



**WASTEWATER TREATMENT AGREEMENT BETWEEN THE  
PORTAGE WATER RECLAMATION BOARD AND THE DAMON RUN  
CONSERVANCY DISTRICT**

This agreement, made and entered into this 11 day of May, 2005 (“Agreement”), by and between the Portage Water Reclamation Board, Porter County, Indiana and the Damon Run Conservancy District, Porter County, Indiana, both of which are political subdivisions, existing in the State of Indiana and organized under the laws thereof, and being hereinafter referred to, respectively, as the “Board” and the “District” and further the Board having authority pursuant to Indiana statutes to execute this Agreement and the District being empowered to do the same as the result of a resolution enacted by the Board of Directors of the District on the \_\_\_ day of \_\_\_\_\_, 2005.

WITNESSETH THAT:

WHEREAS, the District does not have adequate means of disposing of wastewater, liquid wastes and sanitary sewage (collectively, “Sanitary Sewage”) from the District, and

WHEREAS, the Board has a sewage treatment and disposal facility which has capacity in excess of that required to process its own Sanitary Sewage, and is willing to accept the Sanitary Sewage from the District and process and dispose of the same, and

WHEREAS, the District was created by a Court Order of the Porter Circuit Court entered on January 26, 2004, and intends to transport Sanitary Sewage generated within the jurisdiction of the District to the Board’s collection system to be transported and treated by the Board in accordance with this Agreement, and

WHEREAS, under the laws of the State of Indiana, the Board and the District have the power to contract for the provision of Sanitary Sewage service and the Board and the District

desire to enter into this Agreement whereby the Board will accept from the District for treatment and disposal the Sanitary Sewage generated within the jurisdiction of the District, and

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that the Board will accept from the District the Sanitary Sewage of the District and will treat and dispose of the same in a proper manner at its sewage treatment plant ("Treatment Plant") subject to the following covenants and conditions:

1. **District Connections to Collection System.**

a. The District shall, at its total cost and expense, construct its connection facilities, as described in "Exhibit A" attached hereto, in a manner acceptable to the Board and in accordance with the provisions of this Agreement. The connection facilities are depicted on the attached "Exhibit B". All costs associated with the connection facilities, including but not limited to the engineering, construction, physical connection, the meters or meters related thereto, shall be paid promptly by the District. The Board shall have the right to approve all engineers, contractors, plans and specifications related to construction of the connection facilities. The approval of the Board shall not be unreasonably withheld.

b. The District shall connect its system, at the District's sole and exclusive cost, to the Board's sewage collection system at a point approximately 1 1/2 miles west of the intersection of U.S. Highway 149 and U.S. Highway 6 in Porter County, Indiana ("Connection Point").

c. The District shall install meters and sampling manholes at the locations shown on "Exhibit A" to allow for sampling and to record the volume of sanitary sewage discharged to the Board's sewage system by the District. The location and type of

metering equipment and sampling manholes shall be submitted to the Board for approval prior to installation.

d. As part of the connection facilities, the District shall construct a lift station in accordance with the requirements identified on “Exhibit A” and the location of the lift station is more particularly identified on “Exhibit B”.

2. **Charges.**

a. The District shall pay the following to the Board:

i. \$23.50 for each 4500 gallons of Sanitary Sewage as metered, payable monthly. The rate of \$23.50 for each 4500 gallons of Sanitary Sewage is the current rate charged by the Board for metered Sanitary Sewage and is subject to increase in the event that the sanitary sewer rates are increased generally by ordinance.

ii. \$1,700.00 Capacity Allocation multiplied by the number of approved EDUs to be connected to the District’s collection system, one-half of which aggregate amount shall be payable (30) days after final Plat approval for new developments and the other one-half shall be payable within 90 days after final plat approval. The Capacity Allocation of \$1,700.00 per EDU shall be paid immediately for existing structures which discharge Sanitary Sewage to the District’s and therefore the Board’s collection system.

iii. \$500 tap-on fee per EDU payable within thirty (30) days of the close of each fiscal quarter consisting of \$500 times the number of aggregate EDU connections made for the preceding fiscal quarter. The District shall supply

the Board with a list of each tap-on location, identifying owner, type of building, address and date of connection.

