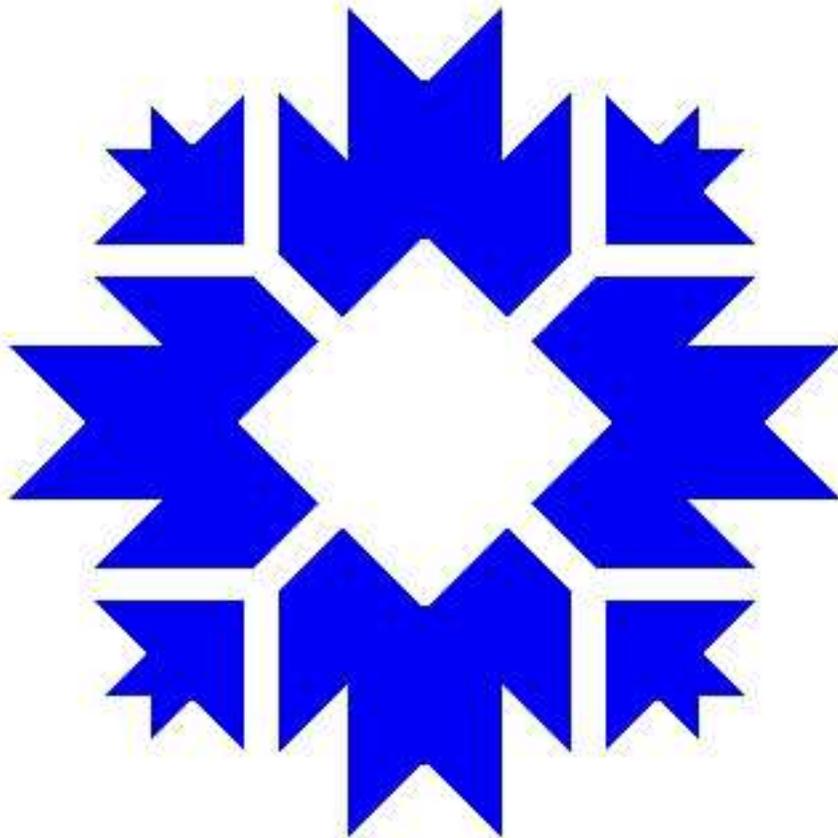


Board of Public Works Meeting

September 10, 2013



REVISED AGENDA
BOARD OF PUBLIC WORKS
(This Meeting May be Televised)

A Regular Meeting of the Board of Public Work to be Held Tuesday, September 10, 2013 at 5:30 p.m., in the City Council Chambers of City Hall at Showers, 401 N. Morton Street, Bloomington, Indiana.

I. MESSAGES FROM BOARD MEMBERS

II. APPROVAL OF MINUTES – August 27, 2013

III. PETITIONS & REMONSTRANCES

IV. TITLE VI ENFORCEMENT

V. HEARINGS FOR NOISE APPEAL

1. Appeal of Noise Citation 31882-2615 E. 5th Street

VI. OLD BUSINESS

VII. NEW BUSINESS

1. Resolution 2013-84: Use of Public Streets for YMCA Fall Run 5K and 10K (Saturday, 11/16)
2. Noise Permit for Channel Your Animal Bike Polo Match (Saturday, 9/14 & Sunday, 9/15)
3. Resolution 2013-85: Allow Itinerant Merchant to Renew Permit to Operate in Public Right of Way (Naughty Dog)
4. Resolution 2013-86: Request to Change Street Name from S. Tech Park Boulevard to S. Cooperative Way
5. Plat Approval for 1710 N. Kinser Pike
6. Request from Indiana University to Close a Portion of N. Fee Lane for the Installation of a Steam Line
7. Approval of Project Coordination Contract Between INDOT and LPA for Park Avenue Brick Street Project
8. Approval of Project Coordination Contract Between INDOT and LPA for 17th Street/Monroe Street/Arlington Road Project

VIII. STAFF REPORTS & OTHER BUSINESS

IX. APPROVAL OF CLAIMS

X. ADJOURNMENT

The Board of Public Works meeting was held on Tuesday, August 27, 2013 at 5:30 p.m. in the Council Chambers of City Hall at Showers, 401 N. Morton Street, Bloomington, Indiana with Charlotte Zietlow presiding.

