

## Dillsboro Town Council

September 23, 2024

The regular meeting of the Dillsboro Town Council was called to order at 6:00 p.m. by President, Doug Baker, who led the Pledge of Allegiance.

Council present: Doug Baker, Becky Fryman, Tim Benning and Charlie Caldwell. Council absent: Jerri Jackson. Attorney present: John Watson

Council Member (CM) Benning made a motion to approve the minutes from the September 9, 2024, regular meeting. CM Fryman seconded the motion. All were in favor, and the motion carried.

### Clerk-Treasurer – Rita Stevens

August financial reports were distributed to the council.

- Water Operating Balance: \$85,962.14
- Sewer Operating Balance: \$174,187.02

2025 Budget Adoption Meeting: Scheduled for October 14 at the regular council meeting.

Upcoming Events: Clerk-Treasurer Stevens will attend the AIM Summit in Fort Wayne from October 7–10.

### Police – Josh Cady, Chief

Cady will be on vacation in October.

### Utility Department – Matt Bauer, Superintendent

The utility team has nearly completed right-of-way clearing. The hillside near the school will be brush cut one more time before winter.

A new water service was installed on Highridge Road on September 20, with another planned for Spangler Road this fall.

A small water leak was identified at the park's baseball side. Bauer requested and received approval to shut down the baseball bathrooms for winter repairs. The soccer bathrooms will remain open.

A minor leak on Route 62 was repaired, with the water service interrupted for only 20 minutes.

Leaf pickup will be scheduled soon, but residents are encouraged to bag their leaves in the meantime.

The autosamplers for the sewer plant have been ordered.

Eric Graver completed sludge bagging and did an excellent job. Six bags were sent to Best Way Disposal for 2024, with a cost of \$2,000–\$2,500 per bag.

Curry & Associates assisted in submitting the Lead Service Line Inventory (LSLI) on September 20. Fees were covered by a grant, with no cost to the town. The 2023 meter change-out program

provided the majority of the necessary data. The town has no lead service lines, so no further action is required.

Bauer and Graver attended training on September 17 to earn the required Continuing Education Units (CEUs) for wastewater licenses.

Bauer will be on vacation from October 25 to November 3.

Bauer requested clarification on unused vacation time. CM Baker made a motion to allow employees to either roll over or receive pay for up to five unused vacation days. CM Fryman seconded the motion. All were in favor, except CM Benning, who opposed. Motion carried.

#### Beautification – Charlie Caldwell

The committee is preparing for fall, and pumpkins have been placed near flowerpots as decorative elements.

#### Parks – Derek Walker

The Soccer Club has received a grant for a drinking fountain at the soccer shelter. The town's utility workers will handle the installation.

#### Main Street – Kami Hamilton

Upcoming events: Main Street Promotion Meeting: September 25, Troublemakers Food Truck: September 27, Stellar Pathways Open House: October 3 at Greendale Middle School

Heritage Days Arts & Crafts on the Lawn was a success with good attendance.

#### Town Manager – Derek Walker

New signs recognizing Grace Quinlan and Katie Robinson have arrived. The council was satisfied with the signs, and a photo will be arranged during the holidays when the honorees return home.

Sewer CCTV Project: The 2020 Preliminary Engineering Report identified 8,315 linear feet of sanitary sewer for inspection. The cost is estimated at \$3.50/linear foot, totaling roughly \$30,000. CM Benning made a motion to approve the project, with funding from the sewer account. CM Fryman seconded. All in favor. Motion carried.

#### Old Business – Derek Walker

Stellar Pathways: An Open House is scheduled for October 3 at 6:00 p.m. at Greendale Middle School to review the draft plan. OCRA will be visiting Dillsboro on October 3 to discuss the North Street stage project and other streetscaping ideas.

Burn Ordinance: No update was provided. The ordinance may be approved as-is or amended.

Right-of-Way Ordinance: The ordinance was revised to simplify fees and limit pedestrian detour requirements when sidewalks are closed.

Facade Improvement Matching Grant (FIMG): The council still needs to appoint a representative. CM Baker noted that Main Street received a \$1,700 grant last year, which it has not yet been used. The appointment decision was tabled for the next meeting.

Main Street Sewer Issue: Discussions between the two parties involved are ongoing. TM Walker will consult with Attorney Watson for a potential resolution.

Dearborn County Regional Sewer District (DCRSD): The council reviewed a draft agreement with highlighted areas for revision. CM Benning made a motion to approve the agreement, with CM Baker authorized to sign. CM Fryman seconded. All in favor. Motion carried. (Attached)

New Business – TM Derek Walker

Dearborn County Community Foundation Endowment Matching Program: CM Benning proposed a \$5,000 allocation for the Dillsboro Quality of Life Fund and \$5,000 for the Clayton Family Dillsboro Park Maintenance Fund. After discussion, CM Fryman proposed a \$7,000/\$3,000 split. CM Caldwell seconded. All in favor. Motion carried.

US Bank Property Purchase: The council discussed the potential purchase of the property at 12899 Bank Street for \$349,000. Appraisals are required before proceeding. TM Walker was directed to gather more information.

Osgood Water/Wastewater Department Request: The Superintendent requested to borrow the town's ring-o-matic trailer to identify water service lines. The council agreed, with the stipulation that the trailer be returned daily.

Public Comment

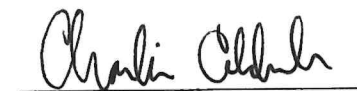

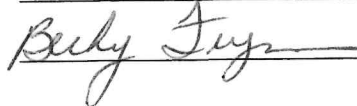
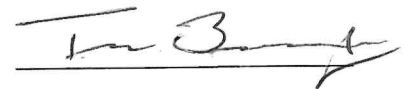

Teresa Elder: Elder inquired about potential damage to sidewalks during the Dillsboro Homecoming Fair. It was confirmed that the ride company's insurance would cover any damage.

CM Benning: Asked for updates on the 911 agreement. Attorney Watson stated that representation for towns and cities has been provided on the 911 board.

With no further business, CM Fryman made a motion to adjourn at 7:54 p.m. CM Benning seconded the motion. All in favor. Motion carried.



