

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

VERIFIED COMPLAINT OF INDIANA-)
AMERICAN WATER COMPANY, INC.)
SEEKING ORDER TO ENFORCE THE)
COMMISSION’S ORDER IN CAUSE NO.)
41383 DETERMINING TERRITORIAL)
DISPUTE BETWEEN WATER)
UTILITIES AND (2) DETERMINE THAT) **CAUSE NO. 44805**
RESPONDENT MAY NOT PROVIDE)
SERVICE TO NEW CUSTOMERS)
WITHIN THE CITY OF)
JEFFERSONVILLE AND WITHIN)
INDIANA AMERICAN’S SERVICE AREA)
RESPONDENT: WATSON WATER)
COMPANY, INC.)

VERIFIED COMPLAINT AND MOTION TO TAKE ADMINISTRATIVE NOTICE

Indiana-American Water Company, Inc. (“Indiana American” or “IAWC”) files this Verified Complaint against Respondent Watson Water Company, Inc. (formerly known as “Watson Rural Water Company, Inc.”) (“Watson”) seeking an order from the Indiana Utility Regulatory Commission (“Commission”) (1) to enforce the Commission’s Order in Cause No. 41383, which resolved a territorial dispute between Watson and Indiana American and established the parties’ respective service territories to conform to the territorial agreement contained within the water supply agreement entered between the parties, and (2) determine that Watson may not extend service to new customers within the City of Jeffersonville and within Indiana American’s Service Area as determined in Cause No. 41383. Indiana American also requests administrative notice be taken of (i) the Commission’s Order dated April 21, 1999 in Cause No. 41383 (the “41383 Order”), a copy of which is attached to this Verified Complaint as Administrative Notice Exhibit No. 1, (ii) the Direct Testimony of Eric W. Thornburg in Cause No. 41383 and exhibits attached thereto, including the map outlining the parties’ respective service territories, a copy of which is attached to this Verified Complaint as Administrative Notice

Exhibit No. 2, and (iii) the Direct Testimony of Richard Lewman in Cause No. 41383, a copy of which is attached to this Verified Complaint as Administrative Notice Exhibit No. 3. In support of this request, Indiana American shows the Commission:

Description of Parties and Commission Jurisdiction

1. Indiana American is a public utility incorporated under the laws of the State of Indiana with its principal office address located at 555 East County Line Road, Suite 201, Greenwood, Indiana 46143. Indiana American is a “public utility” as defined in Ind. Code § 8-1-2-1(a) and is subject to the jurisdiction of this Commission in the manner and to the extent provided by the laws of the State of Indiana. Indiana American owns, operates, manages and controls utility plant, property, equipment and related facilities which are used and useful for the convenience of the public in the production, treatment, transmission, distribution and sale of water to the public in and around numerous communities and counties throughout the State of Indiana, including in and around the City of Jeffersonville, Indiana (the “Southern Indiana System”).

2. Respondent Watson is a not-for-profit public utility corporation which owns, operates, manages and controls plant and equipment for the production, treatment and distribution of water to the public in Clark County, Indiana, including in unincorporated areas of the County near Jeffersonville, Indiana. Watson is a “public utility” as defined in Ind. Code § 8-1-2-1(a). According to the official website of this Commission, Watson has allegedly withdrawn from this Commission’s jurisdiction effective September 11, 2010. This withdrawal would eliminate Commission jurisdiction over Watson with respect to rates and charges; stocks, bonds, notes or other evidence of indebtedness; rules; and the Commission’s annual report filing requirement. In all other respects, Watson is subject to the jurisdiction of this Commission in the manner and to the extent provided by the laws of the State of Indiana.

3. Indiana American is requesting the Commission: (a) enforce its Order issued April 21, 1999 in Cause No. 41383, which resolved a territorial dispute between Watson and Indiana American and established the parties' respective service territories to conform to the territorial agreement contained within the water supply agreement entered between the parties, and (b) determine that Watson may not extend service to new customers within the City of Jeffersonville, Indiana and within Indiana American's Service Area as determined in Cause No. 41383.

4. Accordingly, the Commission has jurisdiction over the subject matter and the parties to this proceeding pursuant to Ind. Code § 8-1-2-54, -61, and -86.

The Service Areas

5. Indiana American provides water utility service within the City of Jeffersonville as the successor in interest to an indeterminate permit issued by the Commission to the predecessor of Indiana Cities Water Corporation, to which Indiana American succeeded when it acquired Indiana Cities Water Corporation in 1993.

6. Indiana American provides Watson's further needs for water pursuant to a written contract between the parties. In April 1997, Indiana American and Watson entered into a Water Supply Agreement ("1997 Agreement") setting the terms of the relationship between Indiana American and Watson, including, among other things, (1) the provision by Indiana American of the entirety of Watson's further needs for water, and (2) resolution of an ongoing dispute regarding the territories to be served by Indiana American and Watson. A copy of the 1997 Agreement is attached to Eric Thornburg's testimony in Cause No. 41383, included in Administrative Notice Exhibit No. 2 attached hereto. The 1997 Agreement was amended in 2003 with respect to matters other than the respective service areas.

7. The parties agreed to territorial boundaries that were set out in a map attached to the 1997 Agreement. That map defines a “Watson Service Area” and an “Indiana American Service Area.”

8. The parties submitted the resolution of the territorial dispute contained in the 1997 Agreement for Commission approval pursuant to Ind. Code § 8-1-2-86.5, in Cause No. 41383. The 1997 Agreement and the map establishing the territorial boundaries were admitted to the record in that Cause. The Commission’s April 21, 1999 Order in that Cause approved the proposed resolution of the territorial dispute contained in the 1997 Agreement and the map attached thereto.

9. In Cause No. 41383, the Commission summarized the testimony presented with respect to the territorial dispute:

Joint Petitioners also seek approval of a resolution of a territorial dispute pursuant to Ind. Code § 8-1-2-86.5. [Indiana American witness] Mr. Thornburg described that for several years there have been various territorial disputes between Watson and Indiana-American or its predecessor Indiana Cities. Watson serves an area abutting the area served by Indiana-American immediately to the northeast. For several years, the proximity of the two systems has resulted in a series of disputes. Mr. Thornburg explained that the [1997 Agreement] contains a provision intended to resolve this long-standing series of disputes.

41383 Order at p. 5.

10. The Commission went on to summarize the testimony of Richard Lewman, who was Watson’s president at the time:

Mr. Lewman also testified regarding the resolution of the territorial dispute. He stated that Watson receives the right to serve residential customers in the area in which Watson has facilities with capacity to provide such service. He testified the territorial agreement represents a reasonable approach in that it will avoid Watson’s duplication of Indiana-American’s facilities and it protects Watson from erosion of its existing customer base.

Id. at p. 6.

11. At the time of the Order in Cause No. 41383, all of the territory in the Watson Service Area and much of the territory in the Indiana American Service Area were outside the corporate limits of the City of Jeffersonville. Since that time, the portion of the Indiana American Service Area relevant to this proceeding and much of the Watson Service Area have been annexed by the City of Jeffersonville. At the time the 1997 Agreement was signed, Watson served a few residential customers in the Indiana American Service Area laid out in the 1997 Agreement, which was outside of the corporate limits of the City of Jeffersonville. Pursuant to the 1997 Agreement, Watson has not further extended those lines that existed at the time of the 1997 Agreement since the date thereof. At the time of the various annexations, Watson did not make service available to any new customers in any of the Indiana American Service Area.

The Litigation

12. After Watson failed to make a number of payments due under the 1997 Agreement as it was later amended in 2003, Indiana American filed a lawsuit in the Clark Circuit Court against Watson in February 2014. Indiana American sought to collect the unpaid and overdue amounts, to collect other amounts that would become due to Indiana American in future years, and for declaratory relief.

13. After a two-day bench trial, the trial court took the matter under advisement.

14. On June 15, 2016, the trial court entered an order (the “Trial Court Order”) in Indiana American’s favor and against Watson.

15. As part of that order, the trial court determined that under the parties’ contract:

IAWC would provide Watson with “potable water in such quantity as may be required by [Watson].” The Agreement continued that IAWC would “provide all of [Watson’s] future water supply requirements.” IAWC agreed not to serve customers in Watson’s service area, except “any large volume users.” Further, the Agreement set forth the terms of the parties’ relationship, including:

- a. An agreement regarding territories to be served by IAWC and Watson respectively, which were set out in an attached map;

Trial Court Order at p. 2, Finding ¶4.

16. A true and accurate copy of the trial court's order is attached as **Exhibit A**.

Threatened Intrusion on Indiana American's Service Area

17. Construction of significant commercial developments is currently underway on 10th Street near the new I-265 interchange in Jeffersonville, Indiana (the "Development Area"). The Development Area is located within Indiana American's Service Area and within the corporate boundaries of the City of Jeffersonville. The Development Area is located in an area that was annexed to the City in 2007. A true and accurate copy of the annexation ordinance is attached as **Exhibit B**.

18. Indiana American currently has a water main located within the Development Area, along 10th Street. Watson's mains are located in the vicinity of 10th Street near the Development Area.

19. Upon information and belief, Watson has negotiated with at least one developer ("Nicklies") to develop an agreement whereby Watson will extend water utility service inside Indiana American's Service Area to the Nicklies development. Nicklies has indicated to Indiana American that it intends to obtain water utility service from Watson.

20. Indiana American has notified Nicklies and at least one other developer who has inquired about service in the Development Area that their developments are located in Indiana American's Service Area.

21. Indiana American has also notified Watson of its expectation that Watson comply with the 1997 Agreement and the 41383 Order and Indiana American's position that Watson's actions in pursuit of providing water utility service to Nicklies and other developments in the Development Area are violations of both the 1997 Agreement and the 41383 Order. A true and accurate copy of Indiana American's notification to Watson is attached hereto as **Exhibit C**.

Enforcement of Commission's Prior Order

22. The Commission has already decided the territorial dispute raised by Watson's actions in the Development Area. In Cause No. 41383, the parties submitted to the Commission for its approval a proposed resolution of a territorial dispute which resolution was set forth in the 1997 Agreement and the map attached thereto. The Commission concluded:

[F]or several years there have been a variety of disputes between Watson and Indiana-American. The growth of Joint Petitioners' respective systems and the development in the area in question create a risk of interference with system planning, duplication of facilities, and under-utilization of existing facilities. The proposed resolution of the territorial dispute resolves these risks and allows the natural growth of both systems to develop. The proposed resolution submitted by Joint Petitioners is in the public interest and should be approved.

41383 Order at p. 6.

23. Watson's actions with respect to the Development Area are in direct violation of the 41383 Order and the service areas established therein. As such, Watson's actions are against the public interest and create the "risk of interference with system planning, duplication of facilities, and under-utilization of existing facilities" against which the Commission's approval of the established service areas in Cause No. 41383 was intended to guard.

Prohibition on Extension of Service by Watson in Jeffersonville

24. Until the recent threats to intrude in the Indiana American Service Area to serve the Development Area, Watson has never made service available to any new customers outside the Watson Service Area as defined by the evidence in Cause No. 41383. The service area line between Watson and Indiana American that was determined in Cause No. 41383 has now been annexed by the City of Jeffersonville pursuant to one or more annexation ordinances. At the time of annexation, Watson did not make service available to any new customers in the Indiana American Service Area, of which the

portion that is the subject of this proceeding is now entirely within the City of Jeffersonville. Even if the Commission had not established the parties' respective service territories, Watson would be barred from serving the Development Area and otherwise in the Indiana American Service Area unless the Commission first made a determination that such service was required by public convenience and necessity. See *Watson Rural Water Company, Inc. v. Indiana Cities Water Corporation*, 540 N.E.2d 131, 136 (Ind. Ct. App. 1989). Watson has not sought such a determination and there is no basis for the Commission to make such a finding based upon the facts as stated herein.

25. Indiana American has an indeterminate permit to serve within the City of Jeffersonville. The Development Area is located within the City limits. Indiana American has an existing main extending along the roadway in the Development Area and has capacity to serve the Development Area.

26. Indiana American has no notice of Watson ever being granted a "license, permit or franchise" either by the City of Jeffersonville or the Commission to own, operate, manage, or control any plant or equipment within the City of Jeffersonville.

27. Ind. Code § 8-1-2-86 prohibits initiating public utility service in a municipality where a public utility providing similar service is already in operation without the Commission first finding that public convenience and necessity require such second public utility service.

28. Ind. Code § 8-1-2-54 provides a mechanism whereby a public utility, among others, may bring a complaint against any public utility if "any regulation, measurement, practice or act whatsoever affecting or relating to the service of any public utility, or any service in connection therewith, is in any respect unreasonable, unsafe, insufficient or unjustly discriminatory, . . ." and the Commission shall then proceed with such investigation as it may deem necessary or convenient. *Id.*

29. Ind. Code § 8-1-2-61 also provides that "any public utility may make complaint as to any matter affecting its own rates or service."

30. Watson's actions with respect to providing water utility service to the Development Area are *per se* unreasonable because they violate Ind. Code § 8-1-2-86.

31. Watson's attempts to provide water utility service within Indiana American's service territory directly and adversely affect Indiana American's service in the same area.

Procedural Matters

32. Administrative Notice Requested. Pursuant to 170 IAC 1-1.1-21, Petitioner requests administrative notice be taken of the following order and testimony and exhibits from Cause No. 41383:

<u>Exhibit Designation in this Cause</u>	<u>Description</u>
Administrative Notice Exhibit No. 1	Order dated April 21, 1999 in Cause No. 41383.
Administrative Notice Exhibit No. 2	Direct Testimony of Eric W. Thornburg with exhibits thereto, including map attached to 1997 Agreement, from Cause No. 41383.
Administrative Notice Exhibit No. 3	Direct Testimony of Richard Lewman from Cause No. 41383

33. Applicable Statutory Provisions. Indiana American considers that the following provisions of the Indiana Code may be applicable to this proceeding: Ind. Code §§ 8-1-2-54, -61, -69, -70, -72, -73, -86, among others.

34. Attorneys for Petitioner. Indiana American is represented by counsel as reflected below, and requests service of all petitions, motions, reports, testimony, exhibits or objections of any kind to be served upon Indiana American by service on Indiana American's counsel of record:

Nicholas K. Kile, No. 15203-53
Hillary J. Close, No. 25104-49
Bart A. Karwath, No. 16088-49
Mark J. Crandley, No. 22321-53
Barnes & Thornburg LLP
11 South Meridian Street
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Kile Telephone: (317) 231-7768
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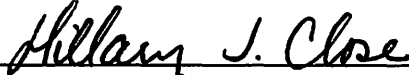
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WHEREFORE, Indiana American respectfully prays that the Commission promptly make such investigation and hold such hearings as are necessary or advisable, including a prehearing conference to establish a procedural timeline for the parties to file their respective evidence; and thereafter, issue an Order in this Cause:

- (a) Enforcing its prior order in Cause No. 41383, which resolved a territorial dispute between Watson and Indiana American and established the parties' respective service territories to conform to the territorial agreement contained within the water supply agreement entered between the parties; and
- (b) Determining that Watson may not provide service to new customers within the City of Jeffersonville, Indiana within Indiana American's Service Area; and
- (c) Granting to Indiana American such other and further relief as may be appropriate and proper.

DATED this 24th day of June, 2016.

Respectfully submitted,



Nicholas K. Kile, No. 15203-53

Hillary J. Close, No. 25104-49

Bart A. Karwath, No. 16088-49

Mark J. Crandley, No. 22321-53

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Attorneys for Indiana-American Water Company, Inc.

VERIFICATION

I, William J. Reedy, PE, Operations Manager for Indiana-American Water Company, Inc.'s Southern Indiana Operations, have read the foregoing Verified Complaint and the statements contained therein are true and correct to the best of my knowledge and belief.



William J. Reedy

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Verified Complaint has been served upon the following by first class, United States mail, postage prepaid, this 24th day of June, 2016:

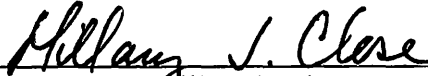
Office of Utility Consumer Counselor (also by email)
PNC Center
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
infomgt@oucc.in.gov

Watson Water Company, Inc.
c/o Glenn Freeman, Registered Agent
4106 Utica Sellersburg Road
Jeffersonville, Indiana 47130

A courtesy copy of the foregoing Verified Complaint has been provided by first class, United States mail, postage prepaid, this 24th day of June, 2016 to the following:

Nicklies & Company
c/o James K. Calvery, Vice President
6060 Dutchmans Lane, Suite 110
Louisville, KY 40205

Paul D. Vink (also by email)
Bradley M. Dick (also by email)
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
pvink@boselaw.com
bdick@boselaw.com



Hillary J. Close

IN THE CLARK CIRCUIT COURT NO. 1

STATE OF INDIANA

**INDIANA-AMERICAN WATER
COMPANY INC**

V

CASE NO: 10C01-1402-CC-272

THE WATSON WATER COMPANY

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter came before the court for bench trial on March 9 and 10, 2016. The parties both appeared, with the Plaintiff appearing by its attorneys, Bart A. Karwath and Mark J. Crandley. The Defendant appeared by its attorneys, Paul D. Vink and Bradley M. Dick. Prior to trial, the Plaintiff timely filed a motion for special findings pursuant to Trial Rule 52(a). The matter having now been fully argued, and fully briefed, and the court being otherwise sufficiently advised in the premises, now finds and orders as follows:

FINDINGS OF FACT

1. This is a contractual dispute between two water utility companies, Indiana-America Water Company (hereinafter "IAWC"), and The Watson Water Company ("Watson");
2. Both Watson and IAWC are in the business of providing water to customers in southern Indiana;
3. In April 1997, IAWC and Watson entered into a Water Supply Agreement ("1997 Agreement");

4. Under the Agreement, IAWC would provide Watson with “potable water in such quantity as may be required by [Watson].” The Agreement continued that IAWC would “provide all of [Watson’s] future water supply requirements.” IAWC agreed not to serve customers in Watson’s service area, except “any large volume users.” Further, the Agreement set forth the terms of the parties’ relationship, including:
 - a. An agreement regarding territories to be served by IAWC and Watson respectively, which were set out in an attached map;
 - b. The creation of a “wheeling” arrangement where Watson agreed to allow IAWC to pass water through Watson’s system to serve customers on the other side;
 - c. An agreement for IAWC to purchase part of Watson’s system in what the agreement describes as the “Cementville area;” and
 - d. Establishing a connection so that Watson could purchase water from IAWC.
5. The 1997 Agreement did not obligate Watson to buy any water from IAWC, but established a connection between the two utilities so that Watson could do so if it wished;
6. As to billing, IAWC “agree[d] to render monthly billings to [Watson] for water delivered,” and Watson “agree[d] to pay [IAWC] for all water used.”
7. The 1997 Agreement has an initial term of 40 years (*i.e.*, to 2037). It can be renewed for subsequent ten-year periods;
8. The Agreement contained a right of first refusal clause. The language of that clause

is as follows:

In the event Corporation [Watson] determines either to sell its entire water system or any part thereof or to arrange for the operation of part or all of the system by a third party under contract, or contemplates a new or revised water purchase agreement, the Corporation agrees that the Utility [IAWC] shall have right of first refusal to purchase, or provide contract operations, or to sell water to the Corporation on the same terms and conditions offered by any third party. Utility shall have thirty (30) days from the receipt of notice from Corporation to exercise its refusal right and agree to purchase or to provide contract operations pursuant to such terms and conditions. If Utility fails to exercise its refusal right, then such refusal right will terminate. For purposes of this paragraph, a transaction with a third party excludes a reorganization or change in the type of Corporation or Company through which the Corporation or Company, which is to be reorganized, remains in effective control of the reorganized entity.