**REGULAR MEETING
OF THE BOARD OF
PUBLIC WORKS**

Present: Charlotte Zietlow
James McNamara
Frank Hrisomalos

ROLL CALL

City Staff: Rick Alexander - Engineering
Jackie Moore – City Legal
Justin Wykoff - Engineering
Mike Arnold - HAND
Jacqui Bauer - ESD
Christina Smith – Public Works
Laurel Archer – Public Works

Zietlow welcomed everyone back to the community.

**MESSAGES FROM
BOARD MEMBERS**

McNamara made a motion to approve minutes from August 13, 2013. Hrisomalos seconded the motion. The motion carried. Minutes were approved as submitted.

**APPROVAL OF
MINUTES**

None

**PETITIONS &
REMONSTRANCES**

None

**TITLE VI
ENFORCEMENT**

Patty Mulvihill, City Legal, stated the person issued the ticket, Mr. Mobley, is present. Mulvihill explained Officer Weisheit was parked at a stop sign near Kirkwood and Grant Street when he heard loud music being played. He observed the music was coming from a white SUV, and later identified the driver of the vehicle as Ryan Mobley. Officer Weisheit's report stated he could hear the music from a block away. He eventually pulled over the driver and advised him that he was in violation of the Noise Ordinance and issued him noise citation #32555. The officer was also able to observe that pedestrians on the sidewalk seemed to notice the loud music because they made physical responses indicating they too had heard the loud music coming from the motor vehicle. Mr. Mobley has appealed the citation in time, within the requirements of the Ordinance. Mulvihill stated Mr. Mobley seems to be arguing two points; 1) he doesn't believe his music could be heard from that far away, and 2) that he

**HEARINGS FOR NOISE
APPEALS**
**Citation #32555 -
Intersection of E.
Kirkwood Avenue & N.
Grant Street**

should have received a warning instead of a fine for the first offense. The City disputes his claims, and feels Officer Weisheit can clearly identify and testify that he heard music coming from the vehicle and that it was heard from outside the vehicle it was coming from. The citation was properly issued. The City would ask that the citation be upheld.

Officer Weisheit explained the events of the traffic stop as follows: He was stopped in traffic facing northbound on Grant Street at Kirkwood to allow pedestrian traffic to cross. While waiting he noticed a couple of the pedestrians turn around and look in a westbound direction toward a vehicle that was coming eastbound on Lincoln at Kirkwood. This was Mr. Mobley's vehicle. As he continued to watch the vehicle he could hear the music, it was loud and the bass was bumping from the interior of the vehicle. By the time Mr. Mobley's vehicle got to the intersection of Kirkwood and Grant more pedestrians had come up, and they were waved through. Zietlow asked if he had his lights on. Officer Weisheit stated he was sitting, idling with his windows rolled down. Mr. Mobley continued through the intersection and continued to play his music. He pulled in behind him and he continued to play the music. When it became a safe area he put on his red and blue emergency lights and signaled for him to pull over. He made contact with Mr. Mobley at his driver's door and explained the Noise Ordinance; "Lower the Boom" which Mr. Mobley disagreed with initially. Mr. Mobley's information was gathered, along with his driver's license, and he completed writing a citation in his patrol vehicle. A citation was issued to Mr. Mobley at his driver's side door. Mr. Mobley had his I-phone on the Lower the Boom website for the City of Bloomington and he began quoting the website information. He stated he understood Mr. Mobley wanted a warning. Officer Weisheit explained at this time of the year there is an unofficial zero tolerance policy as students begin to come back and loud parties and loud vehicles moving through the downtown area and enforcement is kicked up of the Noise Ordinance which is what he was doing. Officer Weisheit stated Mr. Mobley disagreed with him. Mr. Mobley then asked if he was a new officer, which he explained he was not, but has been an officer since early 2007, five years here in Bloomington. Mr. Mobley asked for his name and badge number. Officer Weisheit stated he gave him the information verbally and showed him on the citation where that information was as well. Mr. Mobley then stated he was interested in contesting the citation. Officer Weisheit explained to him how he could do that. Mr. Mobley then asked Officer Weisheit to explain to him directly, and it was explained to him briefly and that on the side of the road was not the time to do that, and he was shown where on the back of the citation that information was. Mr. Mobley was advised to contact

City Hall to follow up further with his needs as far as the citation was concerned, and the traffic stop was completed.

