORATION COUNSEL

By: _____
Jonathan Bryant, General Counsel,
Department of Waterworks

Approved as to adequacy of funds:

CITY OF INDIANAPOLIS,
CONTROLLER

By: _____
Robert Clifford, Controller
Consolidated City of Indianapolis and Marion County

TOWN OF WESTFIELD,
By its Town Council

President

Member

Member

Member

Member

Attest: _____
 , Clerk-Treasurer

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Beginning on June 1, 2008 the Minimum Monthly Guaranteed Revenue Payment shall be \$45,625 per month.

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