Rita Stevens, Clerk-Treasurer

THIS AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ by and between the Town of Dillsboro, Dearborn County, Indiana, and the Dearborn County Regional Sewer District, (DCRSD)

WHEREAS, the Town is a municipality organized and established under the laws of the State of Indiana and provides sewer collection and treatment services in and around its corporate limits;

WHEREAS, the DCRSD is a regional sewer district established pursuant to I.C. 13-26-3-2 to provide sewage disposal service in certain unincorporated areas of Dearborn County, Indiana; and

WHEREAS, the DCRSD has identified an area (Service Area), hereinafter specifically defined, near the Town's corporate boundaries which is in need of Wastewater collection and treatment as residents in the Service Area depend on septic systems, many of which are failing and causing a public health hazard;

WHEREAS, DCRSD does not have a suitable treatment facility for treatment of waste collected in this area; and

WHEREAS, the Town of Dillsboro has an existing wastewater treatment plant and that said facility has sufficient treatment capacity for treatment of wastewater collected from the Service Area and from the Town of Dillsboro; and,

WHEREAS, the Town of Dillsboro's existing wastewater treatment plant is located in a suitable location and is accessible to receive wastewater from the Service Area; and,

WHEREAS, the Town and the DCRSD have reached an agreement whereby all properties in the Service area shall be eligible for connection to a transmission line to be owned and operated by the DCRSD and interconnected for connection with the Dillsboro System.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

**ARTICLE I. RECITALS**

1.01 Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

**ARTICLE II. MUTUAL ASSISTANCE**

2.02 Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of Dillsboro, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**ARTICLE III: DEFINITIONS**

3.01 **Definitions.** For purposes of this Agreement, the following words shall have the following meanings unless the context clearly requires otherwise:

A. "Abnormal Occurrence" means an event at a sewer plant, sewer pump station facility, or sewer collection transmission system that has the potential to cause a violation of a utility permit and is reportable to regulatory agencies that oversee the utility operations. Abnormal occurrences include, but are not limited to, sewage spills, overflow, equipment failures, line breaks, and abnormal lab results.

B. "Agreement" shall mean this document and all modifications, alterations amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as "hereto", "hereby", "herein", "hereof", "hereunder" or other descriptive words or phrases having similar import.

C. "Annexation Territory" shall mean the territory that the Town of Dillsboro has been contemplating annexation with the property owners and being the area identified by parcel number in Exhibit \_\_\_\_ and by means of a map of the annexed territory, as attached hereto and incorporated herein in Exhibit \_\_\_\_.

D. "Attributed Flow" shall mean the sewage flow attributed to DCRSD as determined by the readings of the metering devices installed pursuant to this Agreement.

E. "Allocated Daily Capacity" shall mean the amount of sewer treatment capacity in the Dillsboro sewage system that Dillsboro agrees to set aside for DCRSD as established in Section 4.01 of this agreement.

F. "Capacity" shall mean the ability of Dillsboro to receive and effectively transmit Domestic Wastewater as defined in Section 4.01 of this agreement.

G. "Capacity Default" shall mean a discharge of Wastewater into the Dillsboro system by the DCRSD that exceeds 100% of the Allocated Daily Capacity, Instantaneous Flow, or pollutant characteristics and set forth in Section 4.01 of this agreement

H. "Connection Point" the point where DCRSD's system is physically connected to Dillsboro's system and where ownership and maintenance responsibility transfers. A map depicting the approximate location of the connection point is attached hereto as Exhibit \_\_\_\_.

I. "Dillsboro System" shall mean the Wastewater collection, transportation system, and treatment plant facilities, presently existing or hereafter to be acquired, constructed, owned and operated by Dillsboro together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof.

J. "Domestic Wastewater" shall mean typical water-borne wastes from a residential user such as wastes from kitchens, water closets, lavatories, and laundry facilities and have a

**Commented [JW1]:** I think this one should stay for now but if agreed by all the service area could be changed to the proposed language I provided or any other combination that satisfies all.

Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) less than 250 mg/l and balanced pH between 6.0 and 9.0.

K. "Dwelling Unit" shall mean any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarter by one family or other group of persons living together or by a person living alone.

L. "EDU" means Equivalent Dwelling Units equating to 310 gallons of Domestic Wastewater per day on an average daily flow basis per standard established by the Indiana Department of Environmental Management. (IDEM) For purposes of this Agreement, each detached single family residential 5/8" or 3/4" water meter or equivalent connection will be considered one EDU. Entities other than detached single family residences may be calculated at a higher or lower EDU per IDEM standards.

M. "Excessive Flow" shall mean sewer flows that exceed the Allocated Daily Capacity or the Instantaneous Flow Rate Capacity established in this agreement or in amendments hereto.

N. "Extra Strength Wastes" shall mean all sewage which exceeds the pollutants, loadings, or waste characteristic limits as set forth in this agreement and the Town of Dillsboro Sewer Use Ordinance as it exists now and as amended in the future.

O. "GPD" shall mean Gallons of Wastewater Per Day, as discharged during a 24-hour period measured from midnight to midnight.

P. "Industrial User" shall mean any facility or entity that discharges industrial wastewater that is required to apply for an Industrial Wastewater Pretreatment (IWP) permit and comply with the regulations set forth by the Indiana Department of Environmental Management (IDEM).

Q. "Instantaneous Flow Rate" shall mean the instantaneous sewage flow at any given time as determined by the readings of the metering devices installed pursuant to this Agreement

R. "Service Area:" shall mean the area that DCRSD intends to service waste water services to and identified by parcel number in Exhibit A, attached hereto and incorporated herein and as further described in "Exhibit B," a map of the service area, as attached hereto and incorporated herein.

**Commented [JW2]:** This may be addressed with the alternative language I provided or something like it.

T. "Treatment Plant" shall mean the existing Wastewater treatment and disposal facilities, the outfall sewer and all other facilities related to treatment and disposal of Wastewater, together with any additions, improvements, enlargements and/or modifications thereto and/or replacements thereof, heretofore or hereafter acquired or constructed by Dillsboro, and that Dillsboro deems appropriate and necessary to provide treatment and disposal of Wastewater under applicable laws of the State of Indiana.