Ryan Mobley introduced himself. Mr. Mobley explained his version is pretty similar to the Officer's. Mr. Mobley stated he is not contesting that the stereo was somewhat loud, but as far as pedestrians making gestures and turning their body, and facing the noise, if it were a loud situation it would've been turned down, seeing as how he did see the officer for a block as he traveled east. Mr. Mobley stated his concern was, as the officer said, he pulled up the website, and it seemed like it was insinuating it was more of an awareness campaign versus a punishment campaign. Mobley stated he just turned 29, he lives on 17th, and the only reason he hooked them up was he had them for sale on Craig's list and wanted to make sure they sounded good, and he drove down the road maybe 1/2 mile and got a \$50 citation. Mr. Mobley stated he has since sold them and if his appeal is not granted he guesses he will lose a little money paying that ticket with what was made from the sale.

McNamara explained to Mr. Mobley the only duty of the Board is to determine whether or not the citation was properly issued, and from everything he gathered that is the case here. It is not the history or policy to get involved in the whole warning versus citation, that is 100 percent officer discretion. McNamara did point out, as was the case as well with the weed discussion from several weeks ago, that there is no way the general public could be aware of how much input there is to the City staff, including Bloomington Police Department, and 911 operators, and so forth, that they are constantly being asked to enforce things more than they do. The Board hears the appeals on the citations, here, but what the Board doesn't hear is this particular forum is how much pressure comes in from the community, with calls and so forth with complaints. McNamara added when he worked for the City one of the most common calls was the mobile sound. McNamara added while this has nothing to do with Mr. Mobley's case, he wanted make it clear this is not an isolated persecution of any kind, there are many people in the community that want these things enforced. McNamara stated Mr. Mobley was correct, Lower the Boom is more an awareness and education campaign, as is Quiet Nites. The Bloomington Municipal Code, on the other hand, is where the Lower the Boom and Quiet Nites are converted into ordinances that have citations. Lower the Boom and Quiet Nites have a corresponding enforcement component to it, which is what happened on Kirkwood Avenue.

McNamara made a motion that the appeal of Noise Citation #32555 be denied. Hrisomalos seconded the motion, and stated there is

another appeal process for Mr. Mobley. The motion passed. The Appeal was denied. Mr. Mobley will have the right to appeal further.

None

OLD BUSINESS

NEW BUSINESS

Mike Arnold, HAND, stated this is a property another inspector came across while out doing Title VI enforcement. This is a garage on the back of the property at 1210 S. Madison Street. The building is listing and sagging and does meet the definition of an unsafe structure for Title 17. HAND is asking that the structure be removed. An Order to Remove has been sent to the owner of the property. To date HAND staff has not heard anything back from the owner

Request to Uphold Order to Remove Unsafe Structure at 1210 S. Madison Street

Zietlow asked if the next step is to remove the structure. Arnold stated the first step is for the Board to Uphold the Order to Remove. Hrisomalos asked how many times HAND tries to contact an individual. Arnold stated staff has reason to believe they have been contacted because they signed for the registered mail. However, there has been no contact from them by phone.

McNamara asked if there way anything in the building. Arnold stated not that he was aware of, but that he did not go on the property, but stayed on the alleys. Zietlow asked if anyone was living there. Arnold stated he believes someone is living in the house, but the garage is not an occupied structure. The property owner has been given until September 30, 2013 to remove the structure.

McNamara asked if they would get another notice regarding the Board's action. Arnold stated a notice of the Board's action would be sent.

McNamara made a motion to Uphold the Order to Remove the Unsafe Structure at 1210 South Madison Street. Hrisomalos seconded the motion. The Order to Remove Unsafe Structure was upheld.