3. **Design/Construction of Systems.** As a prior condition to the District's connection to the sewer system of the Board, pursuant to paragraph 1 herein, the District shall, at the District's expense, complete construction of the connection facilities, in accordance with the following:

a. It is anticipated that most of the connection facilities will be constructed within existing right-of-ways. The Board agrees to cooperate with the District in obtaining any necessary easements and/or access to right-of-ways for construction and dedication of the connection facilities. The cost of acquiring necessary easements or right-of-ways shall be paid by the District.

b. Warrant and guaranty to the reasonable satisfaction of the Board and its engineer, that for a period of two (2) years following connection to the Board's sewage system, the connection facilities operate as designed.

4. **Inspection and Maintenance of Meters/Monitoring Equipment.** The duly authorized representatives of both the District and the Board shall have rights of access at all times to inspect and observe the operation of the meters provided for in paragraph 1 hereof and any other monitoring equipment as may be installed to monitor the District's sewage system. The expense of operating, maintaining and calibrating such meters, and any other monitoring equipment west of Highway 149, shall be paid by the District and any records or charts from such meter or meters, and any other monitoring equipment, shall be kept by the Board and shall be subject to examination by the District.



5. **Right of Access.** The duly authorized representatives of the Board shall have rights of access at all times to inspect and observe the District's sewage facilities and shall have rights of access to the facilities of users of the District's sewage facilities for the purpose of inspection, sampling, and any other duties deemed necessary by the Board to provide treatment services pursuant to this Agreement or to comply with the Board's National Pollutant Discharge Elimination System ("NPDES") permit and all laws applicable to the Board's sewage system.

6. **Exclusion of Certain Materials/Notice.** The District agrees to construct and maintain a sewage collection system, including sewers and regulating stations and other structures, as may be required to deliver the flow of Sanitary Sewage from the District to the Board's sewage system. The District agrees to exclude from Sanitary Sewage transported to the Board's sewage collection system any of the following: prohibited discharges under Portage's sewer use ordinance, sand, gravel, street waste, grits, leaves, rags, paper, pickling liquor, cyanides, coal tar, oil, grease, acids, dry cleaning fluids, and any other foreign material and industrial wastes which are objectionable, dangerous and inhibitive to bacterial growth, or which for other reasons cannot readily be treated in the Treatment Plant of the Board or may be injurious thereto. The District further agrees that the Sanitary Sewage transported to the Board's sewage system shall not cause the Board to be in violation of its NPDES permit and shall not contain any material or matter which is not permitted by the Board's NPDES permit. If, for any reason, the District is aware that any Sanitary Sewage transported to the Board's sewage system could cause the Board to be in violation of its NPDES permit, it shall, within twelve (12) hours of becoming aware of such potential violation, provide oral notice to the Board of such potential violation and shall provide a written submission of the same to the Board within five (5) days.

7. **Existing Service Areas.** The following additional Service Area restrictions shall apply to the District:

a. The District agrees that during the term of this Agreement it will not, without the prior written consent of the Board, extend its Service Area, its district, territory, services or lines to, over, on or under property west of Highway 149 in Porter County Indiana. Such restriction shall not apply to the construction of the connection facilities identified in "Exhibit A", provided such construction is in accordance with the terms of this Agreement. The District also agrees that it will not object to any attempt by the City of Portage to annex property east of U.S. Highway 149 in Porter County, Indiana.

b. Any other conservancy district, waste treatment facility or existing development or mobile home park, to the extent serviced by any other waste treatment district or system, and within the Damon Run Conservancy District's certificate of territorial authority, shall be decommissioned and connected to the District within ten (10) years after the date of this Agreement.

c. The District shall not allow any connections or flow that originates from any area that is not located within the District's Service Area as it exists from time to time.

8. **Maintenance of District's Sewer System.** The District agrees that it will operate and maintain its sewage collection system connecting to that of the Board in accordance with best engineering practices and, in addition, with the guidelines set forth in this Agreement. In operating and maintaining its sewage system, the District shall comply with the terms of Portage's Use Ordinance and the Board's NPDES permit. Should the District fail to operate and

maintain its system as described herein, the Board may, at its sole option, perform reasonable emergency repairs and assess a surcharge against the District, including data supporting the costs of the surcharge, sufficient to permit reimbursement of expenses required for any necessary repair and maintenance of the facilities. The District expressly agrees that if it is in default under this Section that it will: (1) make immediate payment of such surcharge to the Board, and (2) cooperate as reasonably necessary to obtain permits, licenses, and meet other requirements to permit the accomplishment of such needed repairs.