**ARTICLE IV: PROVISIONS OF COLLECTION**

4.01 Raw Wastewater Characteristics and Quantity - The DCRSD shall deliver raw domestic wastewater exclusively from the service area to a mutually agreed Connection Point with the Dillsboro system. Dillsboro shall not be required to accept wastewater from any area other than the "Service Area."

Wastewater discharge into the Dillsboro System shall be limited as follows:

A. Allocated Daily Capacity: Wastewater shall not exceed a total volume of **12,400** gallons per 24-hour period, **exclusive of additional capacity for SEI DATA, CHURCH and GAS STATION as hereinafter described**. This number represents the estimated total volume of flow to be received from the service area defined by parcel number in Exhibit \_\_\_\_, attached hereto, and incorporated herein and by service area map, attached hereto as Exhibit \_\_\_\_, representing an estimated **40** EDU of flow. Any proposed expansion of this service area shall require re-negotiation of this agreement.

B. Instantaneous Flow Capacity: Wastewater shall not be discharged at an instantaneous rate of flow exceeding **50** gallons per minute for a period of time exceeding 5.5 hours per day. After default, each day when Instantaneous Rate of Flow is exceeded shall constitute a separate offense for purpose of assessing surcharges.

C. Extra Strength Waste: No extra strength waste as defined in Article 3 of this agreement shall be discharged into the Dillsboro system.

4.02 Emergency. Dillsboro shall notify DCRSD as soon as practicable of an emergency event that will cause disruption of service. Dillsboro shall provide as much advance warning as is reasonable under the circumstances. In such an event, emergency notice shall be given to each party as follows:

TO: DCRSD

\_\_\_\_\_

TO DILLSBORO

Dillsboro Town Manager

**Commented [JW3]**: Again, this may change to the alternative language which I send in a separate document or similar language agreed by all

**Commented [JW4]**: DCRSD Proposes the following here: DCRSD will provide parcel numbers of connected customers for administrative purposes associated with Article VIII paragraph 8.05. DCRSD shall connect customers without Dillsboro pre-approval per the terms and conditions of this agreement.

**Commented [JW5R4]**: I suppose this is meant as a response, in part, to the map, though I don't see how it helps that issue. On the other hand, I would think we would be fine with connectors identified by parcel number and I would think that we probably would not be seeking pre-approval. I don't think the contract as written requires pre approval.

**Commented [JW6]**: DCRSD proposes: Surcharge for exceeding 50 gallons per minute for a time period exceeding 5.5 hours per day will not be cumulative to any other surcharge or penalty.

**Commented [JW7R6]**: I defer to Derek, our operators and Lori on this but my reaction is "no." I would think the opposite would be true.

Dillsboro Council President.

The parties agree that each shall provide the other with emergency telephone and email contact information for the officers designated above when the line goes into service and shall exchange updated emergency contact information annually or when emergency contacts change.

4.03 Discharge and Permitted Flows. DCRSD shall cooperate with Dillsboro to coordinate flows to the Connection Point to mitigate the potential for any Abnormal Occurrence within the Dillsboro System. The parties agree that this Agreement only provides sewage treatment service for Domestic Wastewater transmission. DCRSD agrees that no Industrial Users, as defined herein, with the exception of those industrial users listed below, shall be connected in the Service Area, unless otherwise agreed herein. The following potential users shall be permitted to connect to the system, subject to the all the terms and requirements of this agreement:

SEI DATA

GAS STATION

CHURCH

The parties agree that although these users are permitted to connect and discharge into the system, sewage treatment services shall be limited to that required **at the initial determination of EDU necessary pursuant to IDEM standards to account for capacity produced by these entities.** Should any of the entities set forth above seek to provide wastewater flows **in excess of the initial EDU determination** or which differ significantly from the type or character of flows contemplated at the time of execution of this contract, Dillsboro shall have the right to renegotiate the terms of this contract as to these entities or their successors in interest.

DCRSD shall seek approval from Dillsboro pursuant to the building sewer permit provisions of §52.04 of the Town of Dillsboro Sewer Use Ordinance before permitting any connection other than a domestic wastewater connection. Dillsboro will determine whether the user can be permitted to discharge and if / what pretreatment is necessary.

4.04 Wastewater Testing. The Town of Dillsboro shall test DCRSD's raw wastewater characteristics periodically to confirm raw wastewater complies with the limits established herein and to the characteristics set forth in the Dillsboro Sewer Use Ordinance. If the Town of Dillsboro's monitoring indicates the raw wastewater strength exceeds the limits established in this Agreement and may constitute and Extra Strength Waste Default, **Dillsboro shall promptly notice a default as set forth in Section \_\_\_ below. DCRSD shall be permitted a sample to perform its own testing. In addition, DCRSD may request that raw wastewater be tested by an independent third party to confirm the results of the Town's raw wastewater testing.** ~~DCRSD shall be responsible for the costs of third-party testing and for adjustments, repairs or changes necessary to bring the raw wastewater into compliance with the limits established herein.~~

Commented [JW8]: How about this?

4.05 Extra Strength Waste Default. Should raw wastewater characteristics exceed limits set forth herein each such failure shall be subject to daily surcharges established under Article VIII herein. In such circumstances, each failed test shall be subject to a separate surcharge. Moreover,



should any such failed test expose the Town to fines, costs, fees or penalties imposed by law or regulation, DCRSD shall indemnify and hold Dillsboro harmless for the same.

**ARTICLE V: POINT OF CONNECTION, DISCHARGE AND METERING**

5.01. Connection and Rate of Flow: Wastewater will be sent to the connection point. The discharge rate of wastewater flow into the connection point shall not exceed the capacity limits established in Section 4.01 of this agreement

5.02 Discharge: In addition, the wastewater discharged into the Dillsboro WWTP shall not result in an increase in wastewater odor. If wastewater from the DCRSD sanitary sewer force main is septic or results in an increase in odor, the DCRSD shall be required to install odor control provisions in their collection system. The cost for installation and maintenance of all odor control provisions shall be the responsibility of the DCRSD.

5.03 Easements, Location of Utilities:

A. All easements necessary for construction of the DCRSD'S sanitary sewer main to the Town of Dillsboro Wastewater Treatment Plant shall be the responsibility of the DCRSD. DCRSD shall be responsible for site restoration and property damages to return the property to like or better condition.