Arnold stated this property has come before the Board many times regarding the house at this location. Staff has found out since sealing the house that there is a shed or some type of structure at the back of the lot. This structure is very deteriorated and someone has been getting into the building as has been told to staff by the neighbors. Staff went out and it was determined the structure was unsafe and needs to be removed. There is also an Order to Repair on the same

Request to Uphold Oder to Remove Unsafe Structure at 207 S. Meadowbrook Drive

property and that refers to the fence on the north side of the property. The fence is leaning into the neighbor's property and they were hoping that could be fixed as well. One of the owners listed for this property is Arvin Parks and contact was made with him. Mr. Parks stated he is not an owner and is in the process of getting his name removed from the Recorder's office information. However, at this time he is listed as an owner. Therefore, staff knows the owners have been notified. Staff is asking for the Board to Uphold the Orders. Zietlow stated there are two Orders, one to Uphold the Order to Remove Unsafe Structure, and also to remove the fence.

Zietlow stated for clarification this is two orders, one to uphold the Order to Remove and one to uphold an Order to Repair the fence. Zietlow asked if anyone was living on the property. Arnold stated this property has been vacant for probably 10 years.

Hrisomalos asked who owns the fence. Arnold stated based on the information from the owners, it has been determined that the people who used to live in the house put the fence up, so they would be responsible. Arnold stated that if the fence is not repaired and the City has to do something, that the abatement process would be to remove the fence, and not to repair the fence.

Zietlow asked if the owners are being given an opportunity to repair it. Arnold stated they are, and if they do not repair it then staff will ask for permission to abate, and then the fence would be removed. Arnold stated staff is also asking to bush hog as needed. When staff was on the property to do the Order to Seal it was difficult to get to the house because the vegetation is that dense. The deadline for the property owner is August 31, 2013.

McNamara made a motion to uphold the Orders to Repair and Remove structures at 207 S. Meadowbrook Drive. Hrisomalos added this was to remove the structure and repair the fence, and seconded the motion. The motion was approved. Motion to Remove the Structure and Repair was approved.

Arnold stated this is a property where HAND has been trying to notify the owner since June. This property was cited for overgrowth and noxious weeds. When the noticed was posted on the door he noticed the front door was standing wide open, and the back sliding doors were open as well. Staff is asking for permission to seal the property. The Orders to Seal have been sent to three different addresses, and all have come back unclaimed. Orders were sent to an attorney who was listed in another case against this property, as well as the bank, and the bank's attorney's. Notice was received that the

**Request for Notice of
Publication to Uphold
Order to Seal Structure
at 1633 S. Pinestone
Court**

bank had signed for the document, but it is unclear if the attorney received his copy. There has been no movement in getting this property sealed, nor has there been any contact from the owner for Title VI Abatement. HAND staff now is asking for permission from the Board to Notify by Publication.

McNamara asked Jackie Moore, City Legal, why is it up to the Board to approve notice for publication, and under what circumstances the Board would approve the first order and not the second. It seems to be inefficient and repetitious. Jackie stated anytime the Board takes action then the Board would want to provide notice of that action. If publication is the best, an attempt needs to be made every time. McNamara wondered if after notification was unsuccessful in the attempt to notify by other means, first class mail, or whatever, then could staff just not go ahead and do the publication, as opposed to having to get permission from the Board, and create another separate resolution. Moore explained generally publication notice would have followed previous attempts by the City to get any personal service or Sheriff service. McNamara wondered if this could not be done with a blanket resolution at the beginning of the year that covered this scenario for the entire year.

Zietlow felt that rational would be in giving the property owner multiple chances.

Moore added before any action is taken then the City and the Board would want to make sure everything had been done to give them notice of what is pending.

McNamara moved to approve Request for Notice of Publication to uphold Order to Seal Structure at 1633 S. Pinestone Court. Hrisomalos seconded the motion. Motion passed. Request for Notice of Publication approved.

