

RESOLUTION NO. 42-2015

**RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO,
INDIANA, APPROVING AN AGREEMENT WITH PRATT PAPER (IN), LLC, AND
PRATT INDUSTRIES, INC., AND AUTHORIZING OTHER ACTIONS IN
CONNECTION THEREWITH**

WHEREAS, the City of Valparaiso (the “City”) and Valparaiso City Utilities (“VCU” and, together with the City, the “City Parties”) desire to foster economic development within the City; and

WHEREAS, Pratt Paper (IN), LLC (“Pratt Paper”) has requested that the City issue not to exceed \$10,000,000 of its Taxable Economic Development Revenue Bonds, Series 2015 (Pratt Paper (IN), LLC) (the “Bonds”) and provide the proceeds thereof to Pratt Paper to be applied to the cost of sewage pre-treatment facilities to be used in connection with Pratt Paper’s recycled linerboard and corrugated medium manufacturing facility to be located on land adjacent to 3155 S. State 49, Valparaiso, Indiana and related facilities; and

WHEREAS, the City will pay the Bonds from net revenues from the City’s sewage works; and

WHEREAS, in consideration of the City’s issuance of the Bonds, the City Parties, Pratt Paper and Pratt Industries, Inc. desire to enter into a take-or-pay agreement substantially in the form set forth in Exhibit A hereto (the “Agreement”);

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, RESOLVES THE FOLLOWING:

Section 1. The Council hereby approves the Agreement substantially in the form of Exhibit A hereto.

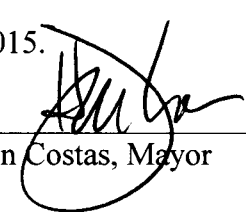
Section 2. The Mayor of the City (the “Mayor”) is hereby authorized and directed to execute the Agreement in the name and on behalf of the City, and the Clerk-Treasurer of the City (the “Clerk-Treasurer”) is hereby authorized and directed to attest such execution of the Agreement, in the form set forth in Exhibit A, with such changes as the Mayor shall approve, such approval to be evidenced by his execution thereof.

Section 3. Council Resolution No. 28-2014, dated July 13, 2014, relating to a proposed guaranty agreement, shall be deemed to be superseded hereby.

Section 4. The Mayor, the Clerk-Treasurer or any other officer of the City is hereby authorized and directed to take any action as such officer deems necessary or desirable to effectuate this Resolution, and any such actions heretofore taken are hereby ratified and approved.

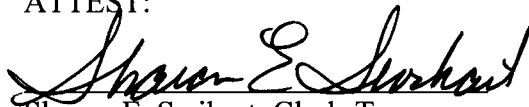
Passed by the Common Council of the City of Valparaiso, Indiana, by a 7-0 vote of all

members present and voting this 14th day of December 2015.



Jonathon Costas, Mayor

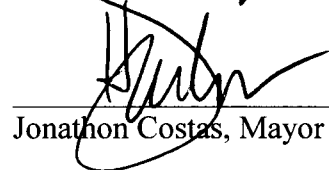
ATTEST:


Sharon E. Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 14th day of Dec., 2015, at 7:50 o'clock p.m.


Sharon E. Swihart, Clerk-Treasurer

This Resolution approved and signed by me this 14th day of Dec., 2015, at 7:50 o'clock p.m.



Jonathon Costas, Mayor

**CONTRACT FOR
SANITARY SEWAGE CAPACITY**

A CONTRACT for sanitary sewage capacity by and among PRATT PAPER (IN), LLC, a limited liability company organized under the laws of the State of Indiana, PRATT INDUSTRIES, INC. a Delaware corporation validly existing and qualified to do business in the State of Indiana, collectively, PRATT, and the VALPARAISO CITY UTILITIES, hereinafter referred to as VCU, a municipally owned utility in the State of Indiana with its principal place of business at 205 Billings, Valparaiso, Indiana (referred to herein as, "Party" or "Parties").