B. Certain utilities related to the project will be located on Dillsboro property at or near the treatment plant. Existing records do not indicate where all utilities might be in the area. Dillsboro cannot dedicate the time to locating and be certain of the location of all utilities without resorting to the services of a private locator. DCRSD will bear the cost of any such location services.

5.04 Metering Equipment: The DCRSD shall provide to Dillsboro a magnetic wastewater flow meter and auto sampler, hereinafter "equipment," for properly measuring and recording the volume of wastewater delivered for treatment to the Town of Dillsboro wastewater treatment plant. The DCRSD shall be responsible for the cost and installation of the equipment, piping, valves and appurtenances necessary for installing the equipment and other required devices, and for the cost of connection of the DCRSD'S main to Dillsboro system. The DCRSD shall also provide and install a flow recorder in the Town of Dillsboro's WWTP lab building. The flow recorder shall record 24-hour flow data and total daily and monthly flow.

The equipment and flow recorder shall be subject to approval of Dillsboro and be of comparable quality and compatible with Dillsboro's existing metering equipment. Upon satisfactory installation, and third-party certification of installation, Dillsboro shall accept the metering equipment and shall take responsibility for maintenance and upkeep of the metering equipment. DCRSD shall provide the manufacturer's warranty for the equipment and flow recorder to Dillsboro.

5.05 Meter Access: The Town of Dillsboro and DCRSD agree to maintain secure access to the magnetic flow meter by means of a locked access entry. The meter vault shall be located at the connection point. The WWTP has a peripheral security fence and the driveway access gate are locked when the wastewater treatment facility is not staffed. The flow recorder shall be maintained

inside the WWTP lab building, which shall be locked when not staffed. The Town of Dillsboro shall provide DCRSD access to the flow meter and recorder during normal business hours and by special appointment.

5.06 Calibration: The Parties agree that the magnetic wastewater flow meter shall be calibrated annually by Dillsboro and results thereof shall be provided to DCRSD within ten (10) days of the date of calibration. A meter registering not more or less than 2% above or below the 100% shall be deemed to be accurate and binding upon the parties. If the metering equipment shall be found to have a greater percentage of error, correction shall be made to restore meter accuracy to plus or minus 2% of 100%. If the magnetic meter fails to register for any monthly billing period, the *average* amount of wastewater volume treated during the corresponding six month period the previous year shall be deemed to be the amount of wastewater treated in the monthly billing period wherein the meter fails to register, reasonably adjusted for abnormal events.

#### ARTICLE VI: RATES AND CHARGES

6.01

A. Rate. In consideration for the sewage treatment services provided by Dillsboro, DCRSD shall pay to Dillsboro the current applicable service rate as set forth in the Schedule of Rates and Charges in the Dillsboro Sewer Rate Ordinance, as amended from time-to-time. Although the **preliminary range of rates will be subject to modification as set forth below, and the rate finally established pursuant to the provisions of Sections 601(B) below** is subject to modification by Dillsboro from time to time, the rate may only be increased in an amount or amounts supported by actual cost data as established through a rate consulting report and in compliance with the law. Rates shall be non-discriminatory, reasonable and just and shall be established pursuant to the terms of I.C. 8-1.5-3-8 and I.C. 8-1.5-3-8.1, and other applicable law.

B. Methodology to determine Preliminary and Final Rate. The parties acknowledge that as of the original execution of this agreement the Sewer Rate Ordinance does not reflect a wholesale rate as is required by the terms of this agreement. **The parties acknowledge that Dillsboro is actively working toward establishing new rates and charges across its system which will include a standard treatment rate for all of Dillsboro's customers, including DCRSD.**

To this end, Dillsboro commissioned a rate study which is still in progress but is expected to be completed within thirty (30) days of execution of this agreement. The parties acknowledge that the initial rate range set forth in subsection 6.01(C) below was established based upon a report entitled "Study on Wastewater Rates and Charges dated June 19, 2024, as amended on September 16, 2024" prepared by LWG, which is a preliminary report on the ongoing rate study referenced above. A copy of this study is on file with the Town of Dillsboro, has been provided to DCRSD, and is attached hereto as Exhibit \_\_\_\_.

The parties agree that the initial rate range set forth in Section 6.01(C) below will be amended to the final Dillsboro sewage treatment rate after the final rate study is completed. The parties anticipate that this new rate will be established before the end of 2024, or in the first month of 2025. Dillsboro will implement the new rate by ordinance and that new rate

**Commented [JW9]:** DCRSD proposes additional language saying the "basis of the agreement is for a fee structure directly associated with WWTP operating and maintenance costs. The fee structure shall not include any costs for the Dillsboro collection system.

**Commented [JW10R9]:** I think this language does accurately state what our intentions are. However, I am concerned it is too broad and would point out that we already say essentially that in the last sentence of 401(B) which I have highlighted for clarity. How would DCRSD's proposed language in this case effect Robert Reynold's work if applied to it now? This may be fine but I want to be sure.

will be the initial rate for services under the terms of this agreement. The parties anticipate that the new treatment rate referenced herein will fall within the range set forth in Section 6.01(C) below, though this is not guaranteed. The parties intend that future rate modifications shall be determined based on similar methodology to that used in the preliminary LWG study attached hereto as Exhibit \_\_\_\_ and in the final Dillsboro Rate Study and amended rate as finally established.

C. Initial Rate. The preliminary rate range for sewer treatment services provided by Dillsboro under the terms of this agreement shall be set between \$10.81 and \$11.33 for each thousand gallons of sewage treated by Dillsboro, as set forth in the study on Wastewater Rates and Charges Dated June 19, 2024, as amended on September 16, 2024, prepared by LWG an attached hereto as Exhibit \_\_\_\_

6.02 Invoice and Payment. Dillsboro will invoice DCRSD, on a monthly basis, for sewage treatment based upon the sewer flow meter readings taken at the Connection Point. DCRSD shall make payment within thirty (30) calendar days after receipt of an invoice from Dillsboro, regardless of DCRSD's ability to collect from its individual DCRSDs within the Service Area.