9. **Infiltration/Inflow.** The District's sewage system connecting to the Board's system shall receive no storm water or groundwater directly or indirectly from surface drains, ditches or streams, storm or combined sewers, roof, areaway or foundation drains, or from any other means, except the minimum practicable amount of infiltration/inflow, as authorized by law, or mutually agreed upon within acceptable engineering practices. Infiltration and inflow shall be controlled to the satisfaction of the Board.

Infiltration consists of water entering a sewer system, including building drains and sewers, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include and is distinguished from inflow. Inflow consists of the water entering into a sewer system, including building drains and sewers, from such sources as, but not limited to: roof leaders, cellar, yard and area drains, foundation drains, unpolluted cooling water discharges, drains from springs, and swampy areas, manhole covers, cross connections from storm sewers, and combined sewers, catch basins, storm waters, surface runoff, street wash waters or drainage. Infiltration/inflow is the total quantity of water entering a sewer system from both infiltration and inflow.



For all sewers in the District's system modified, upgraded or constructed prior to the date of this Agreement, the maximum rate of infiltration of groundwater shall be 100 gallons per inch diameter per mile per twenty-four (24) hour period (exclusive of house or building laterals); however, infiltration and inflow in newly constructed sewers should approach zero considering current inspection, testing, materials, and construction state-of-the-art.

10. **Sewer Use Rules and Regulations.** The District agrees to adopt sewer use rules and regulations if required by PL 92-500 (the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C., 1251 et. seq.) and said rules and regulations shall be at least as stringent as Portage's Sewer Use Ordinance and shall have local limits which are at least as stringent as those set out in Portage's Sewer Use Ordinance. The District shall provide the Board with a copy of its sewer use rules and regulations and any amendments thereto at least seven (7) business days prior to adoption for the Board's review and comment. Within sixty (60) days of any changes made to Portage's Sewer Use Ordinance, the District shall amend its sewer use rules and regulations so as to reflect such changes. The Board shall provide the District with notice of any changes to its Sewer Use Ordinance within five (5) days of such changes.

11. **Inflow/Infiltration Rules and Regulations.** The District has or will enact rules and regulations which prohibit the introduction of inflow and infiltration as defined in Section 9 into its sewage system and will otherwise enforce such prohibition.

12. **Records, Accounts and Audits.** The Board shall keep books and records of accounts, in which complete and correct entries shall be made of all transactions with the District, which shall at all reasonable times be subject to the inspection of any officer of the District. The District may request an independent audit of the Board's financial records pertaining to this Agreement. The cost of the audit shall be paid by the District. The auditor must



be approved by the Board. Financial records shall be preserved for a period of at least three (3) years from the end of the fiscal year in which payment by the District was made.

13. **Invoice and Payment.** The Board shall, prior to the 10<sup>th</sup> of each month, invoice the District for metered usage charges and such amount shall be due from the District to the Board on the last day of the month in which the invoice is received by the District. In the event that the District should fail to make payment to the Board of the amount of such invoice within the time so limited, the District shall be liable for and shall pay to the Board, as a penalty for delinquency in such payment, the same percentage of such invoice, that the sewage rate ordinance of Portage imposes upon all other users of the Board's sewage disposal facilities for similar delinquencies in payment.

14. **Reimbursement Agreement.** Concurrently with the execution of this Agreement or as soon thereafter as reasonably possible, the Board and District shall execute a Reimbursement Agreement under the terms of which, pursuant to the applicable statutes of Indiana, the District shall be reimbursed the difference in cost to the District between the cost incurred by the District for the extension of its sanitary sewer line West from Highway 149 to Bay Road and the cost the District would have incurred for that same extension had it not been required by the Board to modify the line to serve currently unserved areas West of Highway 149. The Reimbursement Agreement shall provide that the Board will assess the prorata share of the reimbursable cost to users within the area shown on "Exhibit D" as they tap on to the sanitary sewer system between Highway 149 and Bay Road. The Board will remit the funds collected to the District. The term of the Agreement will be fifteen (15) years. The Reimbursement Agreement will be executed subsequent to this Agreement and attached as "Exhibit E".