Alexander stated the Petitioner is Trinitas and are represented by Bynum Fanyo and Associates. Daniel Butler with Bynum and Fanyo was available for questions. Alexander explained this request is for Approval of Patterson Park Phase 3 Final Plat. The property is located on the east side of Patterson and south of "Old" West 3rd Street. The petitioner is requesting final plat approval of a 4 lot replat of the Patterson Park Subdivision. This subdivision dedicates right of way for Propsect Street, Howe Street and additional right of way along the eastside of Patterson. The east/west street, Prospect Street, will divide the property and connect to Patterson. The proposed Howe Street will be at the south end of the development and also connect to Patterson. Lot 1, also known as Areas B and C is

**Approval of Patterson
Park Phase 3 Final Plat**

2.91 acres and will be developed into 29 apartment units with 132 bedrooms. Lot 2, or Area A, will also be developed into 29 apartment units and a mixed use non-residential building. Lots 3 (.75 acres) and 4 (.59 acre) are to be common areas for drainage, conservancy and floodplain easements. Right of way along the east side of Patterson is being dedicated to allow angled parking to be installed along the street.

Alexander reported the petitioners received a rezoning approval of the Planned Unit Development District Ordinance and Preliminary Plan from the Common Council in March of 2013 for a mixed use development. The case was also heard by the Plan Commission this month as PUD-24-13. The developers are required to make the public improvements to Howe, Prospect and Patterson. There will be 19 angled parking spaces on Patterson Drive, 17 spaces will be provided on the new portion of Prospect Street and up to 12 parallel spaces will be added to Old West 3rd Street. The bonding requirements equal a total \$341,000. The plat has been reviewed by Planning and Engineering staff. Staff recommended approval.

Zietlow asked if the old Weddle Brothers building is going to be removed.

Danny Butler introduced himself. He stated there was a large transportation facility on the north part of this property and that is scheduled to be removed in the next month or two.

Zietlow asked if there would be commercial on the ground floor. Butler stated the only use other than apartments on the ground floor is a clubhouse. The large angled building on the plat is going to be the clubhouse. The rest of the buildings will have apartments on the bottom level.

McNamara wondered if the angled parking would need to be codified in the municipal code, or if it was a done deal. Rick stated they will be new spaces and will be codified.

Hrisomalos asked about the number of bedrooms to parking. Butler believed the ratio of parking to bedrooms was around the 60 percent range.

McNamara asked if Prospect and Howe will stop for egress onto Patterson. Alexander stated he anticipated them connecting further to the east in the near future.

McNamara asked what the thinking is with regard to Isaac and Patterson. Alexander stated he did not anticipate, at this time, a light

being there. There will be a light at Adams and Patterson; and a light at W 3rd. McNamara wondered about Isaac because the senior apartments are back there. Alexander stated they would be protected by a light on each side if the lights are coordinated.

McNamara moved to approval of Patterson Park Phase III, Final Plat. Hrisomalos seconded the motion. The motion passed. Plat approved.

Alexander explained there is another new building coming to downtown, 10 North. The Petitioners are 10 North Holdings, LLC and are represented by Tim Hanson. This property is located at the southeast corner of 10th & College, which has been the home of the Waffle House for a long time. The site is approximately two thirds of an acre. The project has been approved by the Plan Commission to build a four story building with a partial 5th floor. The building will include a bank with a drive-thru, additional commercial space, parking garage, and 51 multi-family units, and 77 bedrooms. The Petition is requesting the use of the adjoining right of way along the east side of North College, south of 10th Street. The downtown buildings incorporate most of the property leaving little or no room for construction. The request would block the eastern most lane of College and the sidewalk during construction. Due to the ongoing construction across the street at the Springhill Suites Hotel on the west side of College, the Petitioner has included a pedestrian walkaround with concrete barriers in the layout. The remaining portion of the right of way requested would be used for staging the building materials. The new building is scheduled to open in August of 2014. This request is consistent with other requests the City has had in the downtown area. City Legal has assisted with the writing of the Memorandum of Understanding. This would allow the use of right of way during construction. Staff recommended approval.

Approve Agreement to Use Public Right of Way to Construct 10 North Apartment Complex at 530 N. College Avenue

Alexander added the proposal is to close the third lane that begins north of 10th Street that allows traffic to go straight or turn on 10th Street. Staff feels the safest scenario possible is to block that lane (eliminate the lane completely) off so people don't get in the lane and then think they can go straight.