9. In 2003, Watson sought to extend its service to what is known as the Quarry Bluff subdivision. Richard Lewman ("Lewman"), Watson's long-time board chairman, testified that in 2003 IAWC approached Watson about building a water main to serve the Quarry Bluff subdivision. IAWC, as a for-profit utility, was especially concerned about ensuring that Water One, a competing water utility located in the old Army Ammunition Plant, did not get "outside the plant" and serve Quarry Bluff, a concern that Watson also shared to a lesser extent. John Eckart ("Eckart"), IAWC's president from 1996 to 2004, and Randy Edgemon ("Edgemon"), IAWC's Director of Business Development in 2003, acknowledged that IAWC had a strong interest in keeping Water One from serving areas outside of the plant;
10. Watson expected Quarry Bluff and the area near it to grow and add more customers for Watson to serve. At the same time, another water service provider was exploring

- the possibility of extending water service to Quarry Bluff;
11. However, while Watson recognized the value of Quarry Bluff, it lacked the resources to construct a water main extension to get water to Quarry Bluff and nearby areas. Without a water main, Watson faced losing Quarry Bluff to a competitor;
 12. The parties then began discussions on a project that would allow Watson to serve Quarry Bluff. The discussions involved IAWC constructing a water main, at its expense, for use by Watson to service Quarry Bluff;
 13. Watson was represented during the negotiations with IAWC by its attorney, Virgil Bolly. Mr. Bolly, who had represented Watson since its inception, represented Watson throughout the contract negotiations, and was involved in preparing the operative documents;
 14. Watson now claims it could have likely obtained financing for the project from a bank, but its minutes from the time period reflect that “[a]t the present time it is too costly to extend a water main . . . to Quarry Bluff Estates.” Mr. Huff, a Watson board manager and treasurer, testified that Watson “did not have the financial stability to put the waterline in” during the 2003 time frame;
 15. Watson’s witnesses who were involved with the project testified that Watson relied on its attorney – not IAWC – to advise Watson as to what the contract documents provided;
 16. The negotiations eventually led Watson and IAWC to amend the 1997 Agreement (the “2003 Amendment”). Collectively, the 1997 Agreement and the 2003 Amendment form a single, amended contract (the “Amended Agreement”);

17. Among other things, the 2003 Amendment provides that IAWC would build a water main that Watson could use to serve Quarry Bluff. IAWC would own the main. Watson would lease the main, be responsible for costs associated with maintaining it, and would be allowed to connect to the main in the future at its expense. In addition, the Amendment provided that “[Watson] shall pay to [IAWC] a lease fee of \$1.00 per year.”
18. The original 1997 Agreement contained no purchase obligation and Watson could decide whether or not to buy any water from IAWC in a given year. However, under the Amendment, Watson agreed to purchase a minimum annual quantity of water from IAWC. This minimum annual purchase became a *requirement* of the Amended Agreement;
19. This minimum purchase obligation was determined based on what is known as a “carrying cost.” The carrying cost is the amount IAWC needed to recover in order to provide water through the main.
20. Since IAWC had not yet built the main when the parties executed the 2003 Amendment, the precise amount of water Watson would need to purchase annually to meet the carrying cost could not be calculated;
21. The 2003 Amendment provides that the amount of the annual obligation would be finalized after the actual cost of construction was known. It was later determined that the actual costs were \$921,214.00;
22. The parties therefore agreed that Watson needed to purchase a minimum annual volume of 108,300,000 gallons of water, which was the amount needed to cover

IAWC's annual carrying cost for the main;

23. The 2003 Amendment required Watson to pay for this water at the rates set in IAWC's "tariff," a schedule of rates and charges set from time to time by the Indiana Utility Regulatory Commission ("IURC");
24. The 2003 Amendment kept in place any provision not expressly modified by the 2003 Amendment: "All other terms and conditions of the Agreement between the parties shall remain in full force and effect;"
25. The parties have a fundamental disagreement regarding the effect of the 2003 Amendment. The original contract bound the parties for forty (40) years, but did not require Watson to make an annual water purchase. The amendment required Watson to purchase a minimum annual amount of water, but was silent on the duration of the obligation, saying only that "all other terms" remain "in full force and effect." On its face this would bind Watson for the remainder of the parties' original agreement, through 2037;
26. At trial, Richard Lewman claimed he was told by Randy Edgemon of IAWC that despite the 40-year term of the written contract, Watson would only need to purchase water until the amount of water Watson purchased equaled the cost of constructing the main. Mr. Edgemon denied making the statement that Mr. Lewman ascribed to him;
27. In contrast to Mr. Lewman's testimony, Mr. Hill – Watson's current board president – testified that the limitation on the annual purchase requirement was to last 10 years, not until a certain payment threshold had been met;

28. Clearly, there were discussions between the parties regarding the term of the amendment prior to its execution. On July 29, 2003, Watson's counsel, Virgil Bolly, sent Edgemon a letter that referenced a ten-year term, stating "...there was discussion previously that the agreement would be for 10 years after which the line would become Watson's." With that letter, counsel attached a prior draft of the agreement that required a different annual purchase minimum, and contained a provision that IAWC would sell the line it had constructed, for one (1) dollar, after ten years. This proposed language was rejected by IAWC. Still another draft of the agreement called for a fifteen (15) year period, after which Watson could purchase the line for one (1) dollar. This was likewise rejected;
29. Lewman and Sam Huff ("Huff"), another Watson board member in 2003, testified that Watson did not need the minimum quantity of water. Instead, they believed the minimum purchase requirement was simply a repayment mechanism. Lewman and Huff also testified that Watson could have financed the construction of the main, had IAWC not offered to do so;
30. Mr. Lewman testified that he did not read the 2003 Amendment before he signed it. Lewman Testimony. "Q. You couldn't have read that document, the one that was signed by both parties and come to the conclusion that it was what you had signed previously? A. I don't think I would have signed it. Q. Right. A. No, because that's the one that said that the water line would remain the property of Indiana-American. I wouldn't have signed that if I had read it."
31. Lewman also testified that Watson had legal counsel representing it in the

negotiations, including in preparing drafts of the 2003 Amendment;

32. Mr. Lewman testified that Watson relied on its attorney, not IAWC, with regard to what the 2003 Amendment provided;
33. The 2003 Amendment also modified the right of first refusal to state that if the right of first refusal was triggered and if IAWC did not exercise its right, Watson must “immediately pay to [IAWC] its actual cost to plan and construct the main and make it operational.”
34. Although the Amended Agreement required Watson to purchase at least 108,300,000 gallons per year, it has only done so twice – in 2007 and 2008.
35. In 2009, there was a problem with the meter and IAWC did not charge Watson for the minimum volume. However, Watson’s then-manager, Robert Stoner, testified that Watson did in fact take at least the annual minimum volume of water in 2009.
36. After that year, 2009, Watson took fewer gallons from IAWC than the required annual minimum. Watson has not purchased the contractual amount of water in any year since 2009;
37. For each year after 2009, IAWC issued an invoice at the end of the year that covered the difference between the number of gallons that Watson actually purchased and the minimum number of gallons Watson was required to purchase from IAWC under the Amended Amendment.
38. Watson understood why it received these invoices and that it had to purchase the annual minimum volume regardless of whether it took that much water.
39. Watson understood that the reason for the additional charge was because it had not

purchased the minimum volume required each year, and that the amount billed was the difference between the required minimum volume and the volume actually purchased by Watson, multiplied by IAWC's tariff rate, which was the same amount charged for water actually taken by Watson.

40. Watson paid the invoices for 2010 and 2011 (issued in 2011 and 2012).
41. Watson refused to do so when it received the invoice for 2012 (which was sent in early 2013).
42. In February 2014, IAWC filed this lawsuit to collect the unpaid and overdue amounts, to collect other amounts that would become due to IAWC in future years, and for declaratory relief. Watson countersued, alleging it should be repaid all moneys paid to IAWC above the cost of the construction of the main.
43. Since 2014, Watson has purchased negligible amounts of water from IAWC.
44. IAWC alleges that Watson's outstanding balance as of the end of 2015 – not including late charges and attorneys' fees – is \$813,271.66. Watson alleges it has overpaid IAWC \$376,592.87, and seeks repayment;
45. In 2012, Watson entered into a contract with another water provider, River Ridge Development Authority ("RRDA") that allowed each utility to serve as an emergency source of water for the other. This agreement states that each entity would sell the other water in case of an emergency on an as needed basis .
46. In October 2012, Watson and RRDA executed an "Addendum" to the Watson/RRDA 2012 Agreement which changed its terms with respect to the amount of the costs for the connection between Watson's system and the RRDA system for which Watson

would be responsible

47. In July 2013, Watson and RRDA again modified the Watson/RRDA 2012 Agreement by entering into a "First Amendment" to the Watson/RRDA 2012 Agreement. This amendment changed the price paid for water purchased under the Watson/RRDA 2012 Agreement.
48. Watson did not give notice or a right to exercise a first refusal to IAWC before executing any of these documents. None of them triggered the right of first refusal
49. On March 21, 2014, Watson signed a "Second Amendment" to its contract with RRDA (the "Second RRDA Amendment"). The Second RRDA Amendment says that RRDA is "the exclusive source of Watson's future water purchases when it is unable internally to provide for the water needs of its customers."
50. The Second RRDA Amendment is expressly conditioned upon the outcome of this lawsuit.
51. Mr. Freeman testified that Watson did not need any water under the Second RRDA Amendment and that Watson has "sufficient capacity to meet our demand and exceed that demand." He then conceded that Watson "didn't really need the agreement with River Ridge . . . other than to try to get rid of the [Amended Agreement]."
52. Email correspondence relating to the Second RRDA Amendment shows Watson's counsel as saying that he "wants to use the contract as a defense against Indiana-American," and that Watson wanted the Second RRDA Amendment because it "would like to eliminate an existing water supply agreement [with] Indiana-American Water Company."

53. This court finds the duration of the contract to be unambiguous. The 1997 agreement was for forty years. The 2003 amendment was silent on the duration, but stated plainly that “all other terms and conditions of the Agreement between the parties shall remain in full force and effect;” Watson proposed a ten year term. That was rejected. Watson then tried fifteen years. That proposal was also rejected. The contract that was then signed, with the assistance of counsel, during an arms length transaction with sophisticated parties, contained a straight forward term of forty years;

CONCLUSIONS OF LAW

54. To establish a breach of contract, a plaintiff must show “the existence of a contract, the defendant’s breach thereof, and damages.” *Old Nat’l Bank v. Kelly*, 31 N.E.3d 522, 531 (Ind. Ct. App. 2015).
55. Each of those elements is satisfied by the record in this case.
56. **First**, the Amended Agreement is a single, enforceable contract between the parties.
57. The Amended Agreement includes a requirement that Watson purchase an annual minimum of 108,300,000 gallons of water at IAWC’s tariff rate for the remaining term of the contract.
58. **Second**, Watson breached the Amended Agreement by failing to purchase the annual minimum volume for 2012, 2013, 2014, and 2015.
59. Watson is purposely not purchasing the annual minimum volume of water from IAWC. Watson has admitted that it was not impossible for Watson to use the

108,300,000 gallons it was required to purchase each year from IAWC. (“Q: In fact, Watson Water is just deciding not to use the IAWC Water presently; is that right? A: Presently, yes.”). Watson has stipulated that it can take the required annual amount of water.

60 **Third**, Watson damaged IAWC by failing to pay its total outstanding balance, which amounts to \$813,271.66, not including late charges and attorneys’ fees.

61. Watson urges this court to find that the UCC governs here. By finding that water is a good, and applying the UCC, Watson urges this court to then find that since the amendment contained no term defining the duration of the contract, parol evidence can be considered in determining what would be a reasonable time period. Here Watson relies on Section 2-309 of the U.C.C., which governs contractual time periods in the “absence” of a term to the contrary: “The time for shipment or delivery or any other action under a contract if not provided in this Article *or agreed upon* shall be a reasonable time.” Ind. Code § 26-1-2-309 (emphasis added).

62. Such determination would be an unnecessary judicial rewrite of the parties’ contract, and would be inconsistent with the plain language of the amended agreement;

63. The parties did not need to include a term specifying the time period for the Amended Agreement. The Agreement already created a 40-year term that was not changed by the 2003 Amendment. Watson’s argument is simply not supported by the language in any of the agreements signed by the parties. This court specifically finds that the parties agreed on the duration of the contract, forty (40) years. The 2003 Amendment did not change the term of the contract. It preserved the 40-year

term for *all* clauses of the Amended Agreement, including the minimum purchase requirement.

64. Similarly, Watson's contention that applying the required term to the annual minimum purchase requirement creates an overpayment (allegedly because Watson would obtain a \$921,214.00 water main through \$13 million in water purchases over the remaining term of the contract) is not supported by the record or the plain language of the Amended Agreement because:

- a. Watson ignores the value of the water under the Amended Agreement. Watson may resell the water to customers at higher rates than it pays to IAWC.
- b. Watson's position would force IAWC to bear the carrying cost of the main (which is the same as what would be charged to IAWC's customers if the main was on its system) that the annual minimum purchase requirement is intended to satisfy; and
- c. Watson's position ultimately results in a windfall in which it obtains an interest free loan for the construction of the water main by buying water from IAWC at its standard tariff rate;

65. Watson's arguments ask the Court to review the adequacy of the consideration paid under the Amended Agreement. "It is well settled that it is not proper for courts to inquire into the adequacy of consideration. *Auburn Cordage, Inc. v. Revocable Trust Agreement of Treadwell*, 848 N.E.2d 738, 748 (Ind. Ct. App. 2006) (citing *Putz v. Allie*, 785 N.E.2d 577, 579 (Ind. Ct. App. 2003)). "Any consideration which will

sustain a promise to pay will suffice.” *Id.*

66. The Amended Agreement is an arms-length agreement between two sophisticated parties. Watson relied on its seasoned counsel in negotiating the terms of the 2003 Amendment;
67. There is no legal basis to second-guess the contract’s consideration 13 years after the fact, especially when in the early years of the Amended Agreement Watson performed in compliance with the plain language of the Amended Agreement;
68. “Under Indiana law, a person is presumed to understand the documents which he signs and cannot be released from the terms of a contract due to his failure to read it.” *Clanton v. United Skates of America*, 686 N.E.2d 896, 899-900 (Ind. Ct. App. 1997)
69. “[U]nder the law of contracts, a party is responsible for what he or she signs” so that “one who signs a contract in the absence of fraud or deceit cannot avoid the contract on the grounds that he did not read it or that he took someone else’s word as to what it contained.” *Mayflower Transit, Inc. v. Davenport*, 714 N.E.2d 794, 799 (Ind. Ct. App. 1999) (citations omitted).
70. Mr. Lewman signed the 2003 Amendment, binding Watson to the amendment. Mr. Lewman’s failure to read the 2003 Amendment does not excuse Watson from the binding commitments in the document or allow it to take litigation positions inconsistent with the language in the Amended Agreement;
71. There is nothing in the agreement that would allow this minium annual obligation to terminate once a certain sum had been paid, and this line of argument is pure fabrication. These were terms offered by Watson during the negotiations of the

contract, and all of those terms were specifically rejected by IAWC. This language does *not* say that Watson's duty terminated once it "reimbursed" IAWC for its actual construction costs. Rather, it clearly says that Watson was required to purchase the minimum volume of water *annually*.

72. Had Watson wanted its annual obligation to cease at any time prior to the close of that existing 40-year term, the 2003 Amendment needed to reflect that fact. Instead, the document creates a requirement for Watson to purchase an annual amount of water with no modification to the term of years for in which the parties must perform under the contract.
73. Watson's attempt to limit the annual minimum purchase requirement to "reimbursement" for construction costs is not a reasonable interpretation of the language of the 2003 Amendment. *See Heredia v. Sandler*, 605 N.E.2d 1212, 1216 (Ind. Ct. App. 1993).
74. While the "volume" of water Watson was required to purchase was "based upon" IAWC's cost to construct the main, the Amended Agreement unequivocally imposed on Watson an annual obligation to purchase a set amount of water at IAWC's established rates without any limitation to the cost of construction.
75. Watson asks the Court to add language the parties themselves rejected in the written documents that govern their relationship. This argument would "make a new contract for the parties or supply missing terms under the guise of construing a contract" and is barred by bedrock Indiana law. *Ochoa v. Ford*, 641 N.E.2d 1042, 1044 (Ind. Ct. App. 1994).

76. Had the parties wished to terminate the annual purchase obligation (1) after a certain point in time; (2) once Watson paid some amount of money; or (3) after Watson “reimbursed” IAWC, the parties would have added language making that commitment in the contract documents. The Amended Agreement says no such thing. It created an annual purchase requirement not tethered to reimbursement of the main’s construction costs.
77. Watson argues it has no obligation to pay for water it did not “use” or that was not “delivered.” It derives this argument from the fact that the 1997 Agreement required Watson to pay for water “used” and “delivered.”
78. But the *Amended Agreement* does not allow Watson to unilaterally refuse to take the required annual minimum and then not pay for the water it was supposed to buy under the annual purchase requirement.
79. The 1997 Agreement set a purchase price for water that is “used” or “delivered” because there was *no* required annual minimum purchase requirement in that document. However, the 2003 Amendment changed the parties’ relationship by requiring Watson to purchase an annual minimum amount of water purchase regardless of the actual “use” or “delivery” of water. Watson must pay for that annual minimum even if it does not now want to take the water it committed to purchase.
80. Finally, if there was any ambiguity about the plain language of the 2003 Amendment, the parties’ course of performance of the contract illuminates what they intended. *See DeHaan v. DeHaan*, 572 N.E.2d 1315, 1323 (Ind. Ct. App. 1991). In construing the

Amended Agreement, “the parties’ conduct in connection with the contract may be considered” and the Court may apply the construction the parties themselves gave to the contract. *Id.*

81. Watson took and paid for the full annual minimum in 2007 and 2008. Watson acknowledges that it took the annual minimum in 2009, when a meter error occurred. In 2010 and 2011, Watson failed to take the full annual minimum water, but paid the full amount that would have been owed had it met the annual minimum purchase requirement;
82. The court is similarly unpersuaded by Watson’s reading of the right of first refusal provision.
83. Watson’s attempt to use a post-litigation contract with RRDA to trigger the right of first refusal fails for four independent reasons: (1) the right of first refusal does not override other binding provisions of the contract; (2) Watson materially breached the contract before attempting to avoid its obligations through the right of first refusal; (3) the alleged “contract” on which Watson’s argument rests never triggered the right of first refusal; and (4) Watson did not immediately pay the amounts required by the right of first refusal even if it had been triggered.
84. ***First***, the right of first refusal section does *not* allow Watson to terminate the entire existing agreement between IAWC and Watson. Rather, it provides only that in the event IAWC does not exercise the right of first refusal within 30 days of it being properly triggered, the right of first refusal clause *itself* would be terminated: “If [IAWC] fails to exercise its refusal right, *then such refusal right will terminate.*” It

does not terminate the agreement. There is no language that this would trigger the termination of the remaining terms of the agreement;

85. The right of first refusal is only triggered “[i]n the event Corporation (Watson) determines either to sell its entire water system or any part thereof or to arrange for the operation of part or all of the system by a third party under contract, or contemplates a new or revised water purchase agreement, the Corporation agrees that the Utility (IAWC) shall have a right of first refusal to purchase, or provide contract operations, or to sell water to the Corporation on the same terms and conditions offered by any third party.”
86. However, the Amended Agreement contains several provisions that have nothing to do with the circumstances in which the right of first refusal is triggered, including: (1) the establishment of service territories; (2) the “wheeling” arrangement; and (3) the purchase of the Cementville territory.
87. Nothing in the Amended Agreement suggests that the parties intended to undo these and other arrangements by allowing the right of first refusal to terminate this entire contract. This fact was conceded by Mr. King in his deposition. (“Q. It goes on next to say, ‘If utility fails to exercise its refusal right, then such refusal right will terminate, correct? A. Yes. Q. It doesn’t say the agreement will terminate, does it? A. No.”).
88. Mr. King was the President of Watson’s board at the time of his deposition.
89. The Court therefore concludes that only the right of first refusal – and not the entire Amended Agreement – terminates if IAWC opts not to exercise its right of first

refusal.

90. **Second**, Watson's prior breach of the Amended Agreement prevents it from invoking the right of first refusal.
91. When one party to a contract commits the first material breach of that contract, it cannot seek to enforce the provisions of the contract against the other party. *Titus v. Rheitone, Inc.*, 758 N.E.2d 85, 94 (Ind. Ct. App. 2001).
92. Watson breached the parties' contract by failing to make required payments. It stopped making required payments under the Amended Agreement in early 2013, more than a year and a half before it attempted to invoke the right of first refusal. Because Watson has been in breach since early 2013, it is a prior breaching party and is unable to enforce any terms of the parties' agreement.
93. Watson committed additional breaches even prior to early 2013 by not giving notice to IAWC when it entered into its prior contracts and amendments with RRDA.
94. **Third**, there is no tangible, final agreement between Watson and RRDA.
95. The Second RRDA Amendment is a non-binding document that could be changed by either Watson or RRDA. RRDA's representative even referred to it as a "draft."
96. It was also contingent on the outcome of this lawsuit. Watson may unilaterally walk away from the Second RRDA Amendment at any time, including by settling the lawsuit.
97. Because the Second RRDA Amendment is expressly conditioned on the outcome of this lawsuit, even its terms remain malleable up until this case is adjudicated, including any appeals. Until then, Watson retains the right to rewrite or even

abandon the Second RRDA Amendment.

98. Watson admits it did not intend to purchase water from RRDA, and does not intend to actually purchase water from RRDA.
99. Watson claims that two provisions in the Amended Agreement operate as a “penalty”: (1) the minimum purchase requirement set in the 2003 Amendment; and (2) the requirement that it pay the costs of the water main in the event it triggered the right of first refusal. Neither of these provisions is a “penalty” barred by the U.C.C.
100. **First**, Watson cannot avoid its obligation to purchase an annual minimum amount of water as a “penalty” because the U.C.C.’s penalty analysis only applies to liquidated damages provision, not the consideration owed under a contract:

Damages for breach by either party may be liquidated in the agreement, but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated *damages* is void as a penalty.

Ind. Code § 26-1-2-718 (emphasis added).

101. The minimum purchase requirement is not a “liquidated damages” provision; it is the setting of the consideration that Watson must pay in exchange for IAWC’s construction of the water main on Watson’s system.
102. Even if the penalty analysis applied, it is more than “reasonable” to expect Watson to pay for the amount of water they agreed to purchase. This is true given that: (1) IAWC had to prepare its system and have peak capacity to deliver that water to Watson; (2) the revenue expected under the Amended Agreement gets incorporated into the rates so IAWC needs to be able to collect in full from Watson the revenue

required under the contract; and (3) it compensates IAWC for the same carrying costs that would apply to one being paid by IAWC's other wholesale customers if the main was on IAWC's system.

103. **Second**, Watson claims the requirement that it pay for the cost of the water main if the first refusal is triggered and IAWC elects not to accept the proposal is also a "penalty" under Section 2-718.
104. Again, that section of the U.C.C. only applies to a "liquidated damages" clause. The right of first refusal is not a liquidated damages provision. The contract's requirement that Watson pay the costs of the water main represents the price for Watson's ability to exercise that right, if IAWC elects not to accept the proposal. It is not a form of "damages," but the contractually required price for Watson to exercise its contractual right if IAWC decides not to accept the proposal.
105. Moreover, the right of first refusal's requirement of immediate payment is a reasonable provision that is enforceable under Section 2-718. That provision will uphold any liquidated damages clause as long as it is reasonable at the time it was made or at the time of the breach: "Damages for breach by either party may be liquidated in the agreement but only at an amount which is *reasonable in the light of the anticipated or actual harm* caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy." Ind. Code § 26-1-2-718 (emphasis added).
106. Given this language, "liquidated damages clauses may be upheld if they are reasonable in light of either the anticipated injury, viewed prospectively, or the actual

injury caused by breach, viewed retrospectively.” 32 BROOK. J. INT’L L. 67, 74 (2006) (collecting cases). The same rule applies under common law. *See* Restatement (Second) of Contracts § 356(1) (1981). *See also* *Nylen v. Park Doral Apartments*, 535 N.E.2d 178 (Ind. Ct. App. 1989); *Harris v. Primus*, 450 N.E.2d 80, 83 (Ind. Ct. App. 1983).

