

ORDINANCE NO. 7, 2020
AN ORDINANCE AMENDING ORDINANCE NO. 27-2019, ESTABLISHING THE
WASTEWATER SERVICE AREA FOR THE CITY OF VALPARAISO, INDIANA, AND
REGULATING THE FURNISHING OF WASTEWATER SERVICE THEREIN

WHEREAS, the City of Valparaiso, Indiana, ("City"), by and through the Valparaiso City Utilities ("VCU"), owns and operates the City's municipal sewer system; and

WHEREAS, by Ordinance No. 27-2019, the City established the City of Valparaiso Wastewater Service Area to comprise certain areas within ten (10) miles outside the City's boundaries as depicted on the map and description attached to Ordinance No. 27-2019 as Exhibit A; and

WHEREAS, the City filed a petition for approval of Ordinance No. 27-2019 with the Indiana Utility Regulatory Commission ("IURC") in IURC Cause No. 45306; and

WHEREAS, the VCU Board of Directors ("Utility Board") passed Resolution No. 2020-01, which recommends certain amendments to Exhibit A to Ordinance No. 27-2019 to reflect the terms of an agreement ("Settlement Agreement") between the City and the Town of Chesterton, Indiana ("Chesterton"), related to IURC Cause No. 45306.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, that:

Section 1. Ordinance No. 27-2019 is hereby amended to replace the map attached thereto as Exhibit A with the map attached to this Ordinance as Exhibit A.

Section 2. The City of Valparaiso Wastewater Service area is hereby defined as those areas within the corporate boundaries of the City, as well as certain areas within ten (10) miles outside the City's boundaries, excluding any area within the authorized service area of another wastewater utility. A map and description detailing the City of Valparaiso Wastewater Service Area is attached hereto as Exhibit A. The areas included with the City of Valparaiso Wastewater Service Area are highlighted in green (Damon Run CD Service Areas), blue (2017 VCU Master Plan Service Areas), and orange (Other Proposed Service Areas).

Section 3. Sections 2 through 9 of Ordinance No. 27-2019 are not affected by this Amendment and remain in full force and effect.

Section 4. The Settlement Agreement, a copy of which is attached hereto as Exhibit B, is hereby approved and ratified.

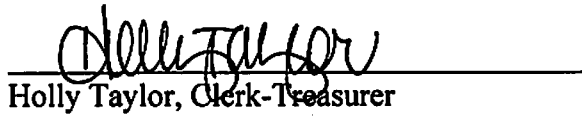
Section 5. If any one or more of the terms, provisions, or sentences of this Ordinance, or portions of the City of Valparaiso Wastewater Service Area, shall be deemed by a court or a tribunal of competent jurisdiction to be contrary to law, then such term or provision shall be deemed severable from the remaining terms and shall in no way affect the validity of the other provisions of this Ordinance.

Section 6. This Ordinance shall be in full force and effect from and after its adoption, approval by the Mayor, and any required regulatory approval.

PASSED by the Common Council of the City of Valparaiso, Indiana, by a 6-0 vote of all 6 members present and voting, this 9 th day of March, 2020.


Presiding Officer

ATTEST:


Holly Taylor, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 9 th day of March, 2020, at the hour of 7:00 P.M.


Holly Taylor, Clerk-Treasurer

This Ordinance approved and signed by me this 9th th day of March, 2020, at the hour of 7:00 P.M.