WHEREAS, VCU is authorized to contract for and furnish the service herein below described pursuant to IC 36-9-23 et al. and is authorized to enter into special rate contracts with customers of the sewage works where clearly definable reduction in cost to the sewage works can be determined;

WHEREAS, PRATT is authorized to do business in the State of Indiana acting by and through its duly authorized officers pursuant to resolutions adopted by the respective governing Board of Directors;

WHEREAS, PRATT will operate and maintain an industrial wastewater pretreatment facility, including a one million gallon per day flow equalization tank and all pretreatment infrastructure ("Pretreatment Facility"); and

WHEREAS, PRATT desires to contract for the availability of a certain amount of capacity for the receipt of PRATT'S sewage from the Pretreatment Facility ("Treatment Capacity") and in consideration of VCU providing the Treatment Capacity for receipt of PRATT'S sewage from the Pretreatment Facility, PRATT (jointly and severally) will agree to

pay a monthly fee notwithstanding the amount of sanitary sewer or effluent actually received by VCU from the Pretreatment Facility ("Capacity Fee");

NOW, THEREFORE, PRATT and VCU, for the promises made and considerations agreed upon hereafter, enter into this contract for Treatment Capacity and the payment (jointly and severally) of the Capacity Fee pursuant to the terms and conditions provided, to-wit:

GENERAL TERMS AND CONDITIONS

1. This contract constitutes the formal agreement between the Parties.
2. The contract between the Parties signatory hereto shall be binding upon the Parties, their agents, representatives, assigns and successors in interest.
3. Except as provided in Section 16 below, all agreements between the Parties with respect to Treatment Capacity and the payment of the Capacity Fee are contained within the provisions of this contract and all other agreements are of no effect and are superseded; the Parties may subsequently modify or change the provisions of this contract at some future date, provided that such modifications and changes are set forth in writing and signed by the Parties signatory to the original contract.
4. The effective date of this contract shall be the date of execution of this contract.
5. The contract shall begin on the effective date provided in Section 4, and shall continue for a period equal to the period during which the economic development revenue bonds to be issued by the City of Valparaiso, Indiana, to finance the Pretreatment Facility are outstanding ("Term").
6. Any delay by or failure of PRATT or VCU to assert or pursue its respective contractual rights and remedies on the contract shall not be construed as a waiver to assert or pursue its respective remedies during the time prescribed by law for breach of contract.

7. Notice of claims or demands made upon one party by the other on the contract shall be deemed duly made when addressed to the Parties or their designated agents at their respective places of business as shown below by first class U.S. mail, postage pre-paid. Also, payment of the Capacity Fee shall be made to VCU in the same manner at the place shown, to-wit:

- (a) Valparaiso City Utilities
1251 Joliet Road
Valparaiso, Indiana 46385
- (b) Pratt Paper (IN), LLC
Attn: Steve Ward
1800-C Sarasota Parkway
Conyers, Georgia 30013
- (c) Pratt Industries, Inc.
Attn: Douglas R. Balyeat, Esq., CPA
3535 Piedmont Road
Building 14, Suite 440
Atlanta, Georgia 30305

8. The tap-on and connection of PRATT'S local or lateral sanitary sewer line to VCU'S own interceptor sanitary sewer line at the Sturdy Road lift station located 1888 Sturdy Road, Valparaiso, Indiana, has been completed pursuant to the plans and specifications prepared by FORD – BACON & DAVIS which are incorporated as a part of this contract.

9. The Treatment Capacity shall be an amount of sanitary sewage or effluent produced by PRATT of .6 million gallons ("MG") per day or 18 MG per month for the first year; .5 MG per day or 15 MG per month for the second year; .4 MG per day or 12 MG per month for the third year; and .35 MG per day or 10.5 MG per month for every year thereafter for the remainder of the Term. VCU agrees to provide the Treatment Capacity to meet these minimum monthly requirements.

10. The Capacity Fee shall be in the amounts, payable monthly, set forth on Exhibit A incorporated herein by reference and made a part of this contract.

11. For so long as the Pretreatment Facility is in operation, PRATT shall also pay VCU a monthly usage charge for sanitary sewage disposal service in accordance with the rates set forth in Ordinance No. 28-2013, or any subsequent ordinance amending Ordinance No. 28-2013 ("Monthly Usage Charge"), adopted by the Common Council, the terms of which are incorporated herein and made a part of this contract, or any subsequently adopted rate ordinance of VCU, such amounts to be billed to PRATT pursuant to Section 2 of Ordinance No. 28-2013. PRATT further agrees that, for so long as the Pretreatment Facility is in operation, PRATT shall comply with Chapter 51 (Sewers) and Chapter 52 (Industrial Pretreatment Ordinance) and the VCU-PPM-01 industrial discharge permit effective date November 15, 2014.