107. Viewed from the time of the 2003 Amendment, the requirement that Watson immediately pay for the cost of the main was necessary to protect IAWC. At the time IAWC agreed to construct the main, IAWC faced the risk that Watson would invoke the right-of-first refusal at any time after the main was built. If IAWC did not want to accept the terms being proposed, IAWC would be in the position of owning a water main trapped within another entity’s utility system and could prevent IAWC from recovering the costs of building the main because Watson would be operated by another entity, be owned by another entity or be getting water from another entity. IAWC therefore needed to be able to recover its costs of construction.
108. The immediate payment requirement is also “reasonable” when viewed from the current perspective. The exercise of the right of first refusal makes the main functionally worthless to IAWC. Since the main will no longer have any value to IAWC, the clause requires Watson to pay an approximation of the value of a main in the form of the costs of construction. That payment allows IAWC to recover the value of an asset it has lost for all functional purposes.
109. As Mr. Reedy testified, the main is likely worth more now than its actual cost of construction because material, labor and other costs have risen significantly since

2003. Moreover, Mr. Eckart testified that the parties would likely negotiate for a transfer of the ownership of the main once this payment was made because, in his opinion, there would no longer be any reason for IAWC to own a main that is embedded in Watson's system.

110. Watson attempts to use the U.C.C. to preclude IAWC from recovering the amounts that Watson agreed to pay under the parties' contract. Under Watson's proposed result, IAWC would be left without any remedy for Watson's breach because Section 2-708 of the U.C.C. allows recovery of "the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach." Ind. Code § 26-1-2-708.
111. This provision of the U.C.C. allows the seller (IAWC) to resell goods intended for the buyer (Watson) and recover the difference if the new buyer happened to pay less than Watson would.
112. Watson's invocation of 2-708 assumes an open market in which IAWC could simply re-sell water meant for Watson to another readily available purchaser. That is not the reality for a regulated utility like IAWC. As Mr. Reedy testified, there are no readily available *additional* purchasers to whom IAWC may sell the water that Watson was obligated to purchase. IAWC serves a closed system. A regulated utility does not sell water in the type of open "market" for goods contemplated by U.C.C. 2-708. IAWC is already obligated to sell water to its other existing customers and cannot simply replace them with other customers.

113. Worse yet, IAWC has taken measures to have a utility system sufficient to serve all of its customers, including the annual minimum that Watson was required to pay.
114. Watson's failure to meet its contractual obligation leaves IAWC with excess capacity in its system that it has no means to "market." It has no other "customers" to whom it may sell water, only those already receiving service, and IAWC is already required to sell them all of their water needs.
115. Critically, Watson's damages argument ignores the impact its failure to purchase the annual minimum amount of water has on IAWC's rates. As both Mr. Reedy and Mr. VerDouw testified, in setting IAWC's water rates, the IURC considers the anticipated revenue from the contract in setting IAWC's rates, and assumes IAWC will be paid in full under the Amended Agreement. The IURC sets rates at a level sufficient to give IAWC a reasonable return on its assets.
116. In determining what is reasonable, the IURC looks at other revenue streams IAWC might receive, such as the contract payments from Watson. Anticipating that IAWC would receive all of the required payments from Watson, the IURC set IAWC's rates lower than they otherwise would be by deducting the full amount of Watson's annual purchase agreement.
117. IAWC is therefore damaged to the full extent of the entire contract price because of the IURC sets IAWC's rates based on the expectation that Watson would pay the full contract price;
118. Watson's focus on "lost profit" ignores the regulated nature of IAWC, which cannot obtain "profits" in a competitive marketplace. The IURC sets IAWC's rates so as to

provide a reasonable rate of return. Virtually every aspect of IAWC's relationship with Watson is a sunk cost, as IAWC has expended resources to ensure that it has capacity to provide water under the Amended Agreement and expended resources to construct the main;

119. There is no doubt that Watson, the "buyer," has failed to "pay the price as it [became] due." *Id.* There is similarly no doubt that efforts by IAWC to sell additional water would be "unavailing," as previously discussed. The key issue question under Section 2-709 therefore is whether the goods at issue were "identified."
120. The U.C.C. defines "fungible" goods as "goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit." Ind. Code § 26-1-1-201(17). *See also Servbest Foods, Inc. v. Emessee Industries, Inc.*, 403 N.E.2d 1 (Ill. Ct. App. 1980).
121. In the context of "fungible" goods like water, the U.C.C. treats them as "identified" as long as the seller stood ready to deliver the goods at any time:

When the sales transaction relates to the sale of part of a larger mass of fungible goods, there may be an identification for the purpose of U.C.C. § 2-501 although no separation is made of the "buyer's goods" from the larger mass. . . . There is a sufficient identification of fungible goods for the purpose of U.C.C. § 2-709(1) when the seller's inventory, at all times, contained sufficient goods to fill the buyer's contract, even though the goods had not been segregated nor put in containers labeled for the buyer. 3A Anderson U.C.C. § 2-501:29 (3d ed.) (footnotes omitted).

"[T]he general policy of the Uniform Commercial Code is to resolve all doubts in favor of identification." *Great Western Sugar Co. v. Pennant Products, Inc.*, 748 P.2d 1359 (Colo. App. 1987).


122. In *Great Western*, the court found that a quantity of sugar was “identified” where the seller maintained enough sugar in its warehouse to supply the required amounts to buyer at any time. *Great Western*, 748 P.2d at 1359 (Colo. App. 1987). “There was no need, as defendant suggests, that plaintiff segregate and label bags of sugar intended to be delivered to defendant. It is not necessary that the goods be in a deliverable state. Accordingly, we hold that identification was sufficient for purposes of [Section 2-709(1)(b)].” *Id.*
123. The undisputed facts here show that IAWC had capacity (and continues to have capacity) to deliver water under the Amended Agreement. That water is “identified” for purpose of 2-709 and IAWC is entitled to payment by Watson of the entire contract price.
124. To the extent any matter set forth in the Court’s Conclusions of Law below also constitutes a Finding of Fact, the Court hereby incorporates and adopts such matter as part of its Findings of Fact. To the extent any matter set forth in the Court’s Findings of Fact above also constitutes a Conclusion of Law, the Court hereby incorporates and adopts such matter as part of its Conclusions of Law.

JUDGMENT

Based on the Findings of Fact and Conclusions of Law set out above, the Court hereby enters JUDGMENT in favor of the Plaintiff, Indiana American Water Company. The Court therefore orders and adjudges as follows:

- A. IAWC shall be awarded \$813,271.66 in unpaid amounts under the contract;
- B. IAWC shall be awarded late fees of \$24,398.36 (for a total of \$837,670.02),
- C. Declaratory judgment is hereby entered such that the Amended Agreement (which includes both the 1997 Agreement and the 2003 Amendment to that agreement) remains in place and continues through the remainder of its 40-year term, up to and including 2037. This includes (but is not limited to) the following: wheeling, territory, annual minimum purchasing;
- D. Declaratory judgment is hereby entered such that Watson is required to continue purchasing an annual minimum volume of 108,300,000 gallons of water under the Amended Agreement throughout the remainder of its 40-year term, up to and including 2037;
- E. This court agrees to entertain an award of attorney's fees and costs, assessed against Watson, with the amount of fees and costs to be determined by separate order;
- F. And that Watson shall receive nothing by way of its counterclaim.

SO RECOMMENDED THIS THE 15th DAY OF JUNE, 2016.



WILLIAM A. DAWKINS, Magistrate
Clark Circuit Court No. 1

SO ORDERED THIS THE 15th DAY OF JUNE, 2016



ANDREW ADAMS, Judge
Clark Circuit Court No. 1

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Ordinance No. 2007-OR-10

**AN ORDINANCE ANNEXING CERTAIN REAL
ESTATE INTO THE CITY OF JEFFERSONVILLE, INDIANA**

WHEREAS, this Common Council of the City of Jeffersonville, Indiana (the "Common Council"), is the legislative body of the City of Jeffersonville, County of Clark, State of Indiana (the "City"); and,

WHEREAS, this Common Council has determined that six (6) tracts of real estate within Clark County, Indiana, consisting of an aggregate of approximately 7,806-acres, which tracts are more particularly described hereinbelow (collectively, the "Annexed Territory"), and are sufficiently contiguous to the existing boundaries of the City pursuant to the provisions of both IC 36-4-3-1.5 and IC 36-4-3-13(c)(1); and,

WHEREAS, this Common Council has determined that each of the tracts within the Annexed Territory statutorily qualifies for annexation under the provisions of IC 36-4-3, *et seq.*; and,

WHEREAS, on March 5, 2007, this Common Council adopted a fiscal plan by Resolution 2007-R-11 as the definite policy of the City for the provision of non-capital and capital services to the Annexed Territory (the "Fiscal Plan") in conformity with the provisions of IC 36-4-3-13 prior to consideration of this Ordinance; and,

WHEREAS, on March 5, 2007, this Common Council further introduced this Ordinance and approved it on its first reading following adoption of the Fiscal Plan by resolution; and,

WHEREAS, following notice and publication in accordance with the provisions of IC 36-4-3-2.1 and IC 36-4-3-2.2, this Common Council held a public hearing subsequent to notice in accordance with applicable law concerning the proposed annexation that is the subject of this Ordinance on July 5, 2007, which date was more than sixty (60) days after the date on which (i) the Fiscal Plan was adopted by the above-referenced resolution, and (ii) this Ordinance was first introduced; and,

WHEREAS, more than thirty (30) days, but less than sixty (60) days have passed since the date of the public hearing on this Ordinance, to and until, the date of adoption of this Ordinance as shown below; and,

WHEREAS, this Common Council now finds that the Annexed Territory is needed and will be used by the City for its development and growth in the reasonably near future, and that the annexation of the Annexed Territory into the City on the terms and conditions of this Ordinance is in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF JEFFERSONVILLE, INDIANA, AS FOLLOWS:

Section 1. Description of Boundaries of Annexed Territory. The description of the tracts of territory hereby annexed into the City, including any public highways or rights-of-way therein or adjacent thereto, are as follows:

a. Description of Tract "A":

Being a part of Share #4 in Bowman's Partition as shown in Probate Order Book D, Page 532 in Survey #11 of the Illinois Grant to Clark County, Indiana and being further described as follows:

Beginning on the east corner of said Share 4, in the line dividing Surveys #11 and #12, same being a corporation corner of the City of Jeffersonville; Thence S.54°01'40"W., along a corporation line of said city and the line dividing Share 4 and Share 5, 1551.25 feet to a corner of said City; Thence S.54°19'19"W., along said corporation line, 220.55 feet to centerline of the Jeffersonville Flood Wall and a corner of said city; Thence northwesterly, along said centerline and a corporation line, 1301.6 feet, to the line dividing Share 3 and Share 4 of said partition plat and a corner of said city; Thence N.54°17'21"E., along a corporation line and said dividing line, 1483.43 feet to the line dividing said Surveys #11 and #12, a corner of said City; Thence S.35°30'05"E., along said dividing line and said corporation line, 1279.27 feet to THE PLACE OF BEGINNING.

Tract "A" totals approximately 45 acres. The aggregate external boundaries of the above-described Tract "A" are approximately 5,888 lineal feet, and such aggregate external boundaries of Tract "A" coincide entirely the existing boundaries of the City. The aggregate external boundaries of Tract "A" are therefore 100% contiguous to the City, which percentage exceeds the minimum one-eighth (1/8) requirement established by IC 36-4-3-1.5 and the minimum one-fourth (1/4) requirement established by IC 36-4-3-13(c)(1).

b. Description of Tract "B":

Being a part of Surveys #4, 5, 6, 12, 13, 14, 22 and 23 of the Illinois Grant to Clark County Indiana and being further described as follows:

Beginning at the south corner of lot #4 in the Estates of Cherokee Heights as shown in Plat Book 11, Page 52 of said county records;

Thence N.50°E., along a corporation line of the City of Jeffersonville, being the southeast line of said subdivision 376.01 feet to the east corner of lot #3 in said subdivision;

Thence N.40°W., along a corporation line and a northeast line of said subdivision, 340 feet to the south corner of Lot 32 in Cherokee Terrace, Unit 2 as shown in Plat Book 7, Page 4 of said county records;

Thence N.50°E., along a corporation line and the northwest Right-of-Way line of Bennett avenue, 115 feet;

Thence along a corporation line and said Right-of-Way line, 39.27 feet along a curve to the left having a radius of 25 feet and a chord of 35.36 feet to the southwest Right-of-Way line of Cherokee Drive;

Thence N.40°W., along a corporation line and said Right-of-Way line, 75 feet;

Thence S.50°W., along a corporation line and the northwest line of said lot #32, 140 feet to the northeast line of said Cherokee Heights;

Thence N.40°W., along a corporation and said northeast line, 1238.5 feet to the west corner of Lot 74 in Cherokee Terrace, Unit 4 as shown in Plat Book 9, Page 17 of said county records;

Thence N.50°10'17"E., along a corporate line and the northwest line of said Unit 4, 334.14 feet to the west corner of Lot 80 in said Unit 4;

Thence S.40°E., along a corporation line and the southwest line of said lot, 100 feet to the south corner of said lot 80;

Thence N.50°10'17"E., along a corporation line and the southeast line of said Lot, 142.15 feet to the southwesterly Right-of-Way line of Pawnee Drive;

Thence N.40°W., along a corporation line, and said Right-of-Way line, 100 feet to the north corner of said lot;

Thence N.50°10'17"E., along a corporation line, 25 feet to the centerline of said Pawnee Drive;

Thence N.39°58'07"W., along a corporation line, 521.42 feet;

Thence S.50°09'03"W., along a corporation line, 167.07 feet;

Thence S.39°58'09"E., along a corporation line, 371.4 feet;

Thence S.50°10'17"W., along a corporation line, 334.14 feet to said northeast line of said Estates of Cherokee Heights;

Thence N.39°58'07"W., along a corporation line and said northeast line, 850 feet, more or less, to the south corner of River Forest Subdivision as shown in Plat Book 11, Page 53 of said county records;

Thence N.50°01'53"E., along a corporation line and the southeast line of said subdivision, 668.29 feet to the east corner of said subdivision;

Thence N.39°58'07"W., along a corporation line and the northeast line of said subdivision and said line extended, 1428.52 feet to the southernmost corner of a tract of land described in Deed Drawer 27, Instrument 6876 of said county records;

Thence N.60°46'E., along a corporation line and the southeast line of said tract, 1085.61 feet to the east corner of said tract;

Thence N.40°34'45"W., along a corporation line and the northeast line of said tract, 900 feet to the north corner of said tract;

Thence S.39°21'06"W., along a corporation line and the northwest line of said tract, 428.62 feet;

Thence N.40°29'46"W., along a corporation line, 506.36 feet to the southeast Right-of-Way line of Middle Road also known as East 8th Street;

Thence S.11°53'43"W., along a corporation line and said right-of-Way line, 74.67 feet;

Thence S.17°00'50"W., along a corporation line and said Right-of-Way line, 312.05 feet to the line dividing Surveys 4 and 12;

Thence S.54°33'49"W., along said corporation line and said dividing line, 195.68 feet to the northwest Right-of-Way line of said Middle Road;

Thence N.14°31'11"E., along a corporation line and said Right-of-Way line, 158.47 feet;

Thence N.16°31'01"E., along a corporation line and said Right-of-Way line, 928.69 feet;

Thence N.40°W., along a corporation line, 634.52 feet to the south corner of Allison Courtyards as shown in Condo Plat Book 2, Page 5 of said county records;

Thence N.62°33'E., along a corporation line and a line of said Allison Courtyards, 644.93 feet to said northwest Right-of-Way line of said Middle Road;

Thence N.9°43'25"E., along a corporation line and said Right-of-Way line, 54.01 feet;

Thence N.63°02'45"W., along a corporation line and a line of said Allison Courtyards, 448.16 feet;

Thence N.27°26'24"W., along a corporation line and a line of said Allison Courtyards, 564.55 feet;

Thence N.37°12'56"E., along a corporation line and a line of said Allison Courtyards, 297.61 feet to the southwest Right-of-Way line of Allison Lane;

Thence N.40°33'10"W., along a corporation line and said Right-of-Way line, 940 feet, more or less, to a corner of the City of Jeffersonville;

Thence N.50°E., along a corporation line, (crossing Allison Lane) 52 feet, more or less to the northeast Right-of-Way line of said lane;

Thence N.40°W., along a corporation line and said Right-of-Way line, 320 feet, more or less to the northwest Right-of-Way line of Seminole Drive in Indian Hills Subdivision as shown in Plat Book 6, Page 220 of said county records;

Thence N.49°42'E., along a corporation line and the northwest line of said Drive, 435.6 feet;

Thence N.40°W., along a corporation line, 444.57 feet to a western corner of said Indian Hills;

Thence N.49°42'E., along a corporation line and the northwest line of said subdivision, 1396.68 feet to the line dividing Surveys #12 and #13;

Thence N.35°33'25"W., along a corporation line, and the line dividing said Surveys #12 and #13, 1430 feet to the west corner of said Survey #13;

Thence N.54°36'31"E., along a corporation line and the northwest line of said Survey 13, 53.65 feet;

Thence N.35°21'29"W., along a corporation line, 778.81 feet to the southeast Right-of-Way line of River City Park Road;

Thence S.81°18'34"E., along a corporation line and said Right-of-Way line, 536.78 feet;

Thence N.54°30'30"E., along a corporation line and said Right-of-Way line, 743.32 feet, to the line dividing Autumn Ridge Apartments & Vissing Park;

Thence S.35°32'15"E., along a corporation line, and said dividing line, 1442.27 feet to the to the south corner of said Vissing Park;

Thence N.54°41'31"E., along a corporation line and the line dividing Seilo Ridge and Vissing Park, 1284.85 feet to the southwest line of Pebble Creek Subdivision;

Thence N.35°30'30"W., along a corporation line and said southwest line, 1066.61 feet to the line dividing said Surveys #13 and #22;

Thence N.54°36'44"E., along a corporation line, said dividing line, and the northwest line of said Pebble Creek, 293.45 feet to the common corner of Surveys #22 and #23;

Thence N.36°32'15"W., along a corporation line and said dividing line, 2137 feet to a right-of-way line of Herb Lewis Road;

Thence S.50°W., along a corporation line and said right-of-way line of Herb Lewis Road, 15 feet;

Thence N.36°03'37"W., along a corporation line and the southwest right-of-way line of said Road, 1170 feet, more or less, to the southeast Right-of-Way line of East 10th Street (formerly State Highway #62);

Thence northeasterly along a corporation line and said Right-of-Way line, 1581 feet, more or less, to the southwest Right-of-Way line of the Clark Maritime Center Railroad Spur;

Thence southeasterly and southerly along corporation lines and said Right-of-Way lines, 8724 feet, more or less, to the west corner of a tract of land described in Deed Drawer 19, Instrument 15017 of said county records, a corner of said City;

Thence N.47°08'04"E., along a corporation line and the northwest line of said tract, 206.82 feet to the north corner of said tract;

Thence S.51°54'35"E., along a corporation line and the northeast line of said tract, 187.5 feet to the east corner of said tract;

Thence northeasterly, along corporation lines and the centerline of Middle Road, 883 feet, more or less, to a corner of the City of Jeffersonville;

Thence N.35°13'34"W., along a corporation line, 881.56 feet to a corner of said City;

Thence N.54°10'26"E., along a corporation line, 938.3 feet, more or less, to a corner of said City;

Thence S.35°49'34"E., along a corporation line, 508 feet, more or less, to a corner of said City;

Thence S.54°10'26"W., along a corporation line, 349.8 feet to a corner of said City;

Thence S.35°49'34"E., along a corporation line, 96.36 feet to a corner of said City;

Thence S.54°10'26"W., along a corporation line, 208.73 feet to a corner of said City;

Thence S.35°49'34"E., along a corporation line, 455.86 feet to a corner of said City;

Thence S.54°10'26"W., along a corporation line, 1338.27 feet to a corner of said City;

Thence N.37°45'30"W., along a corporation line, 67.22 feet to the centerline of Middle Road;

Thence southwesterly, along corporation lines and the centerline of Middle Road, 3143 feet, more or less, to the northeast line of The Fields of Lancassange, Section 3, as shown in Plat Book 13, Page 18 (if extended northwesterly to the centerline of said Middle Road);

Thence S.35°45'40"E., along said corporation line and said Section 3 and Fields of Lancassange Section 2 in Plat Book 12, Page 53, 3142.09 feet to the east corner of said Section 2;

Thence S.54°28'56"W., along said corporation line and the southeast line of said section 2, 311.9 feet to the south corner of said section 2;

Thence S.36°01'11"E., along said corporation line, 836.89 feet to a corner of a tract of land described in Deed Drawer 26, Instrument 8685 of said county records;

Thence N.54°28'26"E., along said corporation line and a line of said tract, 75 feet;

Thence N.35°59'43"W., along said corporation line and a line of said tract, 142.06 feet;

Thence N.17°15'23"W., along said corporation line and a line of said tract, 170.93 feet;

Thence N.74°50'12"E., along said corporation line and a line of said tract, 606.63 feet;

Thence S.73°14'39"E., along said corporation line and a line of said tract, 1403.64 feet to a corner of said tract;

Thence S.35°58'45"E., along said corporation line and a line of said tract and said line extended, 565 feet, more or less, to the west corner of a tract of land described in Deed Drawer 15, Instrument 279 of said county records;

Thence N.58°27'37"E., along said corporation and the northwest line of said tract, 438.97 feet to the centerline of Utica Pike;

Thence continuing, N.58°27'37"E., along said corporation line and the north line of Island View Subdivision in Plat Book 7, Page 51, 591.61 feet to the east corner of said Island View;

Thence N.53°40'05"E., along said corporation line, 291.78 feet;

Thence N.39°19'21"E., along said corporation line, 121.51;

Thence S.67°07'35"E., along said corporation line, 347.31 feet;

Thence S.85°21'56"E., along said corporation line, 346.13 feet;

Thence N.80°03'39"E., along said corporation line, 295.44 feet;

Thence S.80°40'02"E., along said corporation line, 363.82 feet;

Thence N.31°03'07"E., along said corporation line, 222.95 feet;

Thence S.54°24'19"E., along said corporation line, 350 feet, more or less, to a point 100 feet northwest of the line dividing the State of Indiana and the Commonwealth of Kentucky;

Thence along said corporation line, southwesterly and parallel with said dividing line 12,275 feet, more or less to a corner of said City;

Thence N.35°55'12"W., along a corporation line, 1172 feet, more or less, to THE TRUE PLACE OF BEGINNING.