6.03 Capacity Charge

A. DCRSD shall pay to the Town of Dillsboro a fixed fee for capacity in the wastewater treatment plant. The Town of Dillsboro's existing wastewater treatment plant has a total capacity of 500,000 GPD. The parties agree that the capacity agreed to in section 4.01(A) shall be reserved for DCRSD, **together with certain additional capacity described below.** The parties agree that each EDU of flow, or 310 GPD, shall be valued at \$2,434.90 per EDU / \$7.86 per GPD. The parties agree that DCRSD shall pay to Dillsboro a fixed fee for capacity calculated at a total cost of \$97,396.00, (\$2,434.90 multiplied by 40 EDU or 12,400 total volume GPD) **exclusive of additional capacity outlined in Section 6.03(B)(3).** For the first five years of this agreement, measured from the date of first connection to the DCRSD collection system, DCRSD may pay the capacity fee in increments as described in Section 6.03(B) below but at no point shall DCRSD send flows in excess of the capacity purchased.

B. DCRSD shall be responsible for providing to Dillsboro each month, commencing within thirty (30) days of the first connection, the number of connections made to the DCRSD system for the preceding thirty-day period. Dillsboro will invoice DCRSD for the capacity fee **associated with each connection** on a quarterly basis, at the rate of \$2,434.90 per connection as set forth above. Payment shall be made within thirty (30) days of the issuance of the invoice.

1. EDU for SEI DATA, GAS STATION and CHURCH, **industrial users as defined by this agreement**, shall be calculated based on the number of EDU required per IDEM standards to service these individual entities, but in no event shall any of these entities be calculated at less than one EDU. **The calculations necessary to establish the number of EDUs associated with each of these entities shall be based on the average of water usage for each entity for the previous one hundred eighty (180) days as calculated by the Dillsboro Town Engineer from the date the entity requests connection to the system. The calculations and assumptions necessary to**

**Commented [JW11]:** DCRSD proposes additional language providing: **Monthly report is applicable for the 1<sup>st</sup> 40 connections**

**Commented [JW12R11]:** I'm not sure I agree with this. I realize they would have paid in full. However, if they are still connecting as we approach the 12,400 GPD ceiling, would it be beneficial to have notice on those connections to better monitor the situation?

establish the number of EDU required to serve each of these entities, or a written explanation of same, shall be provided to DCRSD together with the invoice for the capacity fee.

2. The number of EDU calculated to address SEI DATA, GAS STATION and CHURCH shall be provided in addition to the capacity limits set forth in Section 4.01 of this agreement.

3. The capacity fee associated with SEI DATA, Church and Gas Station shall be established at \$2,434.90 per EDU and shall be paid in addition to the capacity fees collected pursuant to Section 6.03(A).

C. On the Six (6) year anniversary of the date of first connection to the DCRSD system, DCRSD shall either:

1. Pay to Dillsboro the remainder necessary, if any, to remit the full capacity fee payment of \$97,396.00, and pay the capacity fees established for SEI DATA, CHURCH and GAS STATION pursuant to Section 6.03(B)(3), if any; or

2. Negotiate a reduced capacity allowance. DCRSD shall elect its intention regarding payment or negotiation no later than six (6) months before the final payment would be otherwise due.

D. Although DCRSD is required to pay \$2,434.90 per connection totaling \$97,396.00 capacity fee for the Lake Dilldear community, and the capacity fee associated with SEI DATA, CHURCH and GAS STATION as set forth above, once the full capacity fee required by this agreement has been paid, the parties shall consider the total volume of allocated capacity of DCRSD customers in determining whether additional capacity fees shall be charged beyond the EDU capacity established in section 4.01 as follows:

Once the full capacity payment of \$97,396.00 has been paid, exclusive of capacity assigned to SEI DATA, CHURCH AND GAS STATION, the parties shall determine the total volume of usage in gallons per day over the preceding twelve (12) months by DCRSD customers. If DCRSD is below the limit of 12,400 gallons per day as set forth in Article IV, Section 401(A) of this agreement, DCRSD may make additional connections to the system up to, but not beyond, that limit. If DCRSD exceeds the 12,400 GPD limit in Section 401(A), exclusive of capacity assigned to SEI DATA, CHURCH AND GAS STATION, then DCRSD will be in default and subject to all penalties and/or remedies provided under the terms of this agreement and by law.

6.04: System Development Charge. Dillsboro does not currently have a system development charge. However, should Dillsboro ever enact such a charge, such charge would apply to all additional capacity purchased by DCRSD after implementation of the System Development Charge.

**ARTICLE VII: CONSTRUCTION**

7.01 Construction. DCRSD will design, permit, and construct all facilities required to implement the terms of this agreement, in accordance with IDEM and 10 State Standards at no cost to Dillsboro, which shall include necessary facilities to collect wastewater in the Service Area and all necessary facilities to connect DCRSD's transmission line to the Dillsboro Wastewater

**Commented [JW13]:** Steward, I'm not unwilling to address this but I am not sure I understand fully your concern. Are you seeking limiting language so that system development only impacts treatment issues; something of that nature?

**Commented [JW14]:** DCRSD proposes: DCRSD will only be responsible for potential future system development charges associated with the WWTP. DCRSD will not be responsible for system development charges associated with the collection system.

**Commented [JW15R14]:** Again, as with the rates, in broad terms this is the agreement, but are the terms so broad that it would effect the methodology that LWG might want to employ to establish the charge? If not, I would say it can go right in. I would think it is OK. Comments?

Treatment Plant. DCRSD agrees to construct its collection facilities to meet the design hydraulic conditions established by a qualified, licensed engineer, in a preliminary engineering report, or plans to be prepared thereafter, for the Sanitary Sewer project, which shall be based on low pressure principles. Future DCRSD collection facilities will be sized to function properly under variation in flow, hydraulic conditions, and other factors which may reasonably be expected to occur over time in the Service Area. Upon completion, as-built plans for said improvements shall be provided as a physical copy, AutoCAD, and PDF.

7.02 Dillsboro Sewage Works. Dillsboro will, in accordance with applicable laws and regulations, own and maintain, at its own expense that portion of the sewage transmission system from the Connection Point to the Treatment Plant, including the sewer flow meter at the Connection Point. The Connection Point determines the limits of maintenance and ownership for both parties. The parties will maintain their facilities in accordance with standards prescribed by applicable regulatory agencies and will maintain a level of performance, maintenance and repair that will not adversely affect either party.

