

STATE OF INDIANA)
) SS: IN THE MARION COUNTY CIRCUIT COURT
COUNTY OF MARION)
) CAUSE NO. 49C01-1906-PL-023150
IN THE MATTER OF THE)
))
BEN DAVIS CONSERVANCY DISTRICT)

SECOND PETITION TO INCREASE BOND SOLICITATION AMOUNT FOR WASTE WATER TREATMENT FACILITY AND FOR AMENDMENT TO THE BEN DAVIS CONSERVANCY DISTRICT BOND RESOLUTION ADOPTED JUNE 21, 2021

Comes now the Ben Davis Conservancy District (“BDCD”), by its Chairman of the Board of Directors, and files its Second Petition to Increase Bond Solicitation Amount for Waste Water Treatment Facility and for Amendment of the Ben Davis Conservancy District Bond Resolution Adopted June 21, 2021 and in support thereof, would show the Court as follows:

1. The Ben Davis Conservancy District was established pursuant to an Order of the Marion County Circuit Court dated March 10, 1950.
2. The Ben Davis Conservancy District is wholly located in Marion County, Indiana as such, pursuant to IC 14-33-2-9, the Marion County Circuit Court has exclusive jurisdiction over all hearings in connection with the Ben Davis Conservancy District.
3. Prior to 2018, the Ben Davis Conservancy District was funded solely from ad valorem property taxes, exceptional benefits charges, and contract charges.
4. The Ben Davis Conservancy District petitioned this Court for authority to implement a flat rate user fee as an additional tool to finance the works of the Conservancy¹ and said petition was granted on October 19, 2017. After notice and a court hearing, the Marion County Circuit Court issued an Order Authorizing the Implementation of Flat User Fee as an Additional Tool to Finance the Operation of the Ben Davis Conservancy District. In this Order, the Court preliminarily approved the proposed Sewer Rate Ordinance 2017-1 subject to a public hearing. After notice and public hearing, Sewer Rate Ordinance 2017-1 was subsequently adopted by the Ben Davis Conservancy District Board.

¹ As I.C. 36-3-2-6 prohibits conservancy districts within Marion County from issuing general obligation bonds, Conservancy Districts within Marion County must issue revenue bonds to finance improvement. However, revenue bonds cannot be repaid from ad valorem tax proceeds and must be repaid from “revenue” such as user fees.

5. The Ben Davis Conservancy District petitioned this Court to change the nature of the sewer charges to an Equivalent Dwelling Unit ("EDU") basis in accordance with 327 IAC 3-6-11. After notice and a court hearing, this Court issued an August 30, 2019 Order Authorizing the Ben Davis Conservancy District to Change the Nature of Sewer Charges to an Equivalent Dwelling Unit (EDU) Basis. Pursuant to said Order, proposed Ordinance 2019-1 was provisionally approved in its entirety subject to a public hearing. After notice and public hearing, Ordinance 2019-1 was subsequently adopted by the Ben Davis Conservancy District Board. Pursuant to Paragraph 13 of Ordinance 2019-1, the Ben Davis Conservancy District Board may changes rates from time to time; "If this ordinance is approved by the Circuit Court, it shall not be necessary to request approval of any new rates or charges implemented from time to time . . ."
6. Given the foregoing, the Ben Davis Conservancy District has the authority to charge a user fee and may implement new rates and charges without permission of the Marion County Circuit Court. Said revenues can be used for the repayment of revenue bonds pursuant to IC 14-33-11-3(1).
7. The Ben Davis Conservancy District petitioned this Court for authority to take preliminary steps to secure funding for a proposed sewage treatment plant. Following notice and hearing, the Marion County Circuit Court issued an Order Approving and Authorizing the Ben Davis Conservancy District to Take Preliminary Steps to Secure Funding for a Proposed Sewage Treatment Facility on May 22, 2018 which, pursuant to Paragraph 3(i) included authority "To do all things necessary and proper for the construction of a sewage treatment plant all without further authorization of this Court."
8. The Ben Davis Conservancy District filed an amended petition before this Court for authority to take preliminary steps to secure funding for a proposed sewage treatment facility at market rates on January 4, 2019. After notice and a court hearing, the Marion County Circuit Court issued an Order Approving and Authorizing the Ben Davis Conservancy District to Take Preliminary Steps to Secure Funding for A Proposed Sewage Treatment Facility at Market Rates on March 15, 2019. In addition to other authority granted in this Order, this Court granted the Ben Davis Conservancy District authority to commit to the purchase of land in an amount not to exceed one million dollars (\$1,000,000) and to proceed with bond solicitation at the time the Ben Davis Conservancy District deemed appropriate and to "take all other proper steps to finance the proposed facility in a sum not to exceed \$15,000,000."
9. Due to the inability to secure a suitable site for a treatment facility for under \$1,000,000 and due to the rising construction costs, the Ben Davis Conservancy District filed a subsequent petition before this Court to increase the funding amount to purchase land for sewer treatment facility and increase bond solicitation amount on February 8, 2021. After notice and a court hearing, the Marion County Circuit Court issued an Order Approving and Authorizing the Ben Davis Conservancy District to Increase Funding Amount to Purchase Land for Sewer Treatment Facility and Increase Bond Solicitation Amount on

issues, a large number of government grants that have increased the demand for utility construction services, excessive inflation not seen since the 1980's and other factors outside the control of the Ben Davis Conservancy District.