Tract "B" totals approximately 2,169 acres. The aggregate external boundaries of the above-described Tract "B" are approximately 76,861 lineal feet, and such aggregate external boundaries of Tract "B" coincide entirely with the existing boundaries of the City. The aggregate external boundaries of Tract "B" are therefore 100% contiguous to the City, which percentage exceeds the minimum one-eighth (1/8) requirement established by IC 36-4-3-1.5 and the minimum one-fourth (1/4) requirement established by IC 36-4-3-13(c)(1).

c. Description of Tract "C":

Being a part of Surveys #14, 15, 16, 23, 24, 25, 35, 36, 37 and 38 of the Illinois Grant to Clark County, Indiana and being further described as follows:

Beginning at the north corner of said Survey #14;

Thence S.54°28'07"W., along a corporation line of the City of Jeffersonville, being the line dividing Surveys #14 and #24, 216.75 feet to the southwest Right-of-Way line of Utica-Sellersburg Road;

Thence N.34°32'51"W., along a corporation line of said City being said southwest Right-of-Way line, 1925.13 feet;

Thence S.54°34'09"W., along a corporation line of said City, 613.79 feet;

Thence N.34°54'20"W., along a corporation line, 202.51 feet;

Thence S.54°32'21"W., along a corporation line, 2038.82 feet to the northeast Right-of-Way line of the Clark Maritime Center Railroad Spur Track;

Thence northwesterly, along corporation lines and railroad Right-of-Way lines, 412 feet, more or less, to a corner of said City by ordinance #98-or-39;

Thence northeasterly, along a corporation line, 150 feet, more or less, to the northeast Right-of-Way line of Port Road;

Thence northwesterly, along a corporation line and said northeast Right-of-Way line, 2355 feet, more or less, to the southeast Right-of-Way line of State Highway 62;

Thence northeasterly along a corporation line and said southeast Right-of-Way line, 680 feet;

Thence Northwesterly, along a corporation line, 1356.26 feet to the northwest Right-of-Way line of the CSX Railroad;

Thence N.19°58'54"E., along a corporation line and said northwest Right-of-Way line, 3481.37 feet to the southwest Right-of-Way line of Utica-Sellersburg Road;

Thence southeasterly along a corporation line, and said Right-of-Way line, 540 feet, more or less, to the northwest Right-of-Way line of said State Highway 62;

Thence northeasterly along a corporation line and said northwest right-of-Way line, 2700 feet, more or less;

Thence southeasterly along a corporation line, crossing said Highway 62, 150 feet, more or less to the west corner of the Army Ammunition Plant perimeter fence;

Thence southerly, southeasterly, northeasterly and southeasterly, along corporation lines, and said perimeter fence, 12,500 feet, more or less, to the line dividing Surveys #17 and #25;

Thence leaving said corporation line, southwesterly, along said dividing line, and the line dividing Surveys #16 and 25, 1800 feet, more or less to the southwest Right-of-Way line of Old Salem Road;

Thence S.14°18'24"E., along said southwest Right-of-Way line, 838 feet, more or less to an angle point in said Road Right-of-Way line;

Thence S.16°03'24"E., along said Right-of-Way line, 414 feet, more or less, to the northwest line of a tract of land described in Deed Drawer 15, Instrument 8478 of said County Records;

Thence southwesterly, along said northwest line and the northwest line of a tract of land described in Deed Drawer 8, Instrument 3349, 675 feet, more or less, to a steel pin on the west corner of said last mentioned tract;

Thence S.36°29'05"E., along the southwest line of said tract described in Deed Drawer 8, Instrument 3349 and the southwest line of a tract of land described in Deed Drawer 28, Instrument 14463, 860 feet to a stone on the south corner of said last mentioned tract;

Thence S.36°51'49"E., 632.52 feet to an iron pipe on the north corner of Deed Drawer 22, Instrument 11,100;

Thence S.54°24'31"W., along the northwest line of said tract, 1665.89 feet to a steel pin on the line dividing Surveys #15 and #16;

Thence N.35°17'40"W., along said dividing line, 309.6 feet to a steel pin on the north corner of a tract of land described in Deed Drawer 20, Instrument 6882, being also the east corner of a tract of land described in Deed Drawer 28, Instrument 1405;

Thence S.49°43'47"W., along the line dividing said tracts, 1874.09 feet to the centerline of Utica-Sellersburg Road, being a corporation line of said City;

Thence N.39°W., along a corporation line and said centerline, 580 feet, more or less, to a corner of said City;

Thence S.50°W., along a corporation line, and partially along another centerline of said Utica-Sellersburg Road, 374.71 feet;

Thence southwesterly, along corporation lines and said centerline, 418.3 feet;

Thence S.51°07'33"W., along a corporation line and said centerline, 1177 feet, more or less, to the southwest Right-of-Way line of said Utica-Sellersburg Road (where it turns to the northwest);

Thence N.35°23'01"W., along a corporation line, and said Right-of-Way line, 1689 feet, more or less, to the southeast line of Creaghton Cove as shown in Plat Book 13, Page 24 of said County records;

Thence N.54°35'43"E., along a corporation line, and said southeast line, 15 feet, more or less, to the line dividing Surveys #14 and #15, being the centerline of said Utica-Sellersburg Road;

Thence N.35°27'23"W., along a corporation line, said dividing line and said centerline, 264 feet to THE PLACE OF BEGINNING.

Tract "C" totals approximately 1,770 acres. The aggregate external boundaries of the above-described Tract "C" are 42,915 lineal feet, and such aggregate external boundaries of Tract "C" coincide with approximately 33,903 lineal feet of the existing boundaries of the City. The aggregate external boundaries of Tract "C" are therefore approximately 79% contiguous to the City, which percentage exceeds the minimum one-eighth (1/8) requirement of IC 36-4-3-1.5 and the minimum one-fourth (1/4) requirement established by IC 36-4-3-13(c)(1).

d. Description of Tract "D":

Being a part of Surveys 33, 34, 35, 36, 37, 47, 48, 49, 50, 51, 67, 68, 69, 91, and 92 of the Illinois Grant to Clark County, Indiana and being further described as follows:

Beginning at the common corner of said Surveys 69, 70, 91, and 92;

Thence S.50°08'53"W., along the line dividing Surveys 69 and 91, 15 feet to the southwest Right-of-Way line of Salem-Noble Road;

Thence S36°44'52"E., along Right-of-Way line, 4200.55 feet, to the east corner of a tract of land described in Deed Drawer 5, Instrument 1941;

Thence S.53°41'04"W., along the southeast line of said tract, 1761 feet, more or less, to a steel pin on the north corner of a tract of land described in Deed Drawer 22, Instrument 6821 of said county records;

Thence S.36°22'11"E., along the northeast line of said tract, 849 feet to a steel pin;

Thence N.53°37'49"E., 121.45 feet to a steel pin;

Thence S.43°29'05"E., 97.73 feet to a steel pin on the line dividing Surveys #51 and 69;

Thence S.51°15'26"E., 489.72 feet to a steel pin;

Thence N.87°56'E., 269.31 feet to a steel pin;

Thence S.36°22'11"E., 1515.5 feet to the northwest Right-of-Way line of Charlestown Pike (formerly Jeffersonville-Charlestown Pike);

Thence N.47°30'21"E., along said Right-of-Way line, 451 feet to a point in the northeast line of Lots 70 and 71 in Windy Pines as shown in Plat Book 12, page 34 of said county records if said northeast line was extended northwesterly to said northwest Right-of-Way line of Charlestown Pike;

Thence S.42°27'41"E., 284 feet to the east corner of said Lot 70;

Thence N.47°45'22"E., along a line of said subdivision, 200.14 feet to a corner of said subdivision;

Thence S.45°41'25"E., along a line of said subdivision, 283.04 feet to a corner of said subdivision;

Thence N.47°25'33"E., along a line of said subdivision, 3.72 feet to a corner of said subdivision;

Thence S.44°13'58"E., along a line of said subdivision, 184.63 feet to a corner of said subdivision;

Thence S.48°44'55"W, along a line of said subdivision, 72.99 feet to a corner of said subdivision;

Thence S.37°03'05"E., along a line of said subdivision, 189.25 feet to a corner of said subdivision;

Thence S.37°35'14"E, along a line of said subdivision, 97 feet to a corner of said subdivision;

Thence S.48°36'24"W., along a line of said subdivision, 4 feet to a corner of said subdivision;

Thence S.41°12'35"E., along a line of said subdivision 98 feet to a corner of said subdivision;

Thence S.42°36'05"E., along a line of said subdivision, 208.14 feet to a corner of said subdivision;

Thence S.48°19'49"W., 927.1 feet to the north corner of Windy Pines Subdivision Unit 3 as shown in Plat Book 13, Page 52 of said county records;

Thence S.33°38'06"E., along a line of said subdivision, 450.63 feet to a corner of said subdivision;

Thence S.56°30'07"W., along a line of said subdivision 134.7 feet to a corner of said subdivision;

Thence S.33°29'42"E., along a line of said subdivision, 191.41 feet to a corner of said subdivision;

Thence N.56°23'11"E., along a line of said subdivision, 133.4 feet to a corner of said subdivision;

Thence S.33°38'08"E., along a line of said subdivision and said line extended, 800 feet, more or less, to the southeast Right-of-Way line of State Highway 62 being a corporation line of the City of Jeffersonville;

Thence southwesterly along a corporation line and said Right-of-Way line, 3550 feet, more or less, to a point on the northwest line of the U.S. Military Reservation Indiana Army Ammunition Plant;

Thence northwesterly, along a corporation line, 400 feet, more or less, to the southeast Right-of-Way line of Shungate Road;

Thence southwesterly along a corporation line and said Right-of-Way line, 2400 feet, more or less, to the northeast line of a tract of land Described in Deed Drawer 16, Instrument 12,536 if said line were extended southeasterly to said Right-of-Way line;

Thence northwesterly along a corporation line and said northeast line and its' extension, 512 feet, more or less, to the southeast line Right-of-Way line of the Southern Indiana Railroad;

Thence southwesterly along a corporation line and said Right-of-Way line, 672 feet, more or less to the centerline of Utica-Sellersburg Road;

Thence southwesterly and northwesterly along a corporation line and said railroad Right-of-Way line, 2050 feet, more or less, to the southeast Right-of-Way line of Charlestown Pike;

Thence southwesterly along a corporation line and said Right-of-Way line, 5250 feet, more or less, to a corner of said City;

Thence N.36°17'27"W., along a corporation line, 430 feet, more or less, to a corner of said City by Ordinance #2004-OR-6;

Thence N.51°14'48"W., along a corporation line, 343.36 feet to the southeast Right-of-Way line of Jeffersonville Limited;

Thence S.44°09'22"W., along a corporation line, and said Right-of-Way line, 1434.91 feet;

Thence N.40°30'W., along corporation line, 110 feet, more or less, to the south corner of Meadow Springs Subdivision as shown in Plat Book 11, Page 32 of said county records;

Thence N.44°09'22"E., along a corporation line, and the southeast line of said subdivision, 589.03 feet to the east corner of said subdivision;

Thence N.40°30'W., along a corporation line and the northeast line of said subdivision, 1023.91 feet to the north corner of said subdivision;

Thence S.50°38'47"W., along a corporation line and the northwest line of said subdivision, 580.12 feet to the line dividing said Surveys 34 and 35, and the east line of The Meadows, Unit 6 as shown in Plat Book 9, Page 22 of said county records;

Thence N.35°17'47"W., along a corporation line being said east line, 590 feet, more or less to the north corner of said Unit 6;

Thence S.54°57'02"W., along a corporation line, being the northwest line of said Meadows subdivision, 3450 feet, more or less to a corner or said city by ordinance #92-or-52;

Thence N.34°32'41"W., along a corporation line and the northeast line of the YMCA tract, 447.78 feet;

Thence S.36°32'35"W., along a corporation line, 147.15 feet;

Thence 186.76 feet along said Right-of-Way line on a 950.36 foot radius curve to the right being subtended by a chord bearing S. 47°56'01"E, 186.76 feet;

Thence S.52°36'01"W., along a corporation line, 213.5 feet;

Thence S.54°48'11"W., along a corporation line, 645.44 feet to the west Right-of-Way line of Hamburg Pike Thence N.15°38'09"W., along said Right-of-Way line, and a corporation line, 559.05 feet;

Thence S.63°04'10"W., along a corporation line, 357.81 feet;

Thence N.15°59'50"W., along a corporation line, 118.15 feet;

Thence S.43°05'14"W., along a corporation line, 345.72 feet;

Thence S.0°59'57"E., along a corporation line, 703.09 feet;

Thence N.73°33'42"W., along a corporation line, 643.45 feet to a point 100 feet east of the east right-of-way line of the Conrail Railroad;

Thence Northerly, parallel to said railroad, 500 feet, more or less, to the former line between George Pfister and Marvin Crum, (being 365 feet, more or less, south of the south Right-of-Way line of Coopers Lane formerly Potters Lane);

Thence Westerly, along a corporation line 75 feet;

Thence Northerly, along a corporation line, parallel to said railroad, 3700 feet, more or less; to a corner of said City by ordinance #70-or-18;

Thence Easterly, along a corporation line, 75 feet to a point in Lot 14 in Cementville as shown in Plat Book 3, Page 73 of said county records;

Thence Northerly, parallel to said railroad, 4239 feet, more or less, to the centerline of Silver Creek;

Thence following said centerline, upstream in a generally northeasterly direction, 31,324 feet, more or less, to the northwest line of Skyline Acres, Section 3, if said line were extended southwesterly to said centerline;

Thence N.55°24'17"E., along the northwest line of said subdivision and its' extension 2113 feet, more or less, to the southwest Right-of-Way line of Salem-Noble Road;

Thence S.35°00'43"E., along said Right-of-Way line, 970 feet, more or less, to the north line of Whispering Oaks Subdivision, Section 1, as shown in Plat Book 11, Page 69 of said county records, if said line were extended southwesterly to said southwest Right-of-Way line of Salem-Noble Road;

Thence N.50°10'52"E., along the northwest line of said subdivision and its' extension, 926 feet to a corner of said subdivision;

Thence N.44°59'01"W., along the west line of Lot 83 in said subdivision and the west line of Lot 141 in Whispering Oaks subdivision, Section 2 as shown in Plat Book 12, Page 68 of said county records, 264.26 feet to a corner of said Section 2;

Thence N.50°10'08"E., along the northwest line of said Section 2, 1478.13 feet to the north corner of said Section 2;

Thence S.39°53'42"E., along a northeast line of said subdivision, 981.32 feet;

Thence S.41°18'32"E., along a line of said subdivision, 484.38 feet to the line dividing said Surveys 70 and 92;

Thence S.50°08'53"W., along said dividing line, 2375.75 feet to THE TRUE PLACE OF BEGINNING.

Tract "D" totals approximately 3,562 acres. The aggregate external boundaries of the above-described Tract "D" are approximately 91,416 lineal feet, and such aggregate external boundaries of Tract "D" coincide with approximately 34,738 lineal feet of the existing boundaries of the City. The aggregate external boundaries of Tract "D" are therefore approximately 38% contiguous to the City, which percentage exceeds the minimum one-eighth (1/8) requirement established by IC 36-4-3-1.5 and the minimum one-fourth (1/4) requirement established by IC 36-4-3-13(c)(1).

e. Description of Tract "E":

Being a part of Surveys 53 and 71 of the Illinois Grant to Clark County, Indiana and being further described as follows:

Beginning at the southernmost corner of Falcon Crest Subdivision as shown in Plat Book 13, Page 8 of the Clark County, Indiana Records;

Thence N.36°28'36"W., along the southwest line of said subdivision, 1320.85 feet to a western corner of said subdivision;

Thence N.54°47'20"E., along a line of said subdivision, 293.29 feet to a corner of said subdivision;

Thence N.36°21'11"W., along a line of said subdivision, 148.45 feet to a corner of said subdivision;

Thence N.53°48'15"E., along a line of said subdivision, 868.63 feet to the northernmost corner of said subdivision;

Thence S.46°49'24"E., along a line of said subdivision, 345.7 feet to the southeast Right-of-Way line of Falcon Drive;

Thence along said Right-of-Way line 43.77 feet on the arc of a 345.7 foot radius curve to the left (concave northwesterly) being subtended by a chord bearing N.39°32'59"E., 43.74 feet to the northern most corner of Lot 47 in said subdivision;

Thence S.54°04'38"E., along a line of said subdivision and said line extended, 390 feet, more or less, to the southeast Right-of-Way line of the C.S.X. Railroad;

Thence N.22°09'08"E., along said Right-of-Way line, 780 feet, more or less to the north corner of a tract of land described in Instrument #20040498 of said County records;

Thence S.67°50'48"E., along the northeast line of said tract, and said line extended, 1000 feet, more or less, to the southeast Right-of-Way line of State Highway 62 being also the corporation line of the City of Jeffersonville;

Thence Southwesterly along said corporation line and said Right-of-Way line 4500 feet, more or less, to the northeast Right-of-Way line of Stacy Road, if extended southeasterly to said southeast Right-of-Way line of State Highway 62;

Thence N.36°04'W., along said Right-of-Way line and its' extension, 1250 feet, more or less, to the southeast Right-of-Way line of said railroad;

Thence N.22°09'08"E., along said Right-of-Way line, 1450 feet, more or less, to the southwest line of said Falcon Crest subdivision if extended southeasterly to the southeast Right-of-Way line of said Railroad;

Thence N.36°28'36"W., along said extended line, 80 feet, more or less, to
THE PLACE OF BEGINNING.

Tract "E" totals approximately 160 acres. The aggregate external boundaries of the above-described Tract "E" are approximately 12,565 lineal feet, and such aggregate external boundaries of Tract "E" coincide with approximately 4,523 lineal feet of the existing boundaries of the City. The aggregate external boundaries of Tract "E" are therefore approximately 36% contiguous to the City, which percentage exceeds the minimum one-eighth (1/8) requirement established by IC 36-4-3-1.5 and the minimum one-fourth (1/4) requirement established by IC 36-4-3-13(c)(1).

f. Description of Tract "F":

Being a part of Surveys #22 and #35 of the Illinois Grant to Clark County, Indiana and being further described as follows:

Beginning at the south corner of said Survey #35 being on the Corporation Line of the City of Jeffersonville;

Thence N.34°55'27"W., along a corporation line of said City being the line dividing Surveys #34 and #35, 28.03 feet to the northwest Right-of-Way line of Charlestown Pike;

Thence N.55°29'42"E., along said Right-of-Way line and a corporation line, 223.45 feet;

Thence N.77°52'03"E., along said Right-of-Way line, and a corporation line 31.9 feet;

Thence S.46°43'14"E., along a corporation line, 21.28 feet to the centerline of Charlestown Pike;

Thence northeasterly, along said centerline and a corporation line, 1661 feet, more or less, to the south corner of a tract of land described in Computer #200310160 of said county records;

Thence S.36°17'27"E., crossing said pike, 20 feet, more or less, to the southeast Right-of-Way line of said pike;

Thence southwesterly along said Right-of-Way line and a corporation line, 1350 feet, more or less to a north line of Landsburg Cove, Section 5 as shown in Plat Book 12, Page 16 of said county records;

Thence S.70°58'40"E., along the northeast line of said Section 5, and a corporation line, 256.99 feet, more or less,

Thence N.56°25'23"E., along a corporation line, 581.45 feet;

Thence N.34°49'27"W., along a corporation line, 11.03 feet to the south corner of Landsburg Cove, Section 1, as shown in Plat Book 10, Page 82 of said county records;

Thence N.55°41'52"E., along a corporation line and the southeast line of said Section 1, 586.23 feet to the south corner of Landsburg Cove, Section 2 as shown in Plat Book 10, Page 83 of said county records;

Thence N.55°41'52"E., along a corporation line, 380 feet to the southwest line of Landsburg Cove, Section 4 as shown in Plat Book 11, Page 54 of said county records;

Thence S.33°02'34"E., along a corporation line and said southwest line, (passing the south corner of said section 4 at 754.23 feet) 826.3 feet to the southeast right-of-way line of the former CSX Railroad;

Thence S.23°12'31"W., along a corporation line and said Right-of-Way line, 2885 feet, more or less, to a corner of said City by ordinance #95-OR-38;

Thence S.51°W., along a corporation line, 224.33 feet;

Thence N.45°52'W., along a corporation line, 241.69 feet;

Thence N.22°35'08"W., along a corporation line, 52.12 feet;

Thence N.40°W., along a corporation line, 235 feet;

Thence N.28°17'E., along a corporation line, 435.54 feet;

Thence N.71°38'30"W., along a corporation line, 129.6 feet to the southeast Right-of-Way line of Hammons Lane;

Thence N.10°59'15" W., along a corporation line, 57.36 feet to the northwest Right-of-Way line of said lane;

Thence N.40°W., along a Corporation line 270 feet;

Thence S.49°40'W., along said corporation line and the northwest line of said tract, 350 feet;

Thence N.40°W., along a corporation line, 1210 feet, more or less, to the original northwest Right-of-Way line of Charlestown Pike;

Thence N.38°57'30"W., along a corporation line, and said Right-of-Way line, 400 feet, more or less, to the line dividing said Surveys #22 and #35;

Thence S.50°17'40"W., along a corporation line and said dividing line, 200 feet, more or less, to THE PLACE OF BEGINNING.

Tract "F" totals approximately 100 acres. The aggregate external boundaries of the above-described Tract "F" are approximately 11,812 lineal feet, and such aggregate external boundaries of Tract "F" coincide with approximately 11,788 lineal feet of the existing boundaries of the City. The aggregate external boundaries of Tract "F" are therefore approximately 99.8% contiguous to the City, which percentage exceeds the minimum one-eighth (1/8) requirement established by IC 36-4-3-1.5 and the minimum one-fourth (1/4) requirement established by IC 36-4-3-13(c)(1).