12. PRATT acknowledges that VCU may alter its Monthly Usage Charge from time to time based upon the experience of increased costs of operation and maintenance to treat PRATT'S waste and agrees to pay those rates and charges as set by VCU from time to time. VCU agrees to give PRATT a twenty (20) day written notice prior to any public hearing for the purpose of rate modification pertaining to any change in the sewage rate structure of the VCU. PRATT shall be entitled to the same rights and remedies that other customers of VCU have under IC 36-9-23. Nothing in this section shall be construed as a waiver of PRATT'S rights of law, or otherwise, to question or challenge the rates imposed.

13. PRATT represents that the execution and delivery of this contract and the agreements herein contained does not contravene or constitute a default under any provision of any agreement, indenture or other commitment to which PRATT is a party and that this contract constitutes a valid legal and binding obligation of PRATT enforceable in accordance with its

terms and that PRATT unconditionally guarantees to VCU full and prompt payment of the Capacity Fee due under the terms of this contract as the same shall become due as long as VCU continues to own and operate a municipal sewage works utility and notwithstanding the amount of sanitary sewer or effluent actually sent to VCU from the Pretreatment Facility.

14. VCU represents that the execution and delivery of this contract and the agreements herein contained does not contravene or constitute a default under any provision of any agreement, indenture or other commitment to which VCU is a party and that this contract constitutes a valid legal and binding obligation of VCU enforceable in accordance with its terms.

15. In enforcing or attempting to enforce this contract following any default on the part of either Party hereunder, the defaulting Party agrees to pay all costs, expenses, and fees, including all reasonable attorney fees, which may be incurred by the successful Party, whether the same shall be enforced by suit or otherwise. No set-off, counterclaim, reduction or diminution of any obligations, or any defense of any kind or nature which the defaulting Party has or may have against the successful Party shall be available hereunder to the defaulting Party, however, subject to the rights granted under this contract.

16. PRATT shall be required to pay the monthly Capacity Fee notwithstanding the amount of sanitary sewer or effluent actually received by VCU from the Pretreatment Facility and notwithstanding the discontinuation of operation of the Pretreatment Facility by PRATT or its successors or assigns. In the event of the failure of PRATT to pay the monthly Capacity Fee when due and payable, VCU shall be entitled to immediately recover as liquidated damages and not as a penalty from PRATT, a sum of money equal to all past due amounts owed under this contract and all other sums due for the remainder of the Term, including reasonable attorney fees incurred by VCU as a result of PRATT's breach and all costs of collection incurred by VCU.

17. This contract shall not be deemed to supersede or amend the rights or obligations of the Parties, under the Memorandum of Understanding-Pratt Paper (IN), LLC, to the extent those rights or obligations have been created under Indiana law, ("MOU"), between the City of Valparaiso, Indiana, and Pratt Paper (IN), LLC, dated September 17, 2013, except for the obligations of Pratt Paper (IN), LLC under Section 6.c.ix of the MOU.

18. The terms of this contract may be enforced as to any one or more breaches either separately or cumulatively.

19. The invalidity or enforceability of any one or more phrases, sentences, clauses or sections of this contract contained, shall not affect the validity or enforceability of the remaining portions of this contract or any part thereof. This contract shall be construed in accordance with and governed by the laws of the State of Indiana.

IN WITNESS WHEREOF, the Parties have executed this contract by setting their hands
hereto on the dates hereinafter subscribed by:

VALPARAISO CITY UTILITIES

PRATT (IN), LLC

This 17th day of December, 2015

This 17th day of December, 2015

David Bengs, President

Gary Byrd, Vice-President

PRATT INDUSTRIES, INC.

This 17th day of December, 2015

Gary Byrd, Vice-President

THIS CONTRACT PREPARED BY: Lisa A. Lee, ICE MILLER LLP, One American Square,
Suite 2900, Indianapolis, IN 46282-0200.

EXHIBIT A

The Capacity Fee shall begin on January __, 2016 and shall be billed monthly in a manner consistent with Valparaiso City Code Section 51.30. For the first 60 months the Capacity Fee shall be \$[113,334].

Beginning with the 61st month, the Capacity Fee shall be \$[105,000], which amount of Capacity Fee shall continue through the end of the Term.