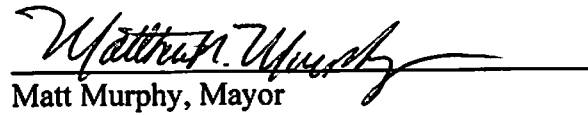

Matt Murphy, Mayor

EXHIBIT A

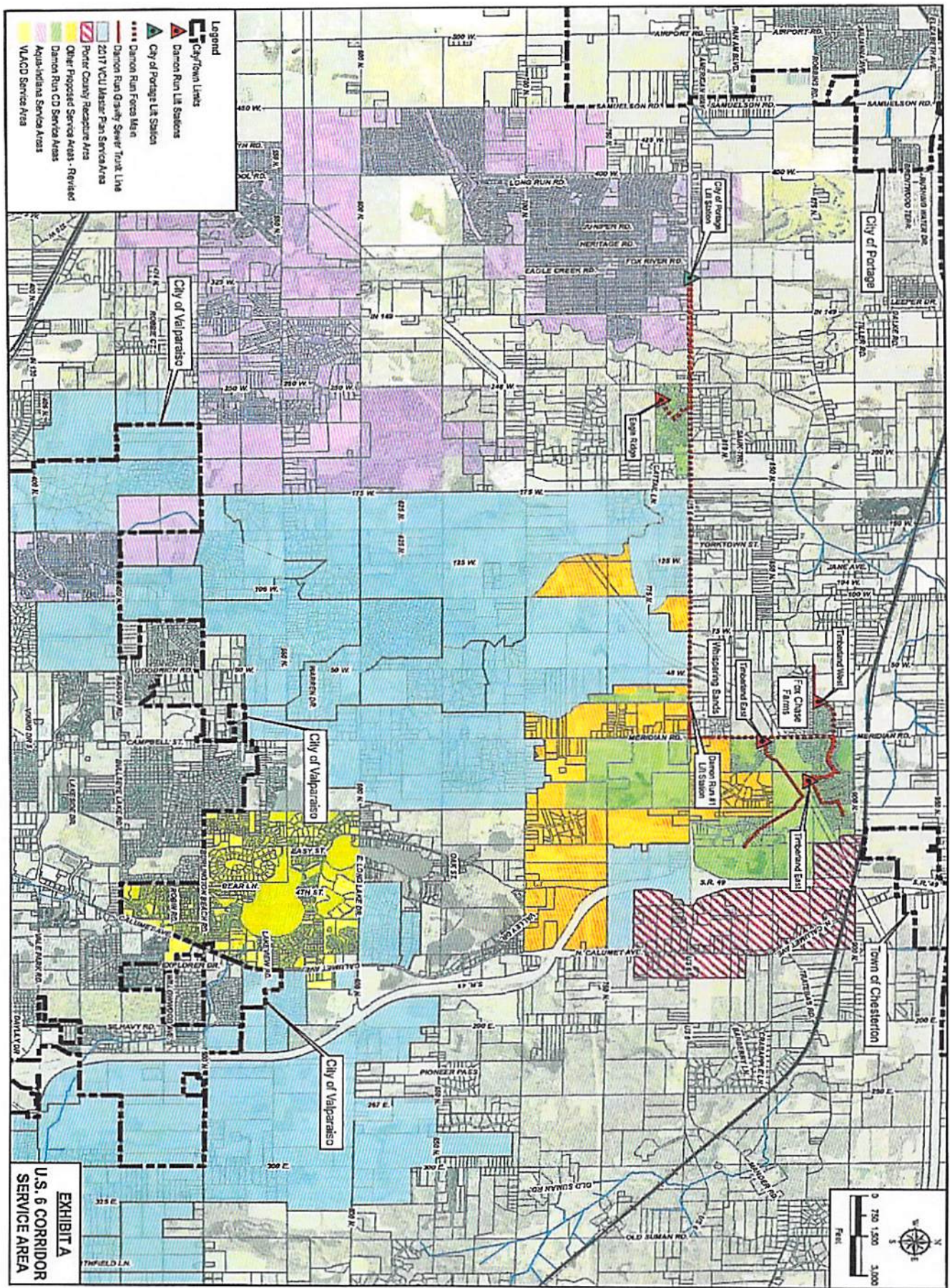


EXHIBIT A
U.S. 6 CORRIDOR
SERVICE AREA

EXHIBIT B

**STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE PETITION OF THE)
CITY OF VALPARAISO, INDIANA, AND)
VALPARAISO CITY UTILITIES FOR)
APPROVAL OF A REGULATORY ORDINANCE) CAUSE NO. 45306
ESTABLISHING A SERVICE TERRITORY FOR)
THE CITY'S MUNICIPAL SEWER SYSTEM)
PURSUANT TO IND. CODE CH. 8-1.5-6)**

JOINT STIPULATION AND SETTLEMENT AGREEMENT

On October 15, 2019, the City of Valparaiso, Indiana, and Valparaiso City Utilities (together, "Petitioner" or "Valparaiso") filed with the Indiana Utility Regulatory Commission (the "Commission") its Petition initiating this Cause. Petitions to intervene filed by the Town of Chesterton, Indiana, acting by and through the Town of Chesterton Utility Service Board (together, "Chesterton"), and Aqua Indiana, Inc. ("Aqua Indiana"), respectively, were granted by a Docket Entry issued on December 4, 2019. Chesterton also filed a Petition for an exclusive sewer service area in Cause No. 45312. The Indiana Office of the Utility Consumer Counselor ("OUCC") and Aqua Indiana are also parties to Cause No. 45312. Chesterton and Valparaiso (collectively, the "Parties", and individually, a "Party") have after arms-length settlement negotiations reached an agreement with respect to all of the issues before the Commission in this Cause. The Parties therefore stipulate and agree for purposes of resolving all of the issues in this Cause, to the terms and conditions set forth in this Joint Stipulation and Settlement Agreement (this "Settlement").