15. **Transfer of Connection Facilities.** Upon connection of the District's collection system to the Board's sanitary sewer system, the District shall assign, convey and transfer the lift station and all connection facilities, sanitary sewer lines, and easements and appurtenances, except meters, West of Highway 149 to the Board and shall also transfer all title, warranties and maintenance agreements for equipment which has been installed or constructed as part of the lift station or its appurtenances to the Board. Thereafter, the Board shall own the connection facilities, lift station equipment, appurtenances, easements, land and all sanitary sewer lines constructed by the District West of Highway 149 and shall maintain, repair and replace those lines at Board's expense. The Board shall not own the meters or other monitoring equipment west of Highway 149.

16. **Reserved Capacity and Additional Capacity.** It is agreed that Board shall permit District, during all applicable times that this Agreement is in effect, following construction and approval by Portage of the connection facilities, to allow District to discharge Sanitary Sewage collected in its service area into the Board's sewage system at the connection point. By December 31, 2005, it is expected that the District will generate a flow of 115,000 gallons per day. The anticipated flow from the District over the subsequent six (6) year period is set forth in the attached "Exhibit C." The maximum flow allowed by the Board from the District pursuant to this Agreement is 346,720 gallons per day.

In the event the District discharges in excess of the anticipated flow shown on "Exhibit C," and assuming the Treatment Plant has capacity sufficient to accept such increased amount of Sanitary Sewage, the District agrees to pay to the Board a surcharge equal to one hundred twenty-five percent (125%) of the then current rate per 4,500 gallons of Sanitary Sewage for all amounts in excess of the anticipated flow shown on "Exhibit C."

Should the District determine there to be a need to discharge additional volume to the Board's sewage system at any time during the pendency of this Agreement, the District shall advise the Board of such need and the Board agrees to utilize good faith in reviewing the request and to respond to such request no later than six (6) months after receipt of same. Prior to determining whether to provide such additional capacity, the following conditions shall be met:

- a. Treatment capacity beyond that presently allocated to the District can be provided without adverse effect to the Board's sewage system or future needs of Portage.
- b. The District gives the Board notification of need, and a binding commitment, to the extent permitted by applicable law, to bear appropriate costs directly related to meeting that need.
- c. Binding written agreement, executed with the same formality as this Agreement, is reached with all jurisdictions, if any, whose Sanitary Sewage is treated by the Board as to the sharing of the ultimate treatment capacity of the Treatment Plant.
- d. Commitments are received from, and funds made available by, those jurisdictions, if any, desiring increased capacity above the present design capacity.
- e. The District and other jurisdictions, if any, identified in subparagraphs (c) and (d) above, comply with all provisions of Federal and State law, rules and regulations and the costs of compliance and any legal actions brought against the Board as a result of its efforts to provide for the additional capacity are borne by the District and other jurisdictions, if any, requesting same. Where the request is made by the District and one or more other jurisdictions, these costs shall be shared ratably in proportion to the amount of requested capacity.



If the Board determines to provide additional capacity to the District, the rights and obligations with respect to the provision of such additional capacity shall be set forth in a supplement or amendment to this Agreement.

Both parties understand and agree that the payments called for by Section 2 of this Agreement are intended to compensate and reimburse the Board for services rendered in the collection, treatment and disposal of Sanitary Sewage from the District. Except for a reservation of capacity of the Treatment Plant for the benefit of the District as heretofore set forth herein, such payments shall in no wise entitle the District to any possessory nor proprietary rights in the Treatment Plant or other sewage works facilities of the Board. The Board reserves the right to operate and maintain such Treatment Plant and other sewage works facilities of the Board and shall have sole discretion as to the methods of operation and the necessity for and nature and extent of improvements thereto.

17. **Excessive Pollutant Charges.** In the event Sanitary Sewage is received by the Board from the District in excess of domestic loadings, biochemical oxygen demand (“BOD”) and total suspended solids now established, then the District shall pay to the Board the rate per pound therefor as established in the Board’s then current rate ordinance. In the event of future changes in the cost of treatment of total suspended solids and BOD based upon the studies in conformity with EPA requirements, then the District shall be subject to any such increased or decreased charges for such excessive pollutants. In the event that future charges are made for other excessive pollutants received by the Board and such charges are uniformly applied throughout the region served by the Board, then the District shall be subject to such charges and such charges shall be set forth in Portage’s rate ordinance.