The map prepared by David R. Blankenbeker, L.S., attached hereto as Exhibit "A" through "F", the originals of which are on file in the office of the Clerk-Treasurer, further depict the above described tracts within the Annexation Territory, and are incorporated herein by reference.

The entirety of the Annexed Territory totals approximately 7,806 acres. The aggregate external boundaries of the entirety of the Annexed Territory are approximately 241,457 lineal feet, and such aggregate external boundaries of the entirety of the Annexed Territory coincides with approximately 167,701 lineal feet of the existing boundaries of the City. The aggregate external boundaries of the entirety of the Annexed Territory are therefore approximately 69% contiguous to the City, which percentage exceeds both the minimum one-eighth (1/8) requirement established by IC 36-4-3-1.5 and the minimum one-fourth (1/4) requirement established by IC 36-4-3-13(c)(1).

Section 2. Description of Special Terms and Conditions. Pursuant to the provisions of IC 36-4-3-8, the following special terms and conditions that are intended to make the annexation effected hereby equitable to the property owners and residents of the City as well as those in the Annexed Territory are hereby adopted:

a. The effective date of the annexation enacted by this Ordinance shall be postponed until midnight on December 31, 2007 (i.e., starting on January 1, 2008).

b. The rendering of needed services to the Annexed Territory shall be pursuant to the provisions of the Fiscal Plan previously adopted by resolution of this Common Council.

c. This Common Council has determined upon reasonable inquiry that (i) the resident population density of the aggregate of the Annexed Territory is less than three (3) persons per acre, and/or (ii) the aggregate of the Annexed Territory is not subdivided or is parceled through separate ownerships into lots or parcels such that at least sixty percent (60%) of the total number of lots and parcels are less than one (1) acre, and the provisions of IC 36-4-3-8(c) are accordingly inapplicable to this Ordinance and the Annexed Territory.

Section 3. Description of Property Tax Abatements within Annexed Territory. No property tax abatements pursuant to the provisions of IC 36-4-3-8.5 within the Annexed Territory are adopted within this Ordinance as to any property within the Annexed Territory.

Section 4. Assignment of Annexed Territory to Municipal Legislative District. Pursuant to the provisions of IC 36-4-3-4(g), the Annexed Area shall be divided and assigned according to existing Township Precincts into the following Council Districts of the City:

<u>Existing Township and Precinct #</u>	<u>City Council District After Annexation</u>
Jeffersonville – 20	3 rd District
Jeffersonville – 21	3 rd District
Jeffersonville – 22	3 rd District
Jeffersonville – 23	4 th District
Jeffersonville – 24	5 th District
Jeffersonville – 25	2 nd District
Utica – 2	4 th District
Utica – 3	2 nd District
Utica – 4	2 nd District
Charlestown – 7	2 nd District

The ordinance defining Council Districts within the City shall automatically be deemed amended as of the effective date of the annexation effected by this Ordinance the changes set forth above.

Section 5. Zoning Classifications of Properties within the Annexed Territory. Upon the effective date of the annexation effected by this Ordinance, all properties within the Annexed Territory shall be classified for zoning purposes in accordance with the provisions of Section I(D) of the Fiscal Plan, including without limitation the tables and maps incorporated therein by reference, but excepting the amendments to such tables and maps listed in Appendix "A" attached hereto and incorporated herein. The City Zoning Map shall be amended as of the effective date of this Ordinance to reflect such zoning classifications of properties within the Annexed Territory. Any use existing within the Annexation Territory on the effective date of this Ordinance that was fully in compliance with the applicable Clark County zoning requirements in effect prior to the effective date of this Ordinance, but which is not in

compliance with the requirements of the applicable new zoning classification under the provisions of the Jeffersonville Zoning Ordinance, including without limitation any agricultural use, shall be permitted to continue as a non-conforming use to the extent and scope that such use existed as of the effective date of this Ordinance and in accordance with the provisions of the Jeffersonville Zoning Code and Indiana law generally (as the same may be amended from time-to-time) pertaining to such non-conforming uses.

Section 6. Fire Protection Districts. This Common Council has determined upon diligent inquiry to the Clark County Auditor that as of the date of the adoption of this Ordinance, (a) all properties within the Annexed Area located in Utica Township are presently within the Utica Township Fire District, and (b) all properties within the Annexed Area that are located in Charlestown Township are presently within the Charlestown Fire Protection District. Pursuant to the provisions of IC 36-4-3-7(e), the City shall be liable for and shall pay the indebtedness of the Utica Township Fire District and the Charlestown Fire Protection District in the same ratio that the assessed valuation of the property in the Annexed Territory that is within each such fire protection district bears to the assessed valuation of all property in each such fire protection district as shown by the most recent assessment before the annexation. The City shall make such payments of principal and interest on such indebtedness to the board of fire trustees of the applicable fire district as such obligations come due following the effective date that the City assumes responsibility for fire protection service (such date being January 1, 2009).

Section 7. No Township Debt. This Common Council has determined upon diligent inquiry to the Jeffersonville Township Trustee, the Utica Township Trustee, and the Charlestown Township Trustee, respectively, that as of the date of the adoption of this Ordinance, no debt has been issued or exists within any of such townships. Pursuant to the provisions of IC 36-4-3-10, and if as of the effective date of this Ordinance any of the townships from which the City has annexed territory is indebted or has outstanding unpaid bonds or other obligations, the City shall be liable for and shall pay that indebtedness in the same ratio as the assessed valuation of the property in the Annexed Territory bears to the assessed valuation of all property in the respective township, as shown by the most recent assessment for taxation before the annexation, unless the assessed property within the City is already liable for the indebtedness. The City shall pay its indebtedness under this section, if any, to the applicable township executive. If the indebtedness consists of outstanding unpaid bonds or notes of the township, the payments to the executive shall be made as the principal or interest on the bonds or notes becomes due.

Section 8. Displacement of Other Governmental Unit Employees. It is not anticipated that this annexation will result in the elimination of jobs for any employees of other governmental units. However, in the event that any such jobs are eliminated, the City personnel director is hereby directed to assist any such displaced employees in obtaining new employment, but nothing herein shall require the City to provide employment for any such displaced employees.

Section 9. Effective Date of Annexation; Publication. The annexation enacted by this Ordinance shall take effect, except to the extent that applicable Indiana law may mandate a different date, at 12:00 midnight on December 31, 2007 (i.e., starting on January 1, 2008), and the Annexed Territory shall be and become a part of the City as of such date. Promptly after adoption of this Ordinance, the Clerk-Treasurer shall publish this Ordinance and notice of its

adoption in the manner prescribed by IC 5-3-1, which publication shall occur not less than ninety (90) days prior to the effective date of the annexation effected by this Ordinance.

Section 10. Certification of Ordinance; Effect. Promptly after adoption of this Ordinance, the Clerk-Treasurer shall certify a copy of this Ordinance as being true and correct in all respects. Pursuant to the provisions of IC 36-4-3-6, such certified copy of this Ordinance shall serve as conclusive evidence of the corporate boundaries of the City in any subsequent proceeding, including without limitation, with respect to any issue that the territory described in this Ordinance was properly annexed and is a part of the City.

Section 11. Clerk-Treasurer to File Copies of Ordinance. Pursuant to the provisions of IC 36-4-3-7 and IC 36-4-3-22, the Clerk-Treasurer shall do the following:

a. Within ten (10) days after the adoption of this Ordinance, send written notice to the Utica Township Fire District and the Charlestown Fire Protection District by its board of fire trustees that the City shall begin to provide fire protection to the portion the Annexed Territory that is located within such district on January 1, 2009, in the absence of remonstrance or appeal under the provisions of IC 36-4-3-11 or IC 36-4-3-15.5.

b. In the event that a remonstrance or appeal of this Ordinance is not filed during the period permitted under applicable Indiana law, file a certified copy of the Ordinance with (i) the Clark County Auditor, (ii) the Clerk of the Clark Circuit Court, (iii) the Clark County Board of Voter Registration, (iv) the office of the Indiana Secretary of State, and (v) the office of census data established by IC 2-5-1.1-12.2. The Clerk-Treasurer shall further provide a sufficient number of copies of the Ordinance to the Clark County Auditor to enable the Clark County Auditor to forward copies and provide notification of the effective date of the annexation effected by this Ordinance pursuant to the provisions of IC 36-4-3-22(d) to each of the following: (1) the Clark County Highway Department, (2) the Clark County Surveyor, (3) the Clark County Plan Commission, (4) the Clark County Sheriff, (5) the Jeffersonville Township Trustee, (6) the Utica Township Trustee, (7) the office of the Indiana Secretary of State, and (8) the office of census data established by IC 2-5-1.1-12.2.

c. In the event that a remonstrance or appeal of this Ordinance is timely filed, but this Ordinance is sustained following judicial review, a certified copy of the judgment ordering annexation in accordance with this Ordinance with (i) the Clark County Auditor, (ii) the Clerk of the Clark Circuit Court, (iii) the Clark County Board of Voter Registration, (iv) the office of the Indiana Secretary of State, and (v) the office of census data established by IC 2-5-1.1-12.2. The Clerk-Treasurer shall further provide a sufficient number of copies of the judgment to the Clark County Auditor to enable the Clark County Auditor to forward copies and provide notification of the effective date of the annexation effected by this Ordinance pursuant to the provisions of IC 36-4-3-22(d) to each of the following: (1) the Clark County Highway Department, (2) the Clark County Surveyor, (3) the Clark County Plan Commission, (4) the Clark County Sheriff, (6) the Utica Township Trustee, (7) the office of the Indiana Secretary of State, and (8) the office of census data established by IC 2-5-1.1-12.2.

d. Record a certified copy of this Ordinance in the office of the Clark County Recorder.

e. The filings and recordings required by this Section 11 shall be accomplished no later than ninety (90) days after (i) the expiration of the period permitted for a remonstrance or appeal, or (ii) the delivery of a certified order under the provisions of IC 36-4-3-15. However, the failure to record this Ordinance as provided by IC 36-4-3-22(a)(2) shall not invalidate this Ordinance.

Section 12. Separate Annexations. Each of the tracts described in Section 1 above are separate annexations that are subject to separate remonstrance, appeal, or other claim for judicial review in accordance with the applicable provisions of Indiana law, and the annexation of such tracts are combined in this single Ordinance for administrative and legislative economy.

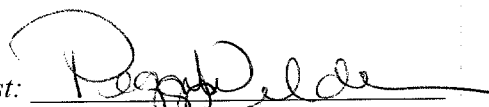
Section 13. Partial Invalidity; Severability. In the event that a portion, but less than all, of the provisions of this Ordinance and/or annexations effected by this Ordinance are deemed to be invalid or unenforceable by the final, non-appealable order of a court of competent jurisdiction, such provisions shall be stricken from the text of this Ordinance, but the remaining provisions following such determination and striking shall remain in full force and effect notwithstanding such partial invalidity and striking.

Section 14. Adoption of Ordinance; Effective Date. This Ordinance shall be in full force and effect from the later of (a) the date of its passage and adoption by this Common Council, (b) the date of its approval by the Mayor in accordance with the provisions of IC 36-4-6-14 or the date on which any veto by the Mayor is overridden by this Common Council in accordance with the provisions of IC 36-4-6-16, or (c) any later date specified by applicable Indiana law.

SO ORDAINED by this Common Council this 6TH day of August, 2007.



**KEITH FETZ, President of the
Jeffersonville Common Council**

Attest: 
Peggy Wilder, Clerk-Treasurer

CERTIFICATE OF PRESENTATION TO MAYOR

The undersigned hereby certifies that on the 6 day of August, 2007, the above Resolution was PRESENTED by me, as the duly elected Clerk-Treasurer of the City of Jeffersonville, Indiana, to the Mayor of the City of Jeffersonville, Indiana.

Peggy Wilder, Clerk-Treasurer

APPROVAL OR VETO BY MAYOR

The undersigned, as of this _____ day of _____, 2007, and as the duly elected Mayor of the City of Jeffersonville, Indiana, hereby takes the hereinbelow described action regarding the above Ordinance as authorized by the provisions of IC 36-4-6-16 and as evidenced by my signature affixed below (check below as appropriate):

_____ I hereby **APPROVE** this Ordinance, which approval was entered within ten (10) days after its presentation by the Clerk-Treasurer to me.

_____ I hereby **VETO** this Ordinance, which veto was entered within ten (10) days after its presentation by the Clerk-Treasurer to me. The reason(s) for this veto are as follows (attach additional sheets for explanation as necessary): _____

_____.


Note: In the event that no action is taken by the Mayor to either approve or veto this Ordinance within ten (10) days after its presentation by the Clerk-Treasurer, then this Ordinance shall be deemed as vetoed pursuant to operation of law. The Clerk-Treasurer shall promptly report any such veto to the Common Council of the City of Jeffersonville, Indiana, by not later than its next regular or special meeting following expiration of such period express approval or veto of this Ordinance by the Mayor.

**ROBERT L. WAIZ, Mayor of the
City of Jeffersonville, Indiana**

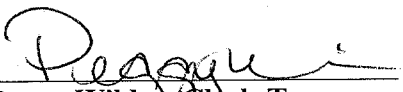
Attest: _____
Peggy Wilder, Clerk-Treasurer

CERTIFICATE OF OVERRIDE OF MAYOR'S VETO

The undersigned, as the duly appointed President of the Common Council of the City of Jeffersonville, Indiana, hereby certifies that on the 20th day of AUGUST, 2007, the Common Council of the City of Jeffersonville, Indiana, at its first regular or special meeting following either (i) the express veto of the above Ordinance by the Mayor of Jeffersonville within ten (10) days after its presentation to him by the Clerk-Treasurer, or (ii) the failure of the Mayor of Jeffersonville to either approve or veto the above Ordinance within ten (10) days after its presentation to him by the Clerk-Treasurer, PASSED and ADOPTED the above Ordinance over the veto of the Mayor of Jeffersonville by a two-thirds (2/3) vote of its entire membership. The provisions of the above Ordinance shall be fully effective from and after such action of the Common Council in accordance with the provisions of Indiana law.



**KEITH FETZ, President of the
Jeffersonville Common Council**

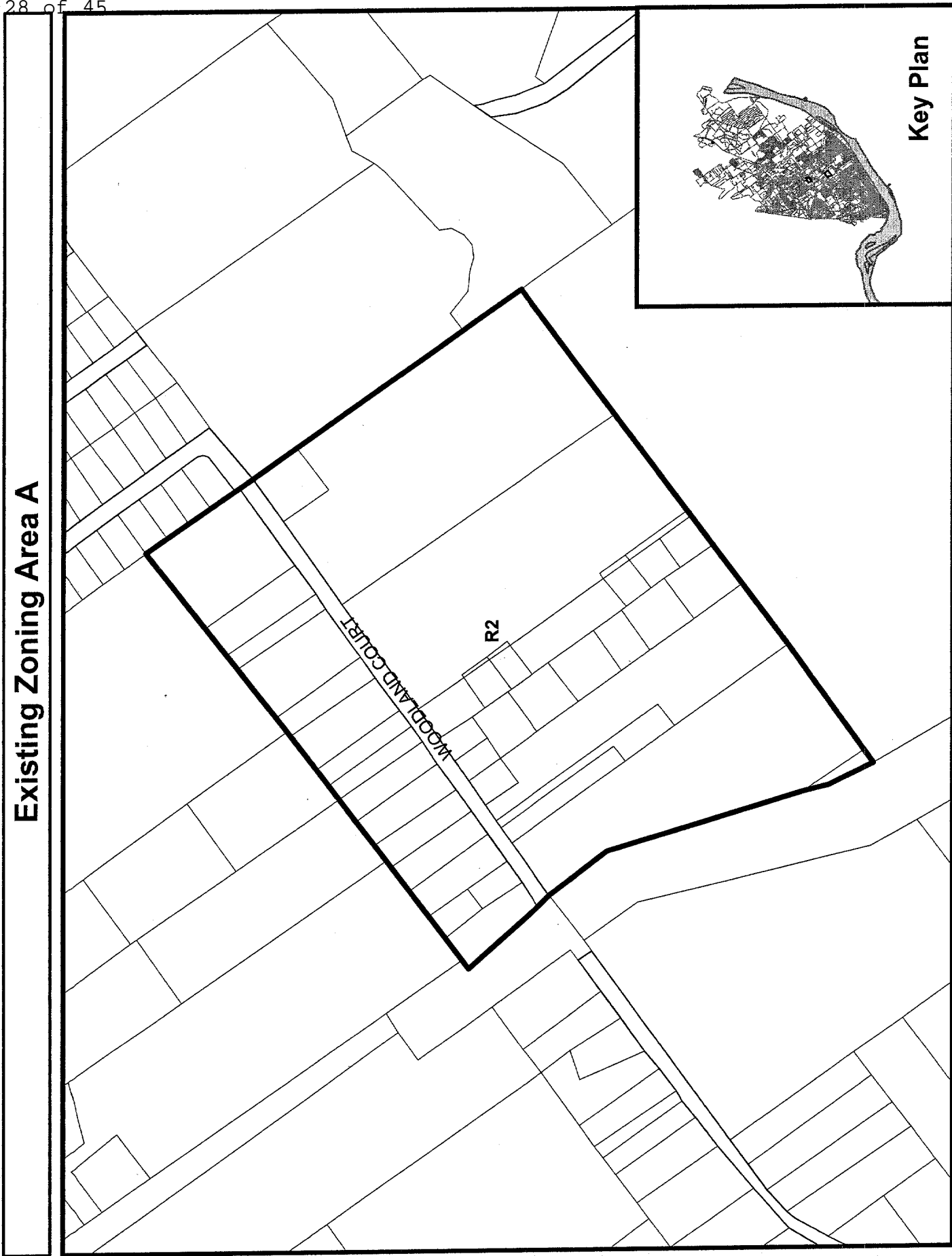
Attest: 
Peggy Wilder, Clerk-Treasurer

APPENDIX "A" TO CITY OF JEFFERSONVILLE
ANNEXATION ORDINANCE NO. 2007-0R-10

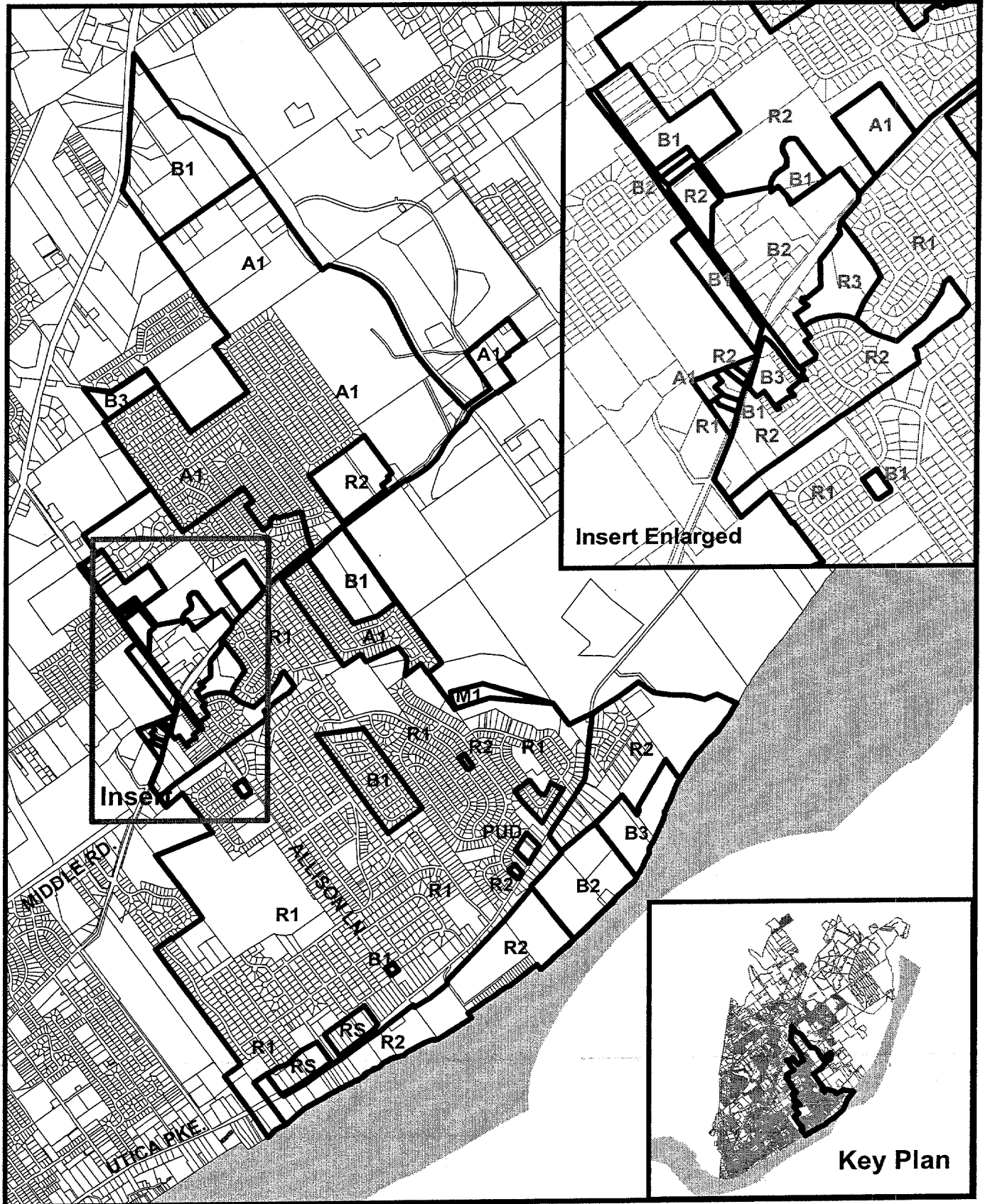
AMENDMENTS TO ZONING CLASSIFICATIONS PROPOSED IN
FISCAL PLAN PREVIOUSLY ADOPTED BY RESOLUTION 2007-R-11

<i>Owner(s)</i>	<i>Property Address</i>	<i>Approximate # of Acres</i>	<i>Classification per Fiscal Plan</i>	<i>Amended Final Classification</i>
<i>see final maps attached hereto —</i>				
<i>approved by City Council 8-20-2007</i>				