1. Valparaiso Exclusive Sewer Service Territory.

- A. **Modified Regulated Territory.** The Parties stipulate and agree that Valparaiso should be granted an exclusive sewer service territory (the

"Valparaiso Area") over a modified area from that contained in its Petition initiating this Cause as depicted on Exhibit 1 attached hereto and made a part hereof. The Valparaiso Area includes those areas originally requested by Valparaiso that are south of U.S. Highway 6, with the exception of the Porter County Recapture Area. North of U.S. Highway 6, the Valparaiso Area includes all existing Damon Run customers, with the exception of Liberty Intermediate and Elementary Schools, and the marked area located directly south of the Damon Run service area.

- B. Valparaiso Common Council Action. Valparaiso agrees to use its best efforts to have the Common Council of the City of Valparaiso approve modifications to Ordinance 27-2019 consistent with this Settlement, and to submit the amended regulatory ordinance along with this Settlement for approval by the Commission.

2. Chesterton Exclusive Sewer Service Territory in Cause No. 45312.

- A. Modified Exclusive Service Area. The Parties stipulate and agree that Chesterton will submit evidence in Cause No. 45312 covering a modified exclusive sewer service territory as depicted as the "Chesterton Utility Service Area" on Exhibit 2 attached hereto and made a part hereof. The "Chesterton Utility Service Area" includes, but is not limited to, the Porter County Recapture Area and all disputed areas north of U.S. Highway 6 not included in the Valparaiso Area.
- B. No Opposition to Chesterton's Requested Relief in Cause No. 45312. Valparaiso stipulates and agrees that it will not oppose Chesterton's requested relief in Cause No. 45312, as modified by this Settlement.
- C. Action by Town Council of Town of Chesterton. Chesterton agrees to use its best efforts to have the Town Council of the Town of Chesterton approve modifications to Ordinance 2014-11 consistent with this Settlement, and to submit the amended regulatory ordinance for approval in Cause No. 45312.

3. No Sewer Service in Other's Area.

- A. No Sewer Service by Valparaiso in Chesterton Utility Service Area. Valparaiso stipulates and agrees that it will not provide sewer service in the "Chesterton

Utility Service Area" as depicted on Exhibit 2 attached hereto and made a part hereof, whether or not Chesterton is granted an exclusive sewer service territory over such area in Cause No. 45312.

B. No Sewer Service by Chesterton in Valparaiso Area. Chesterton stipulates and agrees that they will not provide sewer service in the Valparaiso Area, whether or not Valparaiso is granted an exclusive sewer service territory over such area in this Cause.

4. Future Wholesale Service to Damon Run System. If requested by Valparaiso, Chesterton agrees to enter into good faith negotiations to provide wholesale sewer service to Valparaiso's Damon Run system on terms mutually agreeable to Valparaiso and Chesterton.
5. Submission of Evidence in Cause No. 45306. The Parties stipulate to the admission into evidence in this Cause of the testimony each previously filed (Valparaiso's case-in-chief and supplemental direct testimony and Chesterton's case-in-chief), and any testimony in support of this Settlement offered by the Parties or any of them. Further, each Party waives cross-examination of the other's witnesses with respect to such testimony. The Parties shall not offer any further testimony or evidence in this proceeding, other than this Settlement and the above-identified testimony and exhibits. If the Commission should request additional evidence to support the Settlement, the Parties shall cooperate to provide such requested additional evidence.
6. Proposed Final Order. The Parties agree to cooperate on the preparation and submission to the Commission of a proposed order that reflects the terms of this Settlement and the settlement testimony submitted pursuant to Section 5 hereof.
7. Sufficiency of Evidence. The Parties stipulate and agree that the evidentiary material identified immediately above constitutes a sufficient evidentiary basis for the issuance of a final order by the Commission adopting the terms of this Settlement, and granting the relief as requested herein by Valparaiso and agreed to by the Parties.
8. Commission Alteration of Agreement. The concurrence of the Parties with the terms of this Settlement is expressly predicated upon the Commission's approval of this Settlement. If the Commission alters this Settlement in any material way, unless

that alteration is unanimously and explicitly consented to by the Parties, this Settlement shall be deemed withdrawn.