The District agrees that it shall not convey any Sanitary Sewage or other matter to the Board's sewage system for treatment which (i) is prohibited by Portage's Use Ordinance or this Agreement, (ii) would cause the Board to be in violation of its NPDES permit, or (iii) would cause damage to the Board's sewage system. In the event the District violates this provision, the Board shall have the right and power to take all necessary action to cause the District to (a) cease violating this provision, including seeking injunctive relief, specific performance and any other remedies necessary to enforce this provision and (b) compensate the Board for (i) any damages caused to the Board's sewage system, (ii) legal fees incurred in enforcing this provision, (iii) any penalties or fines resulting from a violation of this provision, and (iv) any other damages accruing to the Board as a result of a violation of this provision.

18. **Regulatory Compliance.** The District acknowledges that the Board has obtained certain Federal grants and that the provisions of PL 92-500 apply to the users within the jurisdiction of the District. The District agrees to cooperate with the Board to the fullest extent so that the provisions of PL 92-500 will be adhered to and complied with. The District agrees to comply with all applicable provisions of the Federal Water Pollution Control Act, and Indiana statutes relating to pollution abatement. Further, the District will implement any requirements, regulations and rules of the U.S. Environmental Protection Agency and any State agencies with respect to conditions and limitations of grants sought by the Board that are applicable to the District and being within the jurisdiction of the Board.

19. **Force Majeure.** The Board shall exercise diligence in the operation and maintenance of its sewage works system so as to furnish the District with sewage treatment services pursuant to the terms of this Agreement, and the District shall exercise diligence in the conveyance of Sanitary Sewage to the Board's sewage works system pursuant to the terms of

this Agreement so as to not interfere unreasonably with service to others dependent upon the Board for such services; but, neither party shall be liable for damages, breach of contract or otherwise by reason of the failure, suspension, diminution or other variance in wastewater service as the result of injunction, fire, strike, riot, explosion, flood, accident, curtailment, interruption, failure or depletion of the Board's wastewater collection and treatment system, acts of God or the public enemy or other acts or conditions beyond the control of the Board or District. Furthermore, neither the District nor the Board shall be liable for damages resulting from interruption of service, when such interruption is necessary to make repairs, replacements or adjustments in equipment and facilities; however, the Board shall give reasonable notice, except in the case of an emergency, if any repairs, replacements or adjustments which will result in an interruption of service.

20. **Effective Date and Duration.** This Agreement shall be effective as of the date first above written, and shall be in full force and effect and shall be binding on both parties. This Agreement shall continue from the date first above written until terminated in accordance with its terms.

21. **Termination.** The failure of either party to comply with the material terms of this Agreement shall constitute a default. Upon default by one party, the other party shall send written notice of default. Such notice shall clearly specify the nature of the default and provide the defaulting party thirty (30) days to cure the default. If the default is capable of being cured within thirty (30) days but is not cured within thirty (30) days, the party who is not in default may provide the other party with notice of termination in which case the Agreement shall terminate upon delivery of the notice of termination. In the case of default that cannot be reasonably cured within thirty (30) days, this Agreement may not be terminated so long as the

defaulting party has given written notice of the extension to the other party and the defaulting party has commenced and is diligently pursuing a cure and actually cures the default within one hundred twenty (120) days from the notice of default. Evidence of such cure and its diligent pursuit shall be provided from the defaulting party determined to be in default to the satisfaction of the non-defaulting party. The curative period maybe extended beyond one hundred twenty (120) days by agreement of the parties. Consent to an additional extension shall not be unreasonably withheld.

In the event of the termination of this Agreement as provided above, the District shall pay the Board for the services provided and invoiced by the Board up to the effective date of termination plus all unpaid costs, less any and all reasonable costs and expenses incurred by the District resulting from Board's default or plus any and all reasonable costs and expenses incurred by the Board resulting from District's default. Payment shall be made within thirty (30) days of the date of termination.

22. **Assignment**. This Agreement is expressly made binding upon the successors and assigns of the parties hereto provided that no assignment by either the Board or the District of its rights to this Agreement shall be binding on the other party unless that other party shall have consented to such an assignment in writing.

23. **Waiver**. Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party's right and shall not affect the right of such party to exercise at some future time said rights or any other right it may have hereunder.