Zietlow asked how long this will continue. Alexander stated until next August. Zietlow asked when the project will begin. Alexander stated as soon as they have all the approvals.

McNamara asked if there were parking meters in that area. Alexander stated no, and there is no parking on 10th Street or on College in that area, which is why there is the need to get into the

travel lane. There has been no request to use 10th Street, and it would be very hard for the City to approve that; however, there may be times when the alley is blocked. Generally the loading and staging of the project will be done from College.

Hrisomalos asked what the ratio of parking to apartments is. Tim Hanson, representing the Petitioner, introduced himself. Hanson stated the ratio total is about 70 percent.

Zietlow asked where was the parking. Hanson stated parking is below. Hanson explained there would be no excavating. There is also parking that comes off the alley. The alley is about 8 feet higher than College Avenue. There will be ramp coming off of the alley and will have about 23 parking spaces on the backside, between the lot and Ahhh Spa.

Hanson stated these will be predominantly one and two bedroom units.

Zietlow commented there was going to be a bank in there. Hanson confirmed the building will house First Financial of Ohio.

McNamara moved to approve the Agreement to use public right of way to construct 10 North apartment complex at 530 North College Avenue. Hrisomalos seconded the motion. The motion passed. Use of right away approved.

Alexander stated this is at 530 N. College Avenue. This request is to encroach over the right of way with small canopies over the doorways, and windows. The design of the building incorporates small canopies above the two residential entries, two windows and above the garage opening along College. These five canopies encroach into the right of way by approximately 1 1/2 feet. All five are at least 10 feet above the sidewalk grade. The Downtown Core Overlay requires entrances to incorporate certain design elements. Canopies do meet the standard for entrance features. They do not impede or block the pedestrian pathway along College. The Right of Way Encroachment Agreement and Memo of Understanding has been prepared for the installation and maintenance of the encroachments. Staff recommended approval.

Resolution 2013-80:
Request to Encroach into
Public Right of Way with
Public Improvements at
530 N. College Avenue

Alexander stated while they are larger than a foot and 1/2 the last little bit of them sticks out into the right of way. Hrisomalos asked if they were designed this way. Hanson stated the canopies sit approximately four feet off the building. Hrisomalos wondered why they didn't design it to fit on their own property instead of on City

property. Hanson stated with the 19 feet of sidewalk in front and having a covered entry so people could get out of the rain. Hrisomalos stated this is constant, the architect builds it with the idea that they are going to get an encroachment into the city property over and over again.

McNamara stated he agreed with Dr. Hrisomalos when speaking about bay windows and things like that, but he likes canopies. Hrisomalos felt canopies should be on their own property.

McNamara made a motion to approve Resolution 2013-80: Request to Encroach into the Public Right of Way with Public Improvements at 530 North College Avenue. Hrisomalos seconded the motion. The motion passed. Resolution 2013-80 approved.

Christina Smith, Public Works, stated the 20th Annual Lotus Festival is scheduled for September 25 through September 29, 2013. This resolution allows the closing of 6th Street between College and Walnut and Walnut and Lincoln, Kirkwood between Walnut and Lincoln, Washington between 7th and 4th, 4th between College and Walnut and the southern half of Grant between Kirkwood and 5th. All streets will be opened to traffic by 4:00 p.m. on Sunday. A map was provided to the Board showing which streets are closed at what time each day and where venues are located.

Resolution 2013-81: Use of Public Streets for the Lotus World Music and Arts Festival (Wednesday, 8/25-Sunday, 9/29)

In addition, 4th Street between Walnut and Lincoln and Lincoln between 4th & 6th will be temporarily restricted on Saturday, September 29, 2013 between 8:00 - 9:00 p.m. as part of Lotus' Street Parade, pending Bloomington Police Department approval of a Parade Permit.

Included in the Resolution is a noise permit for all Lotus Festival-related events until 11:00 p.m. each evening from September 25 through September 29, 2013.

City Departments, including Public Works, Police and Fire, as well as Bloomington Transit all work with Lotus to establish this layout. Lotus has notified all businesses in the downtown area of the plan and invited them to call or come to the Board of Public Works meeting with any concerns. Staff recommended approval.