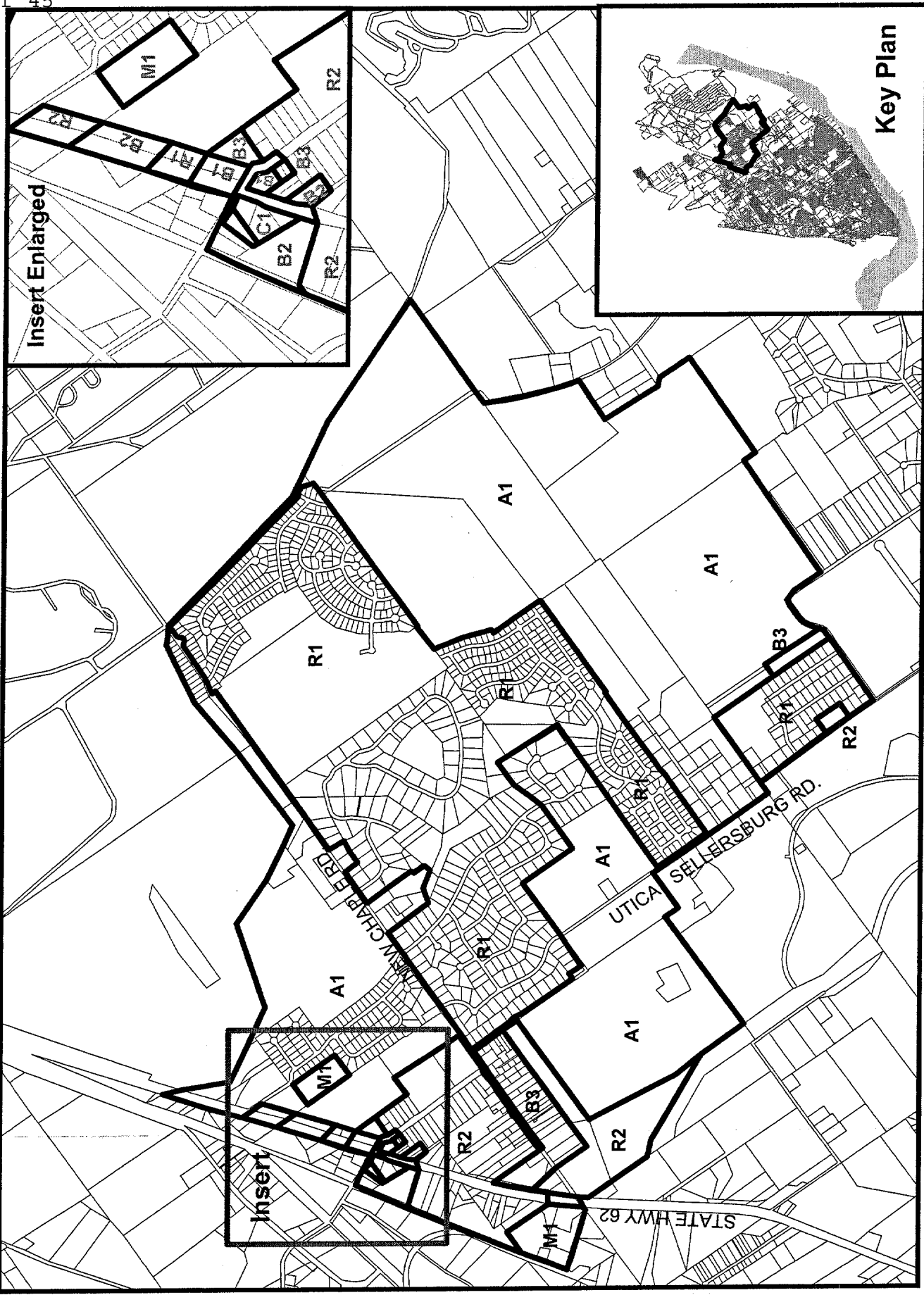
CURRENT ZONING



Existing Zoning Area B



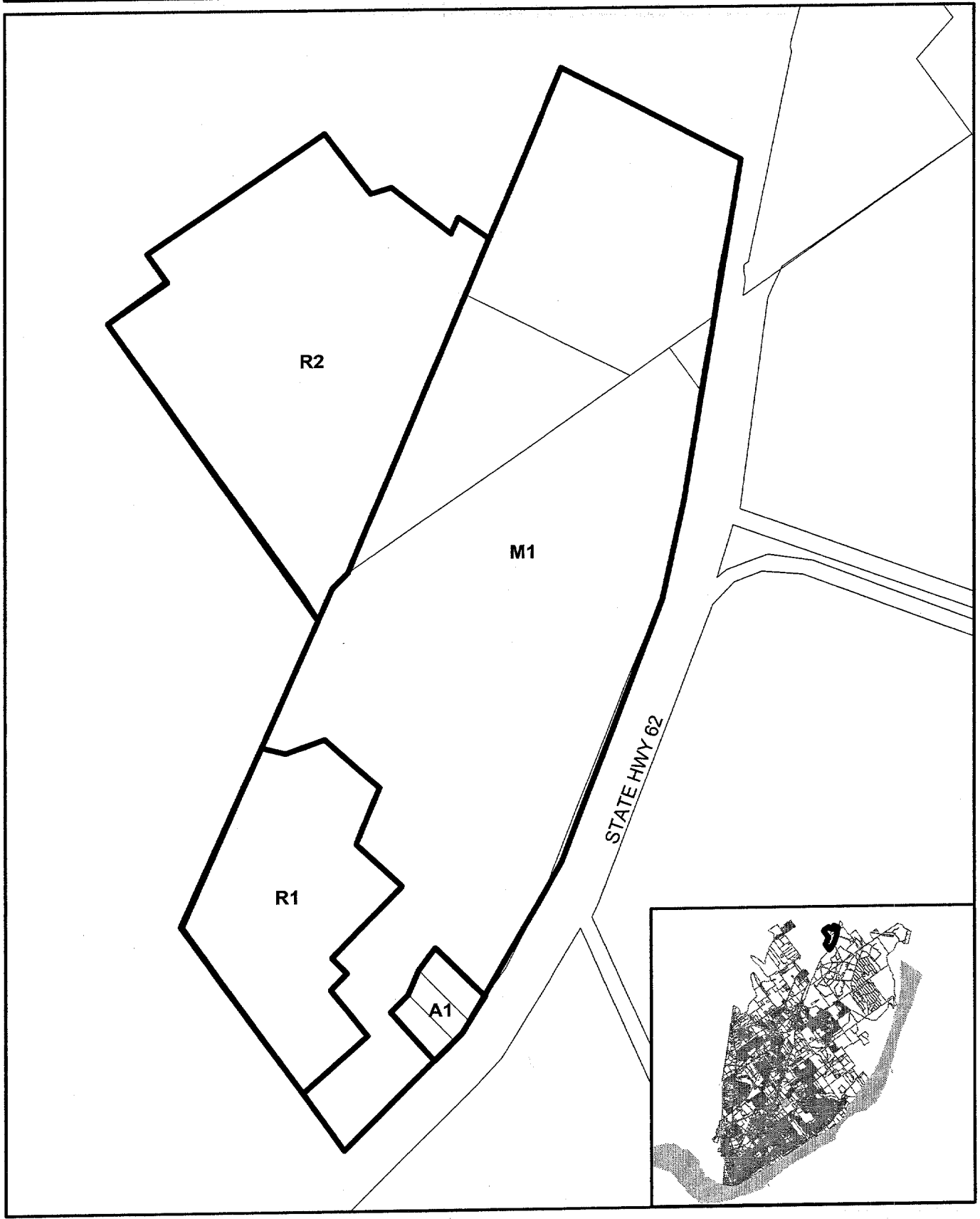
Existing Zoning Area C



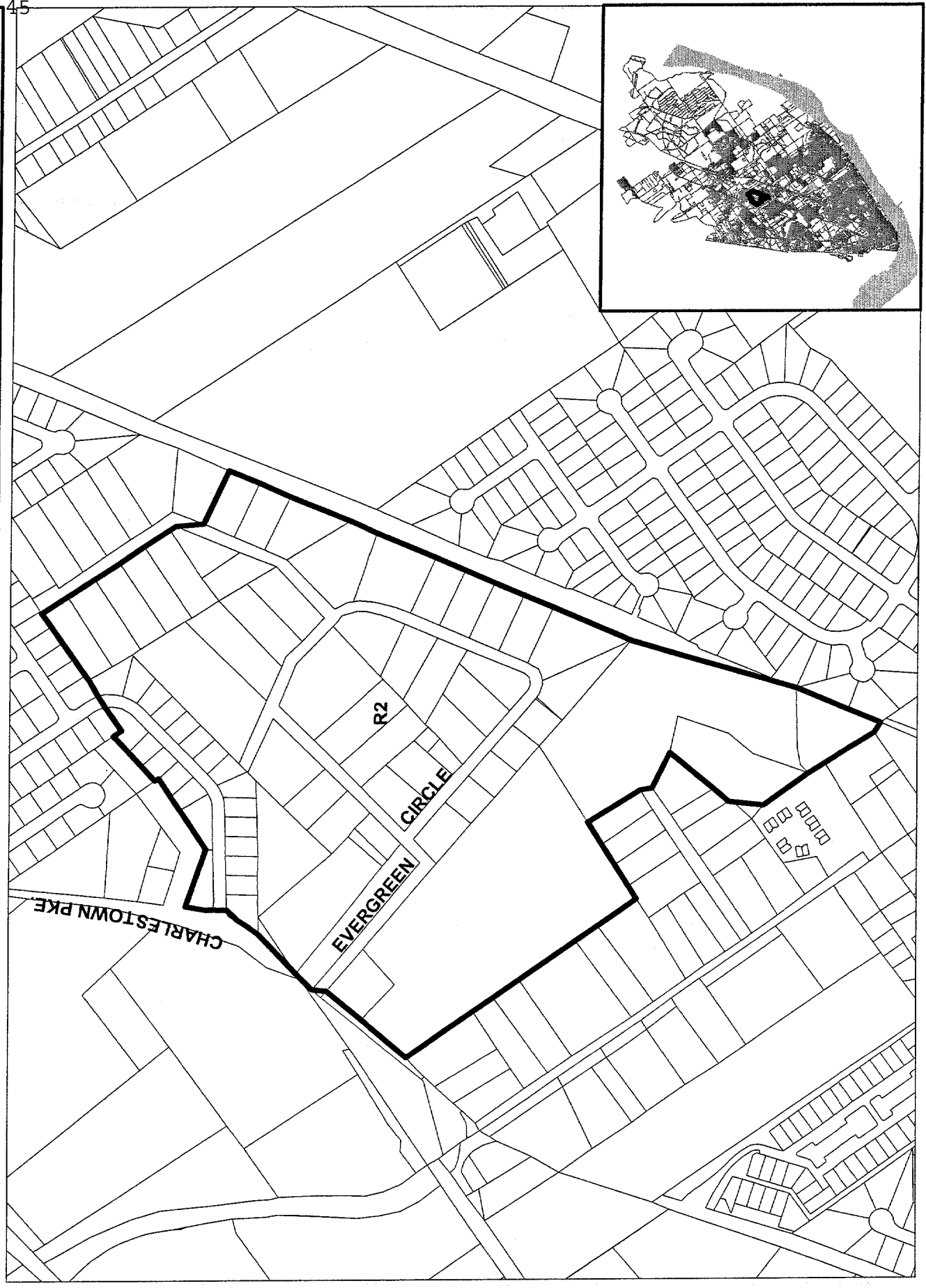
Existing Zoning Area D



Existing Zoning Area E



Existing Zoning Area F

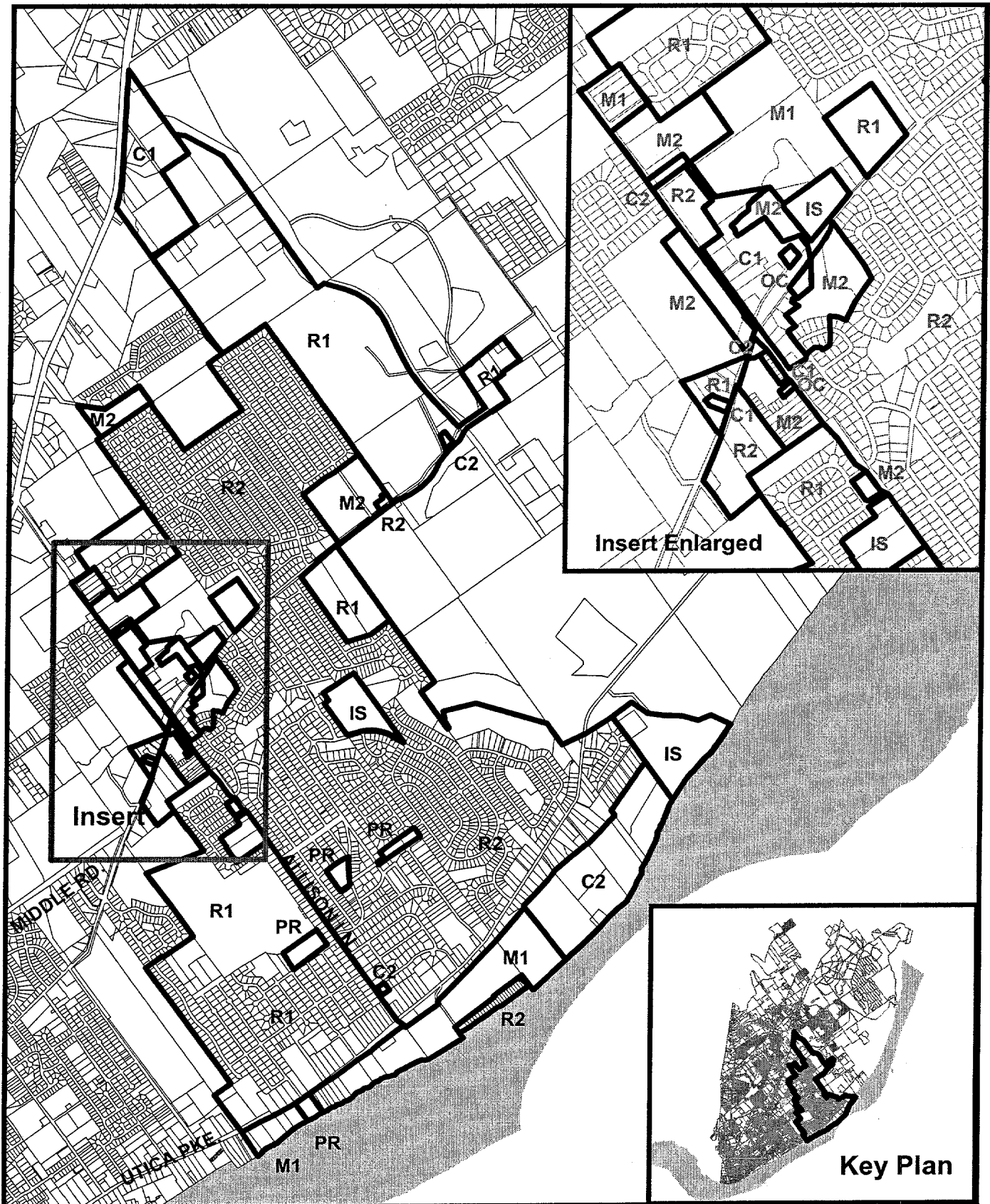


NEW ZONING

Proposed Zoning Area A



Proposed Zoning Area B



Proposed Zoning Area C

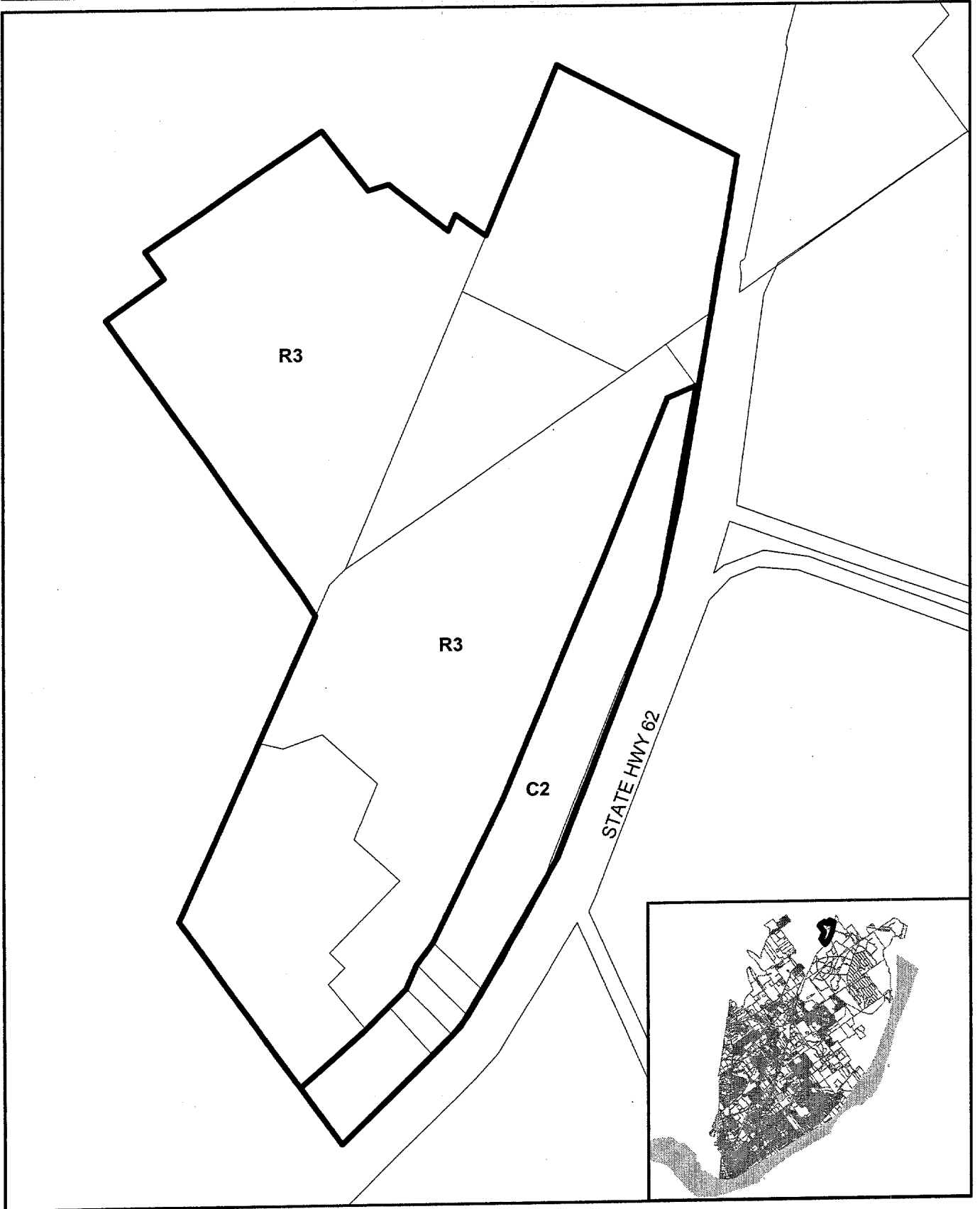


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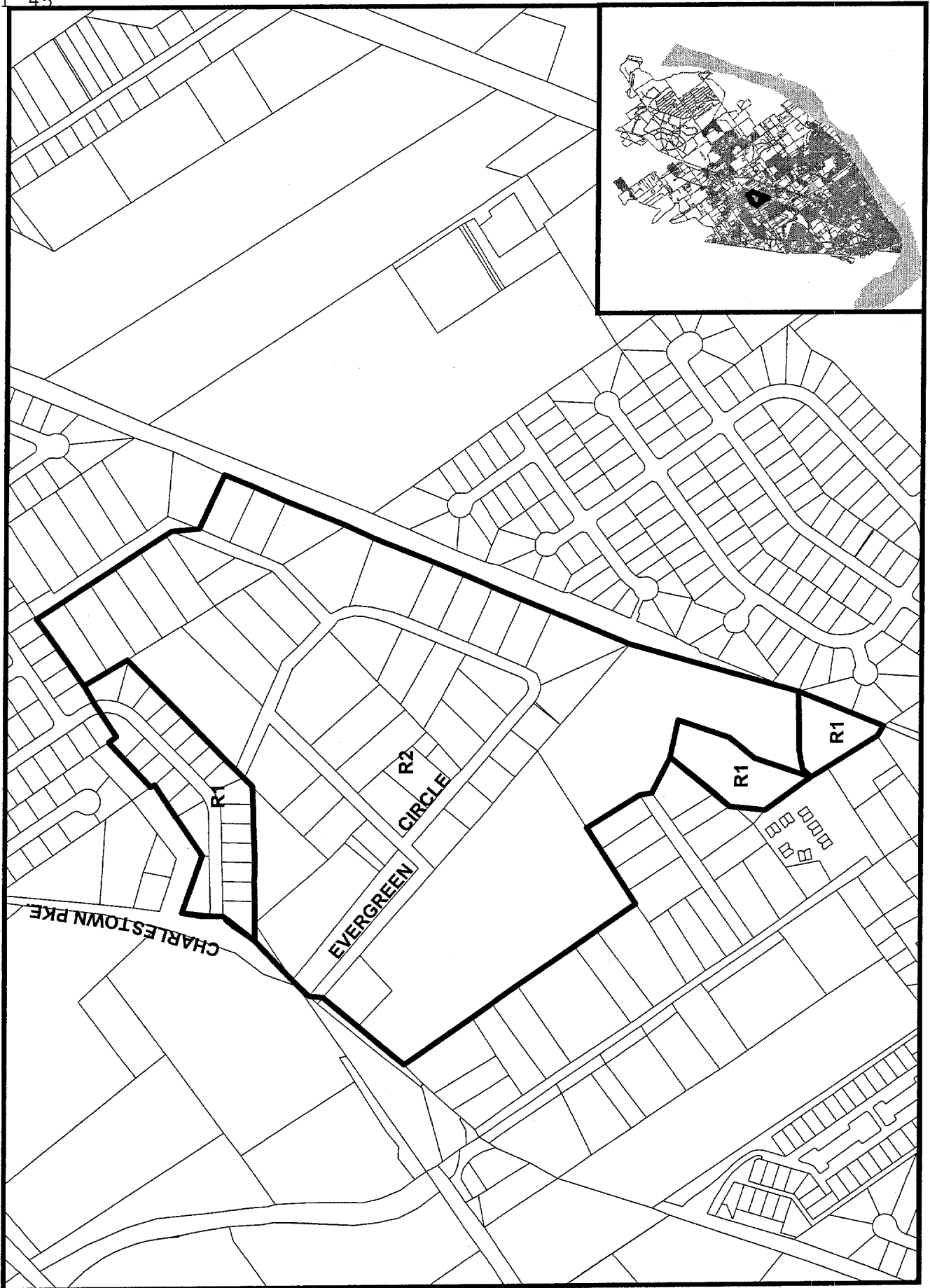
Proposed Zoning Area D



Proposed Zoning Area E



Proposed Zoning Area F



**BEFORE THE COMMON COUNCIL
FOR THE CITY OF JEFFERSONVILLE
STATE OF INDIANA**

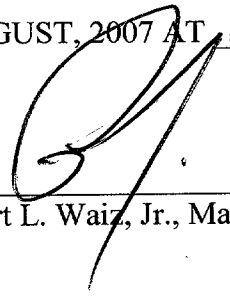
IN THE MATTER OF THE
VETO OF ORDINANCE NO.
2007-OR- 10

STATEMENT OF REASONS

Comes now the Mayor for the City of Jeffersonville, Robert L. Waiz, Jr., having reviewed Ordinance No. 2007-OR- 10, hereby vetoes said ordinance and in support states the following:

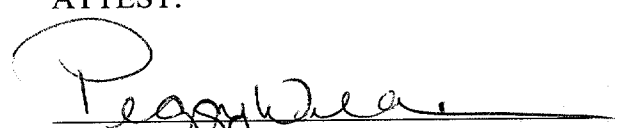
1. The annexation of said territory is not in the best interests of the City;
2. The annexation of said territory will create a financial hardship on the City; and
3. The city will have difficulty in adequately serving the annexed territory with both capital and non-capital services.