7.03 Regulatory Agencies - The DCRSD and the Town of Dillsboro agree that during the initial and any subsequent terms of this Agreement they will construct, operate and maintain their wastewater systems in conformance with all applicable Federal, State and local laws, ordinances, regulations, code and furthermore, that any extensions, reconstruction and other wastewater collection system modifications undertaken by the DCRSD, or the Town of Dillsboro shall conform in all respects thereto.

#### **ARTICLE VIII. DEFAULT EVENTS**

8.01 Defaults. It is a default under this agreement when wastewater delivered by DCRSD exceeds the limitations for, or the characteristic limits of, sewage to be treated as set forth in Article 4 of this agreement. DCRSD agrees to comply with Dillsboro Municipal, Sewer Use Ordinance and Sewer Rate Ordinance for the purpose of enforcement of these provisions.

8.02 DCRSD Allocated Capacity, Instantaneous Rate of Flow and Extra Strength Waste Default.

A. It shall be an Allocated Capacity Default for the DCRSD to send to Dillsboro more than the GDP of wastewater established in Section 4.01. Such Default shall be subject to the Default Surcharges described in Section 8.03 below.

B. It shall be an Instantaneous Rate of Flow default for the DCRSD to send Dillsboro more than the gallons of Domestic Wastewater per minute established in Section 4.01 for a period of time exceeding 5.5 hours per day. An Instantaneous Rate of Flow default shall be subject to the provisions of Section 8.03 below.

C. It shall be an Extra Strength Waste Default for the DCRSD to provide flow to Dillsboro which exceeds the pollutants, loadings, or waste characteristic limits of normal Domestic Wastewater. An Extra Strength Waste Default shall be subject to surcharges as outlined in Section 8.03 below.

D. In addition to any other remedy provided by law, in the event of default, Dillsboro shall be entitled to injunctive relief without the requirement of a bond. DCRSD will reimburse Dillsboro's reasonable attorney fees and costs in the event of any enforcement action. Default may also result in the refusal to accept new connections until the default is cured.

8.03 Default Penalty/Surcharges.

A. **Penalty.** Notwithstanding any contrary provisions contained herein and in addition to all other legal remedies available to Dillsboro, where a default occurs as outlined herein, the DCRSD shall pay to Dillsboro \$1,000.00 per default. **Each day where a default occurs shall constitute a separate default and an additional penalty under this agreement.**

B. **Notice.** Each party acknowledges a specific duty to promptly notify the other when any default, or potential default, occurs. Notification may be made pursuant to Section 12.09 of this agreement.

C. **Enforcement.** The parties agree that in default situations implicating the penalty provisions of this agreement, time is of the essence. When a default occurs exposing DCRSD to a penalty or penalties, DCRSD shall have thirty (30) days from the original notification of default to identify and remedy the default and abate the penalty, as follows:

1. If the default is remedied within fifteen (15) days of notice of the default, the daily penalty shall be fully abated.

2. If the default is remedied after (15) days, but no later than thirty (30) days after notice of default is received, the daily penalty shall be abated by fifty (50) per cent.

3. If the default is remedied thirty-one (31) or more days after notice of default, the full penalty applies. In addition, under these circumstances, Dillsboro may declare a breach of contract and seek all legal remedies available under this agreement and at law.

4. Notwithstanding the provisions of Section 8.03(C), if Dillsboro incurs penalties, fees, fines or costs, including legal fees or costs, arising from defaults described herein, DCRSD shall indemnify and hold Dillsboro harmless for any such penalty, fee, fine or cost, regardless of whether the penalties chargeable by Dillsboro against DCRSD are abated pursuant to the terms of Section 8.03(C).

5. The parties acknowledge that some default events, including but not limited to, those caused by heavy rains, might appear to be remedied during dry weather only to reappear with subsequent heavy rains. There may be other circumstances which would also result in recurring violations of the standards set forth in Section 4.01 of this agreement. In the event a default occurs more than two times arising from the same or similar circumstances, causes or conditions leading to default under this contract, there shall be no abatement of penalties upon the third such occurrence.

The default surcharges set forth herein are in addition to any other default remedies that exist by law and are not intended to be exclusive remedies.

**Commented [JW16]:** DCRSD proposes changing: the \$1000 penalty to \$70. This is approximately 50% of the daily capacity (40 x 310 x 11.33 = \$140.49). A penalty of \$1000 for 12,401 GPD and more vs 12,400 GPD would equate to approximately 712% daily and is problematic from a business perspective. DCRSD estimates revenue will be collected for 185-190 GPD and recognizes payment to Dillsboro will be required for all WW treated up to and including the 310 GPD basis of the 12,400 contracted amount.

**Commented [JW17R16]:** The penalties need to be sufficient so that they will not decide just to pay them and keep right on going. They have to have teeth. I think \$70.00 is too little. I would think \$1,000 is appropriate. On the other hand I know they think that the \$1,000 penalty could sink them in very short order and they are probably right about that. Perhaps we could offer to build in an appeal to the Town Board before final penalties are imposed. If they make reasonable and diligent efforts and promptly address the leak, the board may abate the penalty, etc. I can think of many objections to this and would prefer a straightforward penalty such as we have.

**Commented [JW18]:** DCRSD proposes adding: DCRSD accepts responsibility for potential penalties levied on Dillsboro due to DCRSD actions or inaction.

**Commented [JW19R18]:** The agreement already says this but I see no objection at all to saying it again, especially since they are suggesting that we do so. I will add it.

**Commented [JW20]:** DCRSD proposes as to this provision: Limiting abatement of penalties due to similar circumstances will be subjective. Recommend removing the last sentence.

**Commented [JW21R20]:** I understand that there is a subjective quality to the language here, but I see no other way to get at the problem. If we leave the language out, we have no effective way to police these recurring problems that are always "resolved" within the abatement period, but are never really fixed. It's not perfect, but, this way, we could go into a court and seek relief with a good chance of winning. Similarly, if we are being unreasonable, they could defend themselves. It's not perfect but it gives us a remedy. If we are willing to offer a remedy, they should accept this provision. That said, if anyone can think of a better way to skin the cat, I am happy to put it in. The language in yellow are minor changes I made to try to improve the language but that does not, in my opinion, change the meaning.