15. That the Ben Davis Conservancy District believes that financing the sum of twenty million dollars (\$20,000,000) is no longer sufficient for the project and would request authorization to proceed with Bond Solicitations in a Maximum Par Amount of twenty-four million dollars (\$24,000,000) and requests the consent of this Court to amend the Bond Resolution accordingly.
16. That the Ben Davis Conservancy District would further request the Court's consent to amend the Bond Resolution to modify the definition of Net Revenues such that Operating and Maintenance (including Repair and Replacement) Expenses include only those expenses remaining after the application of the Ben Davis Conservancy District property tax receipts.
17. That the application of ad valorem property taxes (special benefit taxes) to pay for Operating and Maintenance costs is permitted under I.C. 14-33-7-1(a)(5), to wit: "All the real property in the district, except the property that is exempt under section 4 of this chapter, constitutes a taxing district for the purpose of levying special benefit taxes to pay for the following: (5) The expenses of operating and maintaining the district."
18. That the Ben Davis Conservancy District would further request the Court's consent to amend the Bond Resolution Debt Reserve Requirement to be established at the time of sale and at the advice of the Financial Advisor of the Ben Davis Conservancy District, if any.

WHEREFORE, the Board prays that the Court:

1. Set this matter down for a public hearing **(2 hours requested at least twenty (20) days in the future to allow the Ben Davis Conservancy District to Effectuate Publication, preferably on April 12, 2022, April 13, 2022 or April 14, 2022 or, if those dates are not available on April 18, 2022 and if that date is no available, a time during the week of April 25, 2022 and allow all participants to appear electronically in compliance with Governor Holcomb's Executive Orders in response to the coronavirus pandemic.**
2. Approve the Board's seeking market rate funding for financing of a sewage treatment facility in the amount of approximately twenty million dollars (\$24,000,000).
3. Approve the proposed Amendments to the Bond Resolution amending the definition of Net Revenue and allowing the Debt Reserve Requirement to be determined at the time of sale on the advice of the Ben Davis Conservancy District Financial Advisor.
4. Grant all other proper relief.


I affirm under the penalties of perjury that the foregoing is true to the best of my knowledge and belief.

March 26, 2021. In addition to other authority granted in this Order, the Marion County Circuit Court granted the Ben Davis Conservancy District authority to commit to the purchase of land in an amount not to exceed two million dollars (\$2,000,000) and the authority to proceed with financing of the sewage treatment facility with the sale or issuance of bonds in an amount not to exceed \$20,000,000, noting "The Ben Davis Conservancy District shall comply With all notice and other applicable requirements under Indiana Law regarding the issuance and sale of said bonds, but shall not be required to seek further authorization of this Court regarding the sale or issuance of bonds in an amount not to exceed twenty million dollars (\$20,000,000)."

10. Following said hearing, the Ben Davis Conservancy District, after notice and public hearing, and taking into consideration the options of the Ben Davis Conservancy District for the treatment of sanitary sewage, the economic impact to the freeholders and all other customers of the Ben Davis Conservancy District, and the concerns of the freeholders and others appearing at the public hearing and having considered the advice of its accountants, engineers, attorneys, and other experts, including Bond Counsel, Kimberly Blanchet of Barnes and Thornburg, on June 21, 2021, the Ben Davis Conservancy District adopted the following:
 - A. Resolution of the Board of Directors of the Ben Davis Conservancy Approving Funding for Purchase of Land and Financing for Sewage Treatment Facility (a copy of which is attached as "Exhibit A" and made a part of the Petition by this Reference)
 - B. Resolution of the Board of Directors of the Ben Davis Conservancy Authoring the Adoption of a Bond Resolution (a copy of which is attached as "Exhibit B" and made a part of the Petition by this Reference), and a
 - C. Bond Resolution (a copy of which is attached as "Exhibit C" and made a part of the Petition by this Reference)
11. The Ben Davis Conservancy District closed on a parcel of real property suitable for the construction of a wastewater treatment plant, to wit, 900 S. Tibbs Avenue, Indianapolis, IN 46241.
12. Ben Davis Conservancy District has received a permit to construct a wastewater treatment plant from the Indiana Department of Environmental Management ("IDEM").
13. The Ben Davis Conservancy District received zoning approval from the Department of Metropolitan Development on March 16, 2022, to change zoning from I-4 (heavy industrial) to SU-41 (wastewater treatment facility).
14. Bids were opened for the wastewater treatment project on March 17, 2022. At the time of the execution of this petition, all bids received have been in excess of the twenty-millions (\$20,000,000.00) anticipated one year ago. This is believed to be due to supply

BEN DAVIS CONSERVANCY DISTRICT

Dated: 3-23-2020

By: 
Fred F. Buckingham, Chairman of the
Board of Directors of the Ben Davis
Conservancy District

Jennifer M. Hess (24227-49)
Hess Hess & Donnelson LLP
2000 East 116th St., Ste. 106
Carmel, IN 46032
317-844-1377
317-844-1408 (FAX)
Jen.Hess@HHDLegal.com (EMAIL)