24. **Amendment**. The provisions, terms and conditions of this Agreement shall be amended, modified, or added to only by written amendments to this Agreement executed with the same formality as this Agreement. The parties further agree that this Agreement shall be



amended if at any time it is necessary to amend this Agreement to preserve the tax-exempt status of any bonds issued by Portage to finance or refinance improvements and additions to the Board's sewage works system or to allow Portage to issue bonds in the future bearing interest that is tax exempt if such amendment should become necessary under any future regulations promulgated by the Internal Revenue Service.

25. **Indemnification**. The Board shall indemnify, defend and hold the District, its officials, directors, officers, employees and agents harmless from and against all losses, claims, damages, liabilities, actions, decrees, orders, judgments, penalties, enforcement actions and expenses, including reasonable professional fees and disbursements, to the extent not reimbursed by insurance, whether or not in connection with loss of life, bodily injury, and damage to property, of any kind or character, howsoever caused and arising to the extent from (1) the Board's breach of obligations under this Agreement; and or (2) the Board's negligence within the scope of the Board's obligations under this Agreement.

The District shall indemnify, defend and hold the Board, its officials, directors, officers, employees and agents harmless from and against all losses, claims, damages, liabilities, actions, decrees, orders, judgments, penalties, enforcement actions and expenses, including reasonable professional fees and disbursements, to the extent not reimbursed by insurance, whether or not in connection with loss of life, bodily injury, and damage to property, of any kind or character, howsoever caused and arising to the extent from (1) the District's breach of obligations under this Agreement; and or (2) the District's negligence within the scope of the District's obligations under this Agreement.

26. **Severability**. If any section, subsection, paragraph, clause, phrase, or other provision of this Agreement or their application shall, for any reason, be held to be unlawful,



invalid, or unenforceable, the lawfulness, invalidity, or unenforceability of such section, subsection, paragraph, clause, phrase, or provision or their application shall not affect any of the remaining provisions of this Agreement, or their application.

27. **Interpretation.** Each party to this Agreement and its counsel have reviewed this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

28. **Non-Discrimination.** The District and any person on the District's behalf, shall not in any manner with respect to any matter related to employment or any performance pursuant to this Agreement, discriminate against or intimidate any person on account of race, age, religion, color, sex, national origin, ancestry or disability.

29. **Violation of City Ordinances.** If, at any point in time during the term of this Agreement, the District is in violation of any of Portage's ordinances in the Board's Rules and Regulations relating to Sanitary Sewage, such violation shall be a material breach of this Agreement.

30. **Governing Law.** This Agreement shall be construed under and governed by the laws of the State of Indiana.

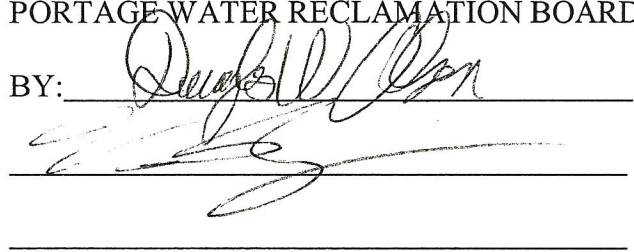
31. **Annexation.** The District acknowledges that this Agreement and its implementation will be a material element supporting the potential future annexation of the geographic area of the Board, in accordance with then applicable law.

32. **Entire Agreement.** The terms and provisions contained herein constitute the entire agreement between the parties and shall supersede all previous agreements or discussions. In the event that any provision of this Agreement conflicts with any applicable law, such conflicts shall not affect any other provisions of this Agreement which can be given effect by

deleting the conflicting provision. To this end then, the provisions which are in conflict are determined to be severable and should be deleted.

PORTAGE WATER RECLAMATION BOARD

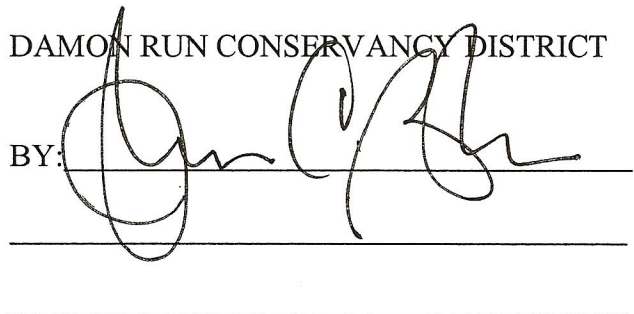
BY:



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DAMON RUN CONSERVANCY DISTRICT

BY:



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