3. **Grace Period.** A “grace period” shall be observed for defaults which implicate the penalty provisions of this agreement, as follows: commencing upon the first connection to the DCRSD system, and for one hundred eighty (180) days thereafter, DCRSD shall not be in default of the limits set forth in Section 401 of this agreement so long as the wastewater discharged into the system does not exceed one hundred twenty-five (125%) per cent of those limits. Thereafter, the limits of Section 401 shall be applied.

8.04 **Other Actions of Dillsboro.** In the event of a dispute herein and in addition to all legal remedies available to both Parties, Dillsboro and the DCRSD may agree to submit to non-binding mediation in accordance with Section 12.04 if both Parties agree in writing. Furthermore, if the United States, the State of Indiana, or any agency thereof promulgates a new statute, law, or regulation imposing more restrictive monitoring, discharge, or treatment requirements, Dillsboro reserves the right to impose more restrictive requirements upon the DCRSD to ensure compliance with the statute, law, or regulation.

8.05 **Revenue upon Default.** In addition to any other default provisions contained in this agreement, if for any reason DCRSD ceases operations, becomes insolvent, is subject to a receivership, or for any reason, is unable to meet its obligations under the terms of this contract, Dillsboro shall have an absolute right to bill all DCRSD customers directly, if necessary, and to collect all revenue from the Service Area until such time as the circumstances leading to DCRSD’s inability to meet its obligations under the contract are corrected. In such circumstances, DCRSD agrees to take any steps necessary to ensure that Dillsboro can bill such customers and/or collect such revenues until the default is remedied. DCRSD shall indemnify and hold Dillsboro harmless for any loss or expense that may arise as a result of such circumstances.

Commented [JW22]: Moved from Article X., with some additional language.

#### **ARTICLE IX: PAYMENT, TERM, SERVICE**

9.01 **Payment:** DCRSD shall pay for wastewater treatment services, capacity fees and/or for any other fees or costs invoiced to them by the Town of Dillsboro within thirty (30) days of issuance of any invoice. There shall be a ten (10%) late charge on any billing not paid within the thirty (30) day period.

Commented [JW23]: Steward, I think this should address your concern. However, I do need to talk to our clerk treasurer as it seems to me we should bill you guys like we do anyone else. In any event, I agree it should not be done in such a way that you have difficulty approving claims. This should not be a big deal from our end. Obviously there are similar provisions in Art. 6 that will need to be cleaned up depending on final changes

9.02 **Term of Agreement:** The Agreement shall extend for a term of twenty (20) years from the date of approval of the Agreement by the Town of Dillsboro and the DCRSD, and shall automatically be renewed for additional periods of ten (10) years unless either party provides written notice to the other party not less than five (5) years prior to the end of such initial term or any subsequent renewal term that the Agreement will be renegotiated or terminated.

9.03 **Failure of Service:** The Town of Dillsboro will, at all times operate and maintain its wastewater treatment plant in an efficient manner and will take such actions as may be necessary to provide the DCRSD with wastewater treatment services agreed upon herein. Temporary or partial failures to provide wastewater treatment service shall be remedied with all possible dispatch. An Act of God or other occurrence or event resulting in the inability of performance



under this Agreement by either the DCRSD or the Town of Dillsboro shall operate to suspend the obligations of this Agreement until such time as remedial action will permit a resumption of performance.

**ARTICLE X. SUCCESSORS AND ANNEXATION**

10.01 Successors; Annexation

1. Successors: Neither party may transfer their interest under the terms of this agreement without the written consent of the other party. **Consent will not be given until the proposed transferee undertakes in a binding contract to accept all rights, duties and obligations imposed by this contract.**

2. Annexation Territory. The parties acknowledge that Dillsboro has been investigating annexation of the Annexation Territory. In the event of annexation, Dillsboro may acquire the line constructed herein in the following manner:

A. If Annexation occurs before the expiration of five (5) years from the date the line comes into service, Dillsboro shall reimburse DCRSD for the construction cost of the line as built, together with legal, engineering and permitting fees directly associated with construction of the line. Construction costs shall be determined through actual pay applications and invoices. If annexation occurs more than five (5) years but less than six (6) years after the line comes into service, Dillsboro shall reimburse DCRSD for fifty (50%) per cent of the construction cost of the line as built, together with legal, engineering and permitting fees directly associated with construction of the line. Thereafter, the rate of reimbursement shall reduce ten (10%) for each subsequent year, such that:

Year 6 to end of contract year	forty (40%) per cent
Year 7 to end of contract year	thirty (30%) per cent
Year 8 to end of contract year	twenty (20%) per cent
Year 9 to end of contract year	ten (10%) per cent
Year 10 and thereafter	no reimbursement

B. Reimbursement may take any form agreeable to the parties, but may be accomplished in whole or in part through a transfer of additional treatment capacity to DCRSD as agreed by the parties

**ARTICLE XI. AUTHORITY**

11.01 Actions. Each of the Parties represents and warrants that it has taken or will take (subject to further proceedings required by law) such action(s) as may be required and necessary to enable each of the respective Parties to execute this Agreement and to carry out fully and perform the terms, covenants, duties, and obligations on its part to be kept and performed as



provided by the terms and provisions hereof. Any funding required by this Agreement of Dillsboro shall be subject to appropriation.

11.02 Powers. The Parties represent and warrant that each has full constitutional and lawful right, power, and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement.

11.03 Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of obligations hereunder have been duly authorized and that the Agreement is a valid and legal Agreement binding on such party and enforceable in accordance with its terms.

#### ARTICLE XII. MISCELLANEOUS

12.01 Indemnity; No Joint Venture or Partnership. DCRSD covenants and agrees at its expense to pay and to indemnify and save Dillsboro, and their officers and agents (the "Indemnitees") harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from the DCRSD's (and/or any affiliate's thereof) development activities with respect to the construction of the transmission line or interconnection at the Connection Point with Dillsboro unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of Dillsboro, or other Indemnitees. However, nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between Dillsboro and DCRSD or any affiliate thereof.