9. **Authorization.** The undersigned represent that they are fully authorized to execute this Settlement on behalf of their respective clients or parties, who will be bound thereby.
10. **Non-Precedential Nature of Settlement.** The Parties stipulate and agree that this Settlement shall not be cited as precedent against Chesterton or Valparaiso in any subsequent proceeding or deemed an admission by any party in any other proceeding, except as necessary to enforce the terms of this Settlement or the final order to be issued in this Cause before the Commission or any court of competent jurisdiction on these particular issues and in this particular matter. This Settlement is solely the result of compromise in the settlement process and, as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceeding, and, failing approval by the Commission, shall not be admissible in any subsequent proceeding.
11. **Counterparts.** This Settlement may be executed in one or more counterparts (or upon separate signature pages bound together into one or more counterparts), all of which taken together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Settlement on the dates set forth below.

City of Valparaiso, Indiana

By: Matthew R. Murphy
Matt Murphy
Mayor

Dated: 2/26/2020

Valparaiso City Utilities

By: David Bengs
David Bengs
President of Board

Dated: 2/25/2020

Town of Chesterton, Indiana

By: Sharon Darnell
Sharon Darnell
Town Council President

Dated: 2/27/2020

Town of Chesterton Utility Service Board

By: Lawrence Brandt
Lawrence Brandt
President

Dated: 2/27/20

This ___ Day of February, 2020

Respectfully submitted,

J. Christopher Janak (18499-49)
Jeffery A. Earl (27821-64)
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*Attorneys for Intervenor, Town of
Chesterton, Indiana, by and through the
Town of Chesterton Utility Service Board*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing JOINT STIPULATION AND SETTLEMENT AGREEMENT was served by e-mail or by First Class United States mail, postage prepaid, this ____th day of February, 2020, to the following:

OUCC

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dlevay@oucc.in.gov
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Valparaiso

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An attorney for Intervenor, Town of Chesterton,
Indiana, by and through the Town of Chesterton
Utility Service Board

EXHIBIT 1

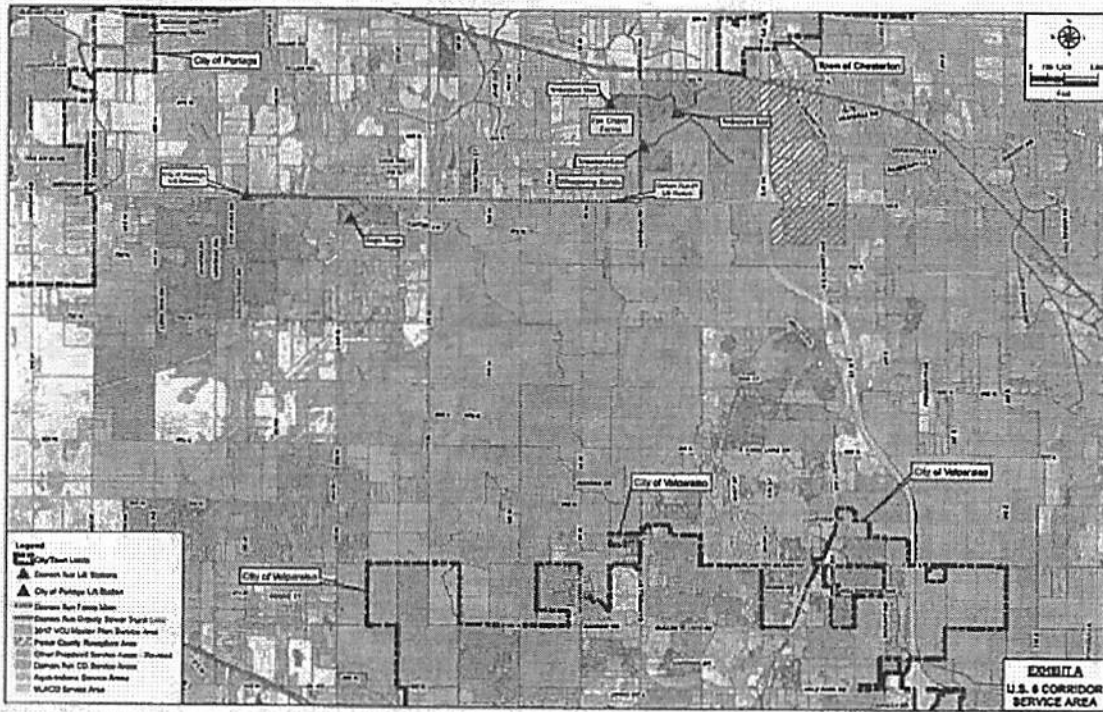


EXHIBIT 2