SO VETOED ON THIS 16th DAY OF AUGUST, 2007 AT 2:45 P.M.



Robert L. Waiz, Jr., Mayor

ATTEST:



Peggy Wilder
Clerk-Treasurer

MOTION

I move to pass Ordinance No. 2007-OR-10 on its second and third readings, and thereby annex approximately 7,806 acres into the City of Jeffersonville, subject only to the following amendments:

1. The inclusion of new Sections 12 and 13 drafted by Mr. Fifer.
2. The modification of Section 5 regarding the zoning classification of properties within the Annexation Area by changing the first sentence to read as follows:

“Upon the effective date of the annexation effected by this Ordinance, all properties within the Annexed Territory shall be classified for zoning purposes in accordance with the provisions of Section I(D) of the Fiscal Plan, including without limitation the tables and maps incorporated therein by reference, excepting the amendments to such maps as shown on the final maps attached hereto as Exhibit “A” and incorporated herein”.

These final maps shall be modified to change the zoning maps included in the Fiscal Plan as follows:

- a. Change the classification of all of the properties in the area of the map prepared by Mr. Hicks to the newly created “Agricultural” zone, *provided that one presently used for agricultural purposes and the owners have requested such change*
- b. Change the classification the Robert Lynn Company’s Falcon Crest subdivision (approximately 30 acres) to “R3”, subject to the conditions of the Zoning Commitment tendered by Mr. Nachand, instead of “M1” as recommended in the Fiscal Plan.

c. Change the location of the "R3" and "C2" districts within the boundaries of the Robert Lynn Company's 110-acre tract located on Highway 62 in the manner shown on the map submitted by Mr. Nachand at the public hearing held on this Annexation Ordinance on July 5, 2007.

I would further move that Mr. Urban, Mr. Hicks, and Mr. Fifer work cooperatively to amend the zoning maps in the Fiscal Plan to reflect these changes, and that the final maps be attached to the original of this Ordinance filed of record

in the Clerk-Treasurer's office as soon as possible.

If there are any disputes about the final maps, particularly the
This concludes my motion.

agical land properties, this shall be reported to the Council at its meeting on Aug. 20 for further consideration.

Applegate & Fifer
Attorneys at Law

Alan M. Applegate*
E-mail: aapplegate@amflawyers.com

*Also licensed in Kentucky and Florida

131 East Court Avenue, Suite 101
Post Office Box 1418
Jeffersonville, Indiana 47131-1418
Telephone: (812) 284-9499
Facsimile: (812) 282-7199

C. Gregory Fifer
E-mail: gfifer@amflawyers.com

Of Counsel:
Ronald R. Fifer

December 19, 2005¹

Ms. Peggy Wilder
Clerk-Treasurer
Jeffersonville City Hall
500 Quartermaster Court
Suite 300
Jeffersonville, IN 47130

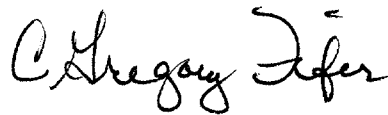
Re: Notice of Adoption of Annexation Ordinance

Dear Peggy:


Enclosed for your records is the original affidavit of publication for the Notice of Adoption of An Annexation Ordinance by the City of Jeffersonville, Indiana.

Sincerely,

APPLEGATE & FIFER



C. Gregory Fifer

/kls 
Enclosure

Legals	Legals	Legals	Legals	Legals
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said northeast line, 1238.5 feet to the west corner of Lot 74 in Cherokee Terrace, Unit 4 as shown in Plat Book 9, Page 17 of said county records; Thence N.50°-10'17"E., along a corporate line and the northwest line of said Unit 4, 334.14 feet to the west corner of Lot 80 in said Unit 4; Thence S.40°-E., along a corporation line and the southwest line of said lot, 100 feet to the south corner of said lot 80; Thence N.50°-10'17"E., along a corporation line and the southeast line of said Lot, 142.15 feet to the southwesterly Right-of-Way line of Pawnee Drive; Thence N.40°-W., along a corporation line, and said Right-of-Way line, 100 feet to the north corner of said lot; Thence N.50°-10'17"E., along a corporation line, 25 feet to the centerline of said Pawnee Drive; Thence N.39°-58'07"W., along a corporation line, 521.42 feet; Thence S.50°-09'03"W., along a corporation line, 167.07 feet; Thence S.39°-58'09"E., along a corporation line, 371.4 feet; Thence S.50°-10'17"W., along a corporation line, 334.14 feet to said northeast line of said Estates of Cherokee Heights; Thence N.39°-58'07"W., along a corporation line and said northeast line, 850 feet, more or less, to the south corner of River Forest Subdivision as shown in Plat Book 11, Page 53 of said county records; Thence N.50°-01'53"E., along a corporation line and the southeast line of said subdivision, 668.29 feet to the east corner of said subdivision; Thence N.39°-58'07"W., along a corporation line and the northeast line of said subdivision and said line extended, 1428.52 feet to the southernmost corner of a tract of land described in Deed Drawer 27, Instrument 6876 of said county records; Thence N.60°-46"E., along a corporation line and the southeast line of said tract, 1085.61 feet to the east corner of said tract; Thence N.40°-34'45"W., along a corporation line and the northeast line of said tract, 900 feet to the north corner of said tract; Thence S.39°-21'06"W., along a corporation line and the northwest line of said tract, 428.62 feet; Thence N.40°-29'46"W., along a corporation line, 506.36 feet to the southeast Right-of-Way line of Middle Road also known as East 8th Street; Thence S.11°-53'43"W., along a corporation line and said right-of-way line, 74.67 feet; Thence S.17°-00'50"W., along a corporation line and said Right-of-Way line, 312.05 feet to the line dividing Surveys 4 and 12; Thence S.54°-33'49"W., along said corporation line and said dividing line, 195.68 feet to the northwest Right-of-Way line of said Middle Road; Thence N.14°-31'11"E.,

poration line and the line dividing Seilo Ridge and Vissing Park, 1284.85 feet to the southwest line of Pebble Creek Subdivision; Thence N.35°-30'30"W., along a corporation line and said southwest line, 1066.61 feet to the line dividing said Surveys #13 and #22; Thence N.54°-36'44"E., along a corporation line, said dividing line, and the northwest line of said Pebble Creek, 293.45 feet to the common corner of Surveys #22 and #23; Thence N.36°-32'15"W., along a corporation line and said dividing line, 2137 feet to a right-of-way line of Herb Lewis Road; Thence S.50°-W., along a corporation line and said right-of-way line of Herb Lewis Road, 15 feet; Thence N.36°-03'37"W., along a corporation line and the southwest right-of-way line of said Road, 1170 feet, more or less, to the southeast Right-of-Way line of East 10th Street (formerly State Highway #62); Thence northeasterly along a corporation line and said Right-of-Way line, 1581 feet, more or less, to the southwest Right-of-Way line of the Clark Maritime Center Railroad Spur; Thence southeasterly and southerly along corporation lines and said Right-of-Way lines, 8724 feet, more or less, to the west corner of a tract of land described in Deed Drawer 19, Instrument 15017 of said county records, a corner of said City; Thence N.47°-08'04"E., along a corporation line and the northwest line of said tract, 206.82 feet to the north corner of said tract; Thence S.51°-54'35"E., along a corporation line and the northeast line of said tract, 187.5 feet to the east corner of said tract; Thence northeasterly, along corporation lines and the centerline of Middle Road, 883 feet, more or less, to a corner of the City of Jeffersonville; Thence N.35°-13'34"W., along a corporation line, 881.56 feet to a corner of said City; Thence N.54°-10'26"E., along a corporation line, 938.3 feet, more or less, to a corner of said City; Thence S.35°-49'34"E., along a corporation line, 508 feet, more or less, to a corner of said City; Thence S.54°-10'26"W., along a corporation line, 349.8 feet to a corner of said City; Thence S.35°-49'34"E., along a corporation line, 96.36 feet to a corner of said City; Thence S.54°-10'26"W., along a corporation line, 208.73 feet to a corner of said City; Thence S.35°-49'34"E., along a corporation line, 455.86 feet to a corner of said City; Thence S.54°-10'26"W., along a corporation line, 1338.27 feet to a corner of said City; Thence N.37°-45'30"W., along a corporation line, 67.22 feet to the centerline of Middle Road; Thence southwesterly, along corpo-

more or less, to THE TRUE PLACE OF BEGINNING. Tract "B" totals approximately 2.169 acres. 3. Description of Tract "C": Being a part of Surveys #14, 15, 16, 23, 24, 25, 35, 36, 37 and 38 of the Illinois Grant to Clark County, Indiana and being further described as follows: Beginning at the north corner of said Survey #14; Thence S.54°-28'07"W., along a corporation line of the City of Jeffersonville, being the line dividing Surveys #14 and #24, 216.75 feet to the southwest Right-of-Way line of Utica-Sellersburg Road; Thence N.34°-32'51"W., along a corporation line of said City being said southwest Right-of-Way line, 1925.13 feet; Thence S.54°-34'09"W., along a corporation line of said City, 613.79 feet; Thence N.34°-54'20"W., along a corporation line, 202.51 feet; Thence S.54°-32'21"W., along a corporation line, 2038.82 feet to the northeast Right-of-Way line of the Clark Maritime Center Railroad Spur Track; Thence northwesterly, along corporation lines and railroad Right-of-Way lines, 412 feet, more or less, to a corner of said City by ordinance #98-09-39; Thence northeasterly, along a corporation line, 150 feet, more or less, to the northeast Right-of-Way line of Port Road; Thence northwesterly, along a corporation line and said northeast Right-of-Way line, 2355 feet, more or less, to the southeast Right-of-Way line of Charlestown Pike; Thence northeasterly along a corporation line and said southeast Right-of-Way line, 680 feet; Thence northwesterly, along a corporation line, 1356.26 feet to the northwest Right-of-Way line of the CSX Railroad; Thence N.19°-58'54"E., along a corporation line and said northwest Right-of-Way line, 3481.37 feet to the southwest Right-of-Way line of Utica-Sellersburg Road; Thence southeasterly along a corporation line, and said Right-of-Way line, 540 feet, more or less, to the northwest Right-of-Way line of said State Highway 62; Thence northeasterly along a corporation line and said northwest right-of-Way line, 2700 feet, more or less; Thence southeasterly along a corporation line, crossing said Highway 62, 150 feet, more or less to the west corner of the Army Ammunition Plant perimeter fence; Thence southerly, southeasterly, northeasterly and southeasterly, along corporation lines, and said perimeter fence, 12,500 feet, more or less, to the line dividing Surveys #17 and #25; Thence leaving said corporation line, southwesterly, along said dividing line, and the line dividing Surveys #16 and 25, 1800 feet, more or less to the southwest Right-of-Way line of Old Salem Road; Thence S.14°-18'24"E., along said southwest Right-of-Way line, 838 feet, more or less, to the southwest

Grant to Clark County, Indiana and being further described as follows: Beginning at the common corner of said Surveys 69, 70, 91, and 92; Thence S.50°-08'53"W., along the line dividing Surveys 69 and 91, 15 feet to the southwest Right-of-Way line of Salem-Noble Road; Thence S.36°-44'52"E., along Right-of-Way line, 4200.55 feet, to the east corner of a tract of land described in Deed Drawer 5, Instrument 1941; Thence S.53°-41'04"W., along the southeast line of said tract, 1761 feet, more or less, to a steel pin on the north corner of a tract of land described in Deed Drawer 22, Instrument 6821 of said county records; Thence S.36°-22'11"E., along the northeast line of said tract, 849 feet to a steel pin; Thence N.53°-37'49"E., 121.45 feet to a steel pin; Thence S.43°-29'05"E., 97.73 feet to a steel pin on the line dividing Surveys #51 and #69; Thence S.51°-15'26"E., 489.72 feet to a steel pin; Thence N.87°-56"E., 269.31 feet to a steel pin; Thence S.36°-22'11"E., 1515.5 feet to the northwest Right-of-Way line of Charlestown Pike (formerly Jeffersonville-Charlestown Pike); Thence N.47°-30'21"E., along said Right-of-Way line, 451 feet to a point in the northeast line of Lots 70 and 71 in Windy Pines as shown in Plat Book 12, page 34 of said county records if said northeast line was extended northwesterly to said northwest Right-of-Way line of Charlestown Pike; Thence S.42°-27'41"E., 284 feet to the east corner of said Lot 70; Thence N.47°-45'22"E., along a line of said subdivision, 200.14 feet to a corner of said subdivision; Thence S.45°-41'25"E., along a line of said subdivision, 283.04 feet to a corner of said subdivision; Thence N.47°-25'33"E., along a line of said subdivision, 3.72 feet to a corner of said subdivision; Thence S.44°-13'58"E., along a line of said subdivision, 184.63 feet to a corner of said subdivision; Thence S.48°-44'55"W., along a line of said subdivision, 72.99 feet to a corner of said subdivision; Thence S.37°-03'05"E., along a line of said subdivision, 189.25 feet to a corner of said subdivision; Thence S.37°-35'14"E., along a line of said subdivision, 97 feet to a corner of said subdivision; Thence S.48°-36'24"W., along a line of said subdivision, 4 feet to a corner of said subdivision; Thence S.41°-12'35"E., along a line of said subdivision 98 feet to a corner of said subdivision; Thence S.42°-36'05"E., along a line of said subdivision, 208.14 feet to a corner of said subdivision; Thence S.48°-19'49"W., 927.1 feet to the north corner of Windy Pines Subdivision Unit 3 as shown in Plat Book 13, page 52 of said county records, 1023.91 feet to the north corner of said subdivision; Thence S.50°-38'47"W., along a corporation line and the northwest line of said subdivision, 580.12 feet to the line dividing said Surveys 34 and 35, and the east line of The Meadows, Unit 6 as shown in Plat Book 9, Page 22 of said county records; Thence N.35°-17'47"W., along a corporation line being said east line, 590 feet, more or less to the north corner of said Unit 6; Thence S.54°-57'02"W., along a corporation line, being the northwest line of said Meadows subdivision, 3450 feet, more or less to a corner of said city by ordinance #92-or-52; Thence N.34°-32'41"W., along a corporation line and the northeast line of the YMCA tract, 447.78 feet; Thence S.36°-32'35"W., along a corporation line, 147.15 feet; Thence 186.76 feet along said Right-of-Way line on a 950.36 foot radius curve to the right being subtended by a chord bearing S. 47°-56'01"E., 186.76 feet; Thence S.52°-36'01"W., along a corporation line, 213.5 feet; Thence S.54°-48'11"W., along a corporation line, 645.44 feet to the west Right-of-Way line of Hamburg Pike; Thence N.15°-38'09"W., along said Right-of-Way line, and a corporation line, 559.05 feet; Thence S.63°-04'10"W., along a corporation line, 357.81 feet; Thence N.15°-59'50"W., along a corporation line, 118.15 feet; Thence S.43°-05'14"W., along a corporation line, 345.72 feet; Thence S.0°-59'57"E., along a corporation line, 703.09 feet; Thence N.73°-33'42"W., along a corporation line, 643.45 feet to a point 100 feet east of the east right-of-way line of the Conrail Railroad; Thence Northerly, parallel to said railroad, 500 feet, more or less, to the former line between George Pfister and Marvin Crum, (being 365 feet, more or less, south of the south Right-of-Way line of Coopers Lane, formerly Potters Lane); Thence Westerly, along a corporation line 75 feet; Thence Northerly, along a corporation line, parallel to said railroad, 3700 feet, more or less; to a corner of said City by ordinance #70-or-18; Thence Easterly, along a corporation line, 75 feet to a point in Lot 14 in Cementville as shown in Plat Book 3, Page 73 of said county records; Thence Northerly, parallel to said railroad, 4239 feet, more or less, to the centerline of Silver Creek; Thence following said centerline, upstream in a generally northeasterly direction, 31,324 feet, more or less, to the northwest line of Skyline Acres, Section 3, if said line were extended southwesterly to said centerline; Thence N.55°-24'17"E., along the northwest line of said subdivision and its extension 2113 feet, more or less, to the southwest

ment #20040498 of county records; Thence S.67°-50'48"E., along northeast line of said tract and said line, extended 1000 feet, more or less, to the southeast Right-of-Way line of State Highway being also the corporation line of the City of Jeffersonville; Thence Southwesterly, along said corporation line and said Right-of-Way line, 4500 feet, more or less, to the northeast Right-of-Way line of Stacy Road, if extended southeasterly, said southeast Right-of-Way line of State Highway 62; Thence N.36°-04' along said Right-of-Way line and its extension, 100 feet, more or less, to the southeast Right-of-Way line of said railroad; Thence N.22°-09'08"E., along Right-of-Way line, 100 feet, more or less, to the southwest line of said Con Crest subdivision; Thence southeasterly to the southeast Right-of-Way line of said Railroad; Thence N.36°-28'36"W., along extended line, 80 feet, or less, to THE PLACE OF BEGINNING. Tract "E" totals approximately 6.6 acres. 6. Description of Tract "F": Being a part of Surveys #22 and #35 of the Illinois Grant to Clark County, Indiana and being further described as follows: Beginning at the southern corner of said Survey #33, along the Corporation line of the City of Jeffersonville, Thence N.34°-55'2" along a corporation line, said City being the line dividing Surveys #34 and #35, 28.03 feet to the west Right-of-Way line of Charlestown Pike; Thence N.55°-29'42"E., along Right-of-Way line a corporation line, 21.28 feet to the center of Charlestown; Thence northeasterly, said centerline and a corporation line, 1661 feet, or less, to the south of a tract of land described in Computer #200310; Thence southerly, along said county records; Thence S.36°-17' crossing said pike, 2 more or less, to the east Right-of-Way line of said pike; Thence westerly along said Right-of-Way line and a corporation line, 1350 feet, more or less, to a north line of Landsburg Cove, Section 5, as shown in Plat Book 16 of said county records; Thence S.70°-58'40"E., along northeast line of said tract, 5, and a corporation line, 256.99 feet, more or less, N.56°-25'23"E., along corporation line, 581.4 feet; Thence N.34°-49' along a corporation line, 11.03 feet to the southern corner of Landsburg Cove, Section 1, as shown in Plat Book 10, Page 82 of said county records; Thence N.55°-41'52"E., along corporation line and the

NOTICE OF ADOPTION OF AN ANNEXATION ORDINANCE BY THE CITY OF JEFFERSONVILLE, INDIANA NOTICE IS HEREBY GIVEN THAT ON AUGUST 20, 2007, the Common Council of the City of Jeffersonville, Indiana, passed and adopted Ordinance No. 2007-OR-10 (the "Ordinance") over the veto of Mayor Robert L. Waiz, which Ordinance annexed certain contiguous territory that is more particularly described hereinbelow into the boundaries of the City of Jeffersonville, Indiana

Mark J. Crandley
Partner
317 261-7924
mark.crandley@btlaw.com

May 10, 2016

Via Hand Delivery

J. Christopher Janak
Paul D. Vink
Bradley M. Dick
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204

RE: Service territory issues

Counsel:

It has come to our attention that Watson Water Company (“Watson”) is in discussions with Nicklies Development Company (the “Contractor”) to install infrastructure and provide retail water service for a development the Contractor is proposing. The service contemplated by this project is inside the exclusive service territory established for Indiana-American Water Company, Inc. (“IAWC”) in its agreement with Watson executed in April of 1997 (the “1997 Agreement”). As you are aware, the 1997 Agreement sets the exclusive service territories for Watson and IAWC. *See* 1997 Agreement at Ex. C. Mr. Burch even referred to it as the “territory agreement” in his testimony at trial.