12.02 Time is of the Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

12.03 Breach. Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity. This provision shall not be construed to relieve DCRSD from the obligation to pay default surcharges as and when required under Article VIII of this agreement.

12.04 Mediation. Upon the mutual agreement of Dillsboro and DCRSD in writing, any dispute or claim in law or equity arising out of this Agreement may be submitted to neutral, non-binding mediation prior to the commencement of litigation or any other proceeding before a trier of fact, except an injunction arising out of Section 8.02 of this Agreement. The Parties agree to act in good faith to participate in mediation and to identify a mutually acceptable mediator. The Parties shall share equally in the costs for mediation services. If the dispute or claim is resolved through

mediation, the resolution will be documented by a written agreement executed by the Parties. This paragraph shall not limit either Party's legal remedies available to them to pursue claims or resolve disputes arising out of this Agreement and does not obligate the Parties to pursue mediation.

12.05 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of each of the Parties approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

12.06 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations, and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

12.07 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity, or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements, or portions of this Agreement and, to that end, any provisions, covenants, agreements, or portions of this Agreement are declared to be severable.

12.08 Indiana Law. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in tort or otherwise, shall likewise be governed by the laws of the State of Indiana, regardless of Indiana's choice of law principles. The Parties agree that the exclusive venue for every dispute arising out of or relating to this Agreement shall be the Circuit Court of Dearborn County, Indiana.

12.09 Notices. Except as otherwise provided, all notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To DCRSD:  
XXXXXXXXXX

Emergency Telephone Contact(s):  
Email:

To Dillsboro:

Dillsboro Utilities	:
c/o Town Manager and/or	Emergency Telephone Contact
	Email
Town Council President	Emergency Telephone Contact
13030 Executive Drive	Email
Dillsboro, IN 47018	

or at such other addresses as the parties may indicate in writing to the others either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof.

Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

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

12.11 Assignment. The rights and obligations contained in this Agreement may not be assigned by the DCRSD or any affiliate thereof without the express prior written consent of Dillsboro.

12.12 No Third-Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

12.13 Not Construed Against Drafter. Each Party to this Agreement agrees that no provision of this Agreement will be interpreted in favor of, or against, any of the Parties hereto because any such Party or its counsel participated in the drafting thereof or because any such provision is inconsistent with any prior draft hereof or thereof. Each Party acknowledges such Party has participated in the negotiation of this Agreement and the drafting and preparation of this Agreement, and the Parties represent and warrant that they have not been coerced into entering into this Agreement, nor has any person or entity exercised any pressure or undue influence on such Party to enter into this Agreement.

12.14 Recording. This Agreement or a memorandum of this Agreement may be recorded by either Party at the Office of the Recorder in Dearborn County, Indiana.

12.15 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and each of the Town Parties have approved or ratified this Agreement at public meetings. Further, funding of the Town Parties is subject to appropriation and approval of funding.

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

TOWN OF DILLSBORO, INDIANA

By: \_\_\_\_\_  
DILLSBORO TOWN COUNCIL  
President

DEARBORN COUNTY REGIONAL SEWER DISTRICT

By: \_\_\_\_\_  
DCRSD President

Derek, in place of a map, Steward is proposing language similar to this.

Service Area: An area originating at the connection point and running west along the DCRSD transmission line as built to a depth of one-half ( $\frac{1}{2}$ ) mile on both sides of the line to and including the Lake Dilldear Community.

4.01 Raw Wastewater Characteristics and Quantity - The DCRSD shall deliver raw domestic wastewater exclusively from the service area to a mutually agreed Connection Point with the Dillsboro system. Dillsboro shall not be required to accept wastewater from any area other than the "Service Area."

Wastewater discharge into the Dillsboro System shall be limited as follows:

A. Allocated Daily Capacity: Wastewater shall not exceed a total volume of **15,500** gallons per 24-hour period. This number represents the estimated total volume of flow to be received from the service area defined by parcel number in Exhibit \_\_\_\_, attached hereto, and incorporated herein and by service area map, attached hereto as Exhibit \_\_\_\_, representing an estimated **50** EDU of flow. Any proposed expansion of this service area shall require re-negotiation of this agreement.

DCRSD may request additional wastewater capacity as set forth in Section 6.03(B) below. Rates and charges for additional wastewater treatment capacity shall be determined at the time of any such request.

B. Instantaneous Flow Capacity: Wastewater shall not be discharged at an instantaneous rate of flow exceeding **50** gallons per minute for a period of time exceeding 5.5 hours per day. After default, each day when Instantaneous Rate of Flow is exceeded shall constitute a separate offense for purpose of assessing surcharges.

C. Extra Strength Waste: No extra strength waste as defined in Article 3 of this agreement shall be discharged into the Dillsboro system.

#### 6.03 Capacity Charge

A. Capacity in the Dillsboro Wastewater Treatment Plant up to a limit of 15,500 GPD or 50 EDU will be reserved for DCRSD upon execution of this contract. DCRSD shall pay to the Town of Dillsboro a fixed fee for capacity in the wastewater treatment plant based on a rate of \$2,434.90 per EDU / \$7.86 per GPD up to a total of 50 EDU or 15,500 gallons per day.

On the two-year anniversary of the first connection, GPD capacity will be considered in lieu of EDUs. Following the two-year anniversary, the total volume used by DCRSD over the past 12 months will be assessed and prorated based on new connections during the 12-month period. If usage is below the GPD capacity limit, DCRSD may continue adding connections at no additional capacity cost. If flow exceeds the capacity limit, DCRSD will be in default and subject to penalties as outlined in the agreement.

B. DCRSD may request additional capacity above that provided herein by submitting a written request to Dillsboro Town Council which will consider said request at their next regularly scheduled meeting. However, Dillsboro shall be afforded all necessary time to consult with their engineer, town manager and others as necessary before ruling on the request. The parties

acknowledge that the rate for additional EDU might not be the same rate as that charged for the additional purchase being made pursuant to the terms of this contract.

DCRSD will send a quarterly report of customer connections and monthly consumption. If an additional request for wastewater is approved, Dillsboro will invoice DCRSD as set forth elsewhere herein. New capacity will be reserved in the plant immediately upon receipt of the capacity fee payment and any other charge which may apply at the time of the request.