Both Watson and IAWC submitted the 1997 Agreement for approval by the IURC. The IURC did so by an order dated April 21, 1999. A copy of that order is enclosed. Along with approving the contract, the IURC order established the exclusive service territories for Watson and IAWC as per the contract. In Paragraph 4 of its findings of fact, the IURC stated that it was presented with an issue of conflicting water utility service territories and could resolve that issue pursuant to Ind. Code § 8-1-2-86.5. *See* Order at p. 6. It also describes Mr. Lewman as testifying that the proposed resolution of this territorial dispute “represents a reasonable approach in that it will avoid Watson’s duplication of Indiana-American’s facilities and it protects Watson from erosion of its existing customer base.” Order at 6. After describing the territorial dispute between the parties and the proposed contractual resolution of it, the IURC found that: “The proposed resolution of the territorial dispute described in Finding Paragraph No. 4 and set forth in Exhibit A hereto shall be and hereby is approved.” Order at p. 7. The exhibit referenced by

the IURC as resolving the territory dispute is the map from the 1997 Agreement, which I enclose.

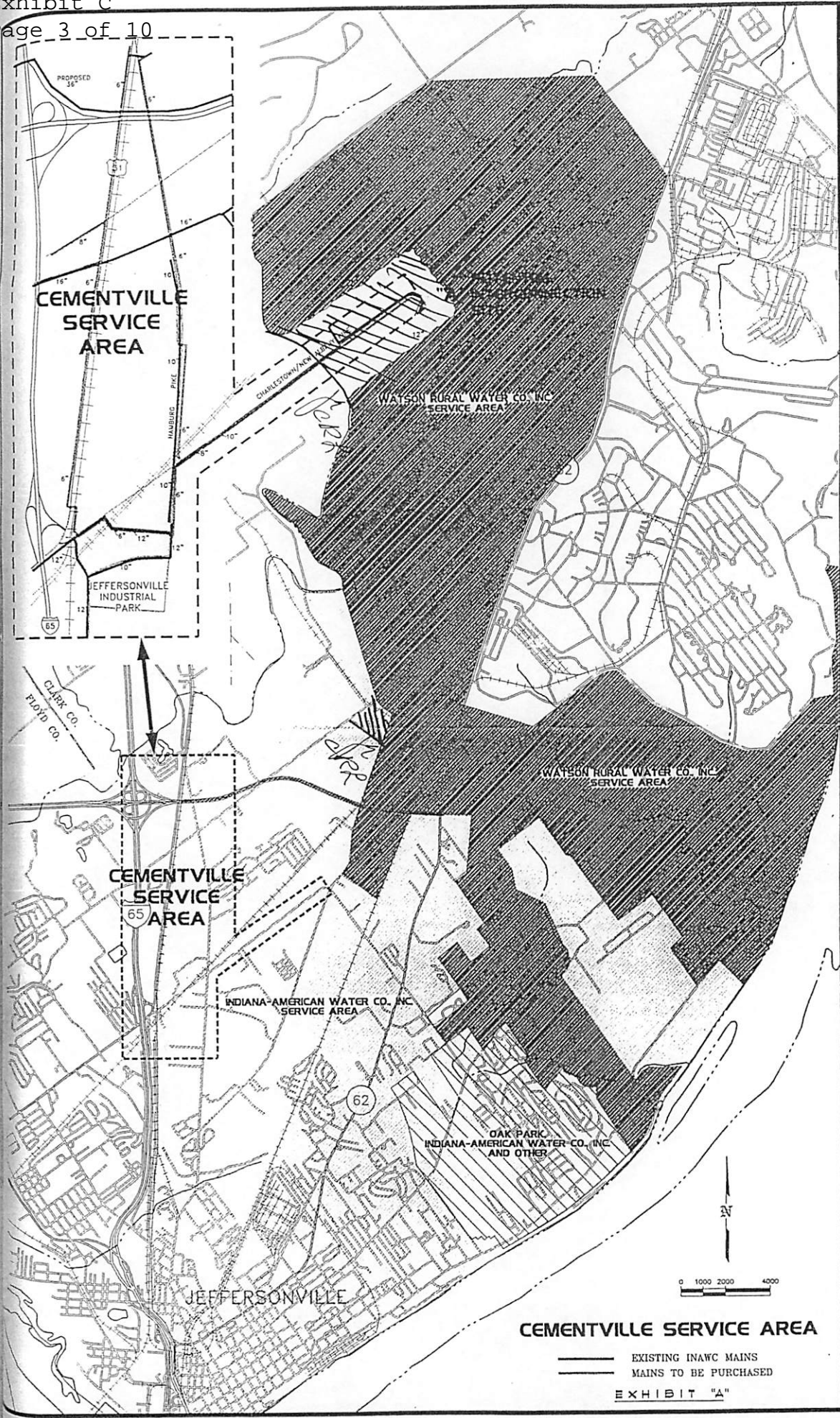
It is our understanding that Watson's discussions with the Contractor are proceeding and that Watson intends to agree to provide water service for the project. We also understand that Watson may be involved in a project to serve a Burger King restaurant within the IAWC service territory. Both of these actions would impinge on IAWC's service territory and, if true, both would violate the 1997 agreement and the IURC's order.

Because of the time-sensitive nature of these circumstances, IAWC respectfully requests that you resolve this matter to IAWC's satisfaction no later than close of business on Friday, May 13, 2016. If you fail to do so, we will proceed to obtain relief through the appropriate legal challenges.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark J. Crandley', written in a cursive style.

Mark J. Crandley



CEMENTVILLE SERVICE AREA

——— EXISTING INAWC MAINS
 - - - MAINS TO BE PURCHASED

EXHIBIT "A"

STATE OF INDIANA
ORIGINAL
INDIANA UTILITY REGULATORY COMMISSION

**JOINT PETITION OF INDIANA-AMERICAN WATER)
COMPANY, INC. ("INDIANA-AMERICAN") AND)
WATSON RURAL WATER COMPANY, INC.)
("WATSON") FOR APPROVAL AND AUTHORIZATION)
OF (A) THE ACQUISITION BY INDIANA-AMERICAN)
OF WATSON'S WATER UTILITY PROPERTIES)
SERVING THE UNINCORPORATED AREA OF)
CEMENTVILLE IN CLARK COUNTY, INDIANA (THE)
"CEMENTVILLE AREA") IN ACCORDANCE WITH)
THE TERMS OF A PURCHASE AGREEMENT)
THEREFORE; (B) THE APPLICATION OF)
INDIANA-AMERICAN'S RATES AND CHARGES FOR)
THE SOUTHERN INDIANA OPERATIONS TO WATER)
SERVICE BY INDIANA-AMERICAN IN THE)
CEMENTVILLE AREA; (C) ALL NECESSARY)
LICENSES, PERMITS, AND FRANCHISES FOR)
INDIANA-AMERICAN TO PROVIDE WATER SERVICE)
IN THE CEMENTVILLE AREA; (D) CERTAIN)
ACCOUNTING AND RATE BASE TREATMENTS)
RELATING TO THE ACQUIRED PROPERTIES;)
(E) APPLICATION OF INDIANA-AMERICAN'S)
DEPRECIATION ACCRUAL RATES TO SUCH)
ACQUIRED PROPERTIES; (F) THE SUBJECTION OF)
THE ACQUIRED PROPERTIES TO THE LIEN OF)
INDIANA-AMERICAN'S MORTGAGE INDENTURE;)
AND (G) THE RESOLUTION OF A TERRITORIAL)
DISPUTE BETWEEN INDIANA-AMERICAN AND)
WATSON.)**

CAUSE NO. 41383

APPROVED:

APR 21 1999

**BY THE COMMISSION:
Judith G. Ripley, Commissioner
Scott R. Jones, Assistant Chief Administrative Law Judge**

On February 4, 1999, Indiana-American Water Company, Inc. ("Indiana-American") and Watson Rural Water Company, Inc. ("Watson") (collectively, "Joint Petitioners") filed their Joint Petition in this Cause seeking various approvals associated with the proposed acquisition by Indiana-American of Watson's water utility properties serving the unincorporated area of Cementville in

Clark County, Indiana (the "Cementville System"). Pursuant to notice duly given as provided by law, a prehearing conference was conducted on March 23, 1999, which resulted in a Prehearing Conference Order issued on March 31, 1999. Also pursuant to notice duly given as provided by law, an evidentiary hearing was conducted on April 19, 1999 at 10:00 a.m. E.S.T. in Room E306, Indiana Government Center South, Indianapolis, Indiana, at which time Joint Petitioners offered evidence in support of the requested relief. The Office of Utility Consumer Counselor ("OUCC") appeared and participated at both the prehearing conference and the evidentiary hearing.

Based upon the applicable law and the evidence, the Commission finds:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the prehearing conference and evidentiary hearing was given as provided by law. Indiana-American owns, operates, manages and controls plant and equipment for the production, treatment and distribution of water to the public throughout numerous communities in the State of Indiana. Watson is a not-for-profit public utility corporation which owns, operates, manages and controls plant and equipment for the production, treatment and distribution of water to the public in Clark County, Indiana. As such, each of Joint Petitioners is a public utility, as that term is used and defined in the Public Service Commission Act. This Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause as and to the extent provided by law.

2. **Relief Requested.** Joint Petitioners seek various approvals in connection with two agreements between them. One agreement is an Agreement for Sale and Purchase of Assets Between Watson and Indiana-American dated August 28, 1998 (the "Asset Purchase Agreement"), providing for the transfer to Indiana-American of Watson's Cementville System. The other agreement is a 40-year Water Supply Agreement dated April 28, 1998 (the "Wholesale Agreement"), providing for Indiana-American's sale for resale to Watson of all of Watson's future water supply needs above and beyond the capacity of Watson's existing well field.

Much of the relief requested in this Cause pertains to the Asset Purchase Agreement. Joint Petitioners seek approval of the transfer of the Cementville System pursuant to the terms of the Asset Purchase Agreement, including a finding that public convenience and necessity require water service by Indiana-American in the Cementville area. Indiana-American also seeks authority upon closing to apply its rates and charges and rules and regulations applicable to general water and public and private fire service which are in effect from time to time in Indiana-American's Southern Indiana Operations to the Cementville area, authority to make certain accounting entries in connection with the acquisition, authority to apply Indiana-American's existing depreciation accrual rates to the Cementville System upon closing, and approval of the encumbering of the Cementville System by subjecting such assets to the lien of Indiana-American's Mortgage Indenture upon closing.

No approval has been sought with respect to most of the terms of the Wholesale Agreement; however, one of the terms of the Wholesale Agreement resolves a territorial dispute between Joint Petitioners. Joint Petitioners seek our approval of the resolution of this territorial dispute.

3. **Transfer of the Cementville System.** Indiana-American's Director of Rates and Revenues, James L. Cutshaw, testified regarding the Asset Purchase Agreement and the proposed accounting treatment. Indiana-American proposes to acquire all of the water mains, service lines, meters, hydrants, easements, permits and all other assets making up the Cementville System. The purchase price to be paid by Indiana-American to Watson is \$500,000. Indiana-American will construct an interconnection of the Cementville System with Indiana-American's existing Southern Indiana Operations at an estimated cost of \$25,000. From and after the closing, Indiana-American proposes to charge customers served by the Cementville System Indiana-American's rates and charges applicable to water service within Indiana-American's Southern Indiana Operations on file with and approved by the Commission as the same are in effect from time to time.

Mr. Cutshaw testified that Indiana-American proposes to make the following journal entry to record the acquisition:

	<u>Debit</u>	<u>Credit</u>
Utility Plant in Service	\$292,610	
Acquisition Adjustment	\$327,607	
		\$107,717
Accumulated Depreciation		\$512,500
Cash		\$512,500

Mr. Cutshaw set forth in Petitioner's Exhibit JLC-2 the specific amounts to be recorded by plant account. He stated that the proposed journal entry and amounts to be recorded by plant account are based upon utility plant as of December 31, 1998, and includes estimated transaction costs of \$12,500. The actual transaction costs incurred will be the amount reflected in the journal entry when it is made. Mr. Cutshaw proposes to amortize the acquisition adjustment over twenty years.

Mr. Cutshaw explained that although the transaction necessarily creates an acquisition adjustment for purposes of Indiana-American's books and records, Indiana-American is not seeking to include the acquisition adjustment in its net original cost rate base for ratemaking purposes, and therefore will not be seeking to recover through rates a specifically set forth return of or return on the acquisition adjustment. Rather in the first general rate case in which the Cementville System will be included in rate base, Indiana-American will propose inclusion of the full purchase price in the fair value of its rate base consistent with the ratemaking treatment approved by the Commission in Cause No. 40103 for Indiana-American's acquisition of the common stock of Indiana Cities Water Corporation ("Indiana Cities").

Mr. Cutshaw also testified that upon closing Indiana-American proposes to encumber the assets making up the Cementville System with the lien of Indiana-American's Indenture of Mortgage dated as of May 1, 1968, as supplemented and amended. Finally, Mr. Cutshaw testified that Indiana-

American is proposing to subject the Cementville System properties to Indiana-American's depreciation accrual rates approved by the Commission in Cause No. 40703 on December 11, 1997.

Indiana-American's Vice President of Operations, Eric W. Thornburg, testified regarding the background and proceedings that led to the Asset Purchase Agreement and the Wholesale Agreement. He explained that over the last several years, Indiana-American has been cooperating with the numerous smaller water utilities in the Jeffersonville/Clarksville/New Albany area in an effort to develop a regionalized and collective solution to all of their respective water supply needs. Through this cooperative effort, several smaller utilities have eliminated to a great extent the need for their own individual construction programs, thus avoiding duplication of facilities and benefitting customers of all utilities in the region. As a product of this collective approach, Joint Petitioners have been meeting and conferring regarding their common needs and concerns since Indiana-American's acquisition of Indiana Cities. In 1994, Watson shared with Indiana-American the scope of a significant capital improvement program recommended by their engineer as necessary to satisfy Watson's current and future service requirements. The cost of this program was estimated to be in excess of \$4 million, including major transmission facilities, a new elevated tank and a well. Indiana-American and Watson determined that the better course of action would be to enter an agreement that called for the interconnection of Joint Petitioners' systems, the sale of water by Indiana-American to Watson, and the purchase by Indiana-American of the Cementville System. Mr. Thornburg explained that with this interconnection, Watson will not need to add an additional wellfield and can avoid constructing a large diameter water main and additional storage facilities beyond the current water main and storage facilities being constructed.

Mr. Thornburg also explained some of the benefits to the two utilities' customers. He testified that water quality to the Cementville System customers will improve. Watson currently does not filter its water and does not remove iron or manganese. By the time of the acquisition, Indiana-American will provide this filtration and iron and manganese removal to the Cementville customers. With respect to Indiana-American's customers, the addition of the Cementville System will allow greater spreading of fixed costs over a broader base of customers. The acquisition will have no impact on Indiana-American's net investment per customer. Finally, Mr. Thornburg explained that the acquisition will allow both of the Joint Petitioners to focus on the natural growth of their respective systems.

Watson's President, Richard Lewman testified that Watson's consulting engineer has studied the situation in detail and concluded that in order for Watson to be able to provide adequate service to the Cementville System customers, substantial additional capital improvements would be needed. By selling the Cementville System, Watson can eliminate improvements to serve Cementville and can dedicate the sales proceeds to its remaining capital improvement projects thus mitigating the impact of Watson's pending water rate increase.

Richard F. Schoeck, an Operations Engineer for Indiana-American, testified regarding other improvements to service for the Cementville System customers that would result from the acquisition. Mr. Schoeck conducted a technical evaluation of the Cementville distribution system.

He concluded that in order for Watson to be able to provide water at the same pressure and flow as Indiana-American, Watson would need to make further capital investments above and beyond Watson's currently scheduled improvements. He concluded that the interconnection would provide an increase in flow availability of approximately 1,050 gallons per minute in addition to an increase in delivery pressure of approximately 17.6 pounds per square inch. In order for Watson to provide service at this same level, substantial further improvements would be needed to the Watson system which would increase Watson's net investment per customer.

We find that the proposed acquisition of the Cementville System by Indiana-American pursuant to the terms and conditions of the Asset Purchase Agreement is in the public interest and should be approved. We also find that public convenience and necessity require water service by Indiana-American in the Cementville areas now served by Watson. We also find that Indiana-American should apply the same rates and charges and rules and regulations applicable to its existing general water service and public and private fire service customers in the Southern Indiana Operations as the same may be in effect from time to time to the Cementville System customers. We find that Indiana-American should make the journal entries set forth by Mr. Cutshaw (as adjusted for actual transaction costs) to record the cost of the Cementville System on its books and records and should record the amounts by plant account set forth in Petitioner's Exhibit JLC-2. Although the resulting acquisition adjustment will not be included in Indiana-American's net original cost rate base for ratemaking purposes, we will consider the purchase price for purposes of determining the fair value of the Cementville System in future rate cases, consistent with our ratemaking treatment of the Indiana Cities acquisition adjustment in Cause No. 40103. After closing, Indiana-American's existing depreciation accrual rates should apply to the Cementville System. Finally, we find that the properties comprising the Cementville System should be encumbered by the lien of Indiana-American's Mortgage Indenture.

4. **Territorial Dispute.** Joint Petitioners also seek approval of a resolution of a territorial dispute pursuant to Ind. Code § 8-1-2-86.5. Mr. Thornburg described that for several years there have been various territorial disputes between Watson and Indiana-American or its predecessor Indiana Cities. Watson serves an area abutting the area served by Indiana-American immediately to the northeast. For several years, the proximity of the two systems has resulted in a series of disputes. Mr. Thornburg explained that the Wholesale Agreement contains a provision intended to resolve this long-standing series of disputes. Pursuant to the Wholesale Agreement, the water sold to Watson by Indiana-American is solely to be used for resale to Watson's customers on the map attached hereto as Exhibit A. Indiana-American has agreed not to provide service within this designated Watson area except for large volume customers for industrial or fire protection purposes who have chosen to locate there. Mr. Thornburg testified that with respect to these large volume customers, Watson does not have the facilities capable to serve such customers. For Watson to do so, it would have to add significant new facilities that would duplicate Indiana-American's existing facilities which are already capable of serving such customers. The resolution of the territorial dispute prevents this duplication by allowing Indiana-American to serve such customers. At the same time, Watson is not at a risk of erosion of its existing residential customer base due to

competition from Indiana-American's facilities. Mr. Thornburg testified that the resolution of the territorial dispute is therefore in the public interest.

Mr. Lewman also testified regarding the resolution of the territorial dispute. He stated that Watson receives the right to serve residential customers in the area in which Watson has facilities with capacity to provide such service. He testified the territorial agreement represents a reasonable approach in that it will avoid Watson's duplication of Indiana-American's facilities and it protects Watson from erosion of its existing customer base.

Indiana Code § 8-1-2-86.5 ("Section 86.5") provides "the Commission, after notice and hearing, may, by order, determine territorial disputes between all water utilities." When the parties to a territorial dispute are able to resolve the dispute through settlement which creates a boundary line between them, Section 86.5 authorizes us to approve the parties' settlement and the agreed upon boundary. See *Town of Shelburn v. Indiana-American Water Co.*, Cause No. 40796 (IURC 1/7/98), pp. 8-9; *Harbour Water Corp. v. Indiana-American Water Co.*, Cause No. 40391 (IURC 5/1/96); *Indiana Cities Water Corp.*, Cause No. 38908 (IURC 4/18/90). We find that for several years there have been a variety of territorial disputes between Watson and Indiana-American. The growth of Joint Petitioners' respective systems and the development in the area in question create a risk of interference with system planning, duplication of facilities, and under-utilization of existing facilities. The proposed resolution of the territorial dispute resolves these risks and allows the natural growth of both systems to develop. The proposed resolution submitted by Joint Petitioners is in the public interest and should be approved.

5. **Cause No. 41057.** We took administrative notice of our Order dated November 25, 1998, in Cause No. 41057, Watson's pending rate case (the "Watson Order"). In the Watson Order, we approved Watson's issuance of long term debt to finance capital improvements to Watson's water utility facilities exclusive of the Cementville System, and we authorized Watson to increase its rates and charges for water service. In the Watson Order, we recognized that the Asset Purchase Agreement had been signed and that the closing on the transaction would impact Watson's revenues, expenses, and amount of debt, cost of debt, and debt service reserve. In order to avoid confusion to Watson's customers, we ordered that Watson file one true-up report after the long term debt had been sold and the Cementville System transferred.

Since the closing on the Cementville System transfer has not yet occurred, it is obvious that Watson was unable to file the true-up report within the time frame anticipated in the Watson Order. Watson represented at the evidentiary hearing in this Cause that the long term debt has now been issued and that the only remaining condition to the true-up report is closing on the Cementville System. As we are today granting Joint Petitioners' requested approval of the Cementville System transfer, we would expect closing to occur in the near future. We find that fifteen (15) days after closing, Watson should file in Cause No. 41057 its true-up report required by the Watson Order. To the extent the true-up report is not filed by June 1, 1999, Watson should instead file a written explanation for the delay. Either upon its own motion or motion filed by the OUCC within fifteen

days thereafter, the Commission may convene a further hearing in Cause No. 41057 on an expedited basis to consider the effects of the delay.


IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The acquisition of Watson's Cementville System by Indiana-American pursuant to the terms of the Asset Purchase Agreement shall be and hereby is approved.
2. Upon closing, Indiana-American shall be and hereby is authorized to apply the same rates and charges and rules and regulations applicable to its existing general water service and private and public fire service customers in the Southern Indiana Operation, as the same may be in effect from time to time, to customers served by the Cementville System.
3. Indiana-American's proposed journal entry to record the acquisition of the Cementville System shall be and hereby is approved.
4. Upon closing, Indiana-American shall be and hereby is authorized to apply its existing depreciation accrual rates to the Cementville System.
5. Upon closing, the encumbering of the properties comprising the Cementville System by subjecting such properties to the lien of Indiana-American's Mortgage Indenture shall be and hereby is approved.
6. The proposed resolution of the territorial dispute described in Finding Paragraph No. 4 and set forth in Exhibit A hereto shall be and hereby is approved.
7. Within the timetable set forth in Finding Paragraph No. 5, Watson shall be and hereby is ordered to file in Cause No. 41057 the true-up report required by the Watson Order.
8. This Order shall be effective on and after the date of its approval.

MCCARTY, KLEIN, RIPLEY, SWANSON-HULL AND ZIEGNER CONCUR:
APPROVED:

APR 21 1999

I hereby certify that the above is a true
and correct copy of the Order as approved.



Joseph M. Sutherland, Executive Secretary
to the Commission