Lee Williams stated there are some new things this year for the celebration of the 20th. There is a Wednesday night concert making the festival five days instead of the normal 4. There will be a parade this year after a two year absence, which will make a lot of people happy. There is a pretty significant event occurring on the IU

campus at Alumni Hall. This is a free concert and is in partnership with Indiana University. IU is paying for a concert with two Lotus artists and Indiana University Artists and will be from 8 - midnight on Thursday night. This is a way to try and engage students on campus to come to Lotus and see the wonder of Lotus. This was originally scheduled for Dunn Meadow with a tent but was going to be very expensive and there were rain issues. It has been moved to Alumni Hall. There is also another backdrop, and volunteers have been working on this for about 8 months. All the backdrops created have been for the Buskirk Chumley Theatre, and other community organizations are welcome to use those backdrops.

Zietlow asked which streets will be closed the longest. Julie Lawson stated West 6th Street and West 4th Street will close at 8:00 am Thursday morning so tents can be installed. Kirkwood between Walnut and Washington will be closed beginning Friday morning and was opened soon after the festival closed on Saturday night, and expect to be able to do that again this year. It will be opened as soon as it is safe to do so. Washington and part of Kirkwood and 6th will close Friday night and Saturday night and open after the festivities on Friday night and Saturday night. South Lincoln from N Grant to 4th Street, as well as 4th Street from Lincoln to South Walnut will be closed from 8:15 p.m. - 8:45 p.m. on Saturday for the parade.

Lee Williams stated there will be two parades going on simultaneously walking around the perimeter inside and meeting at Kirkwood. The Lincoln and 4th Street are streets that are no already closed but where the parade will take place.

Zietlow asked if all the merchants and property owners have been notified. Julie Lawson stated notices have been mailed to all the property owners, and hand delivered to all the residents and business operators on every street that is closed. There has been no feedback from the committee that went door to door. The operators of the restaurants and watering holes along the route are always very happy that Lotus happens in front of their business.

McNamara made a motion to approve Resolution 2013-81: Use of Public Streets for the Lotus Festival World Music and Arts Festival (20th year) on Wednesday, September 25th through Sunday, September 29th. Hrisomalos seconded the motion. The motion passed. Resolution 2013-81 approved.

Christina Smith stated the IU Health Bloomington Hospital is hosting a cookout lunch for employees on the top floor of their parking garage on Thursday, August 29, 2013 from 11:00 a.m. - 2:00 p.m.

**Request for Noise Permit
for IU Health Employee
Cookout (Thursday, 8/29)**

They will be playing amplified music at the event. Staff supported the event.

Hrisomalos hoped it would not bother the patients.

McNamara moved to approve Request for Noise Permit for IU Health Employee Cookout on Thursday, August 29. Hrisomalos seconded the motion. Noise Permit approved.

Smith explained Harmony School is hosting a fundraising dinner that will be held in the gym of Harmony School on Saturday, October 12, 2013. Music, primarily drumming, will be played. The event will end at 8:30. Staff supported the request.

Request for Noise Permit for Taste of East Africa (Saturday 10/12)

McNamara moved to approve Noise Permit for Taste of East Africa on Saturday, October 12th. Hrisomalos seconded the motion. Motion passed, Noise Permit approved..

Smith explained the Elm Heights Neighborhood Association is requesting to close the 600 block of South Fess Avenue for a block party. The street would be closed to vehicular traffic from 2 - 4 p.m. on Sunday, September 22, 2012. The resolution includes a noise waiver so that music may be enjoyed during the festivities. Staff recommended approval and encourages neighborhood get-togethers. This event will also serve as a forum to welcome returning students to the neighborhood.

Resolution 2013-82: Use of Public Street for Elm Heights Neighborhood Block Party (Sunday, 9/22)

Zietlow asked if this was between 2nd and University. Wykoff stated it was.

Jacqui Bauer, Elm Heights resident, stated the location has changed, and they are requesting to close that portion of Fess. Usually the event is held one block south; however, they did want to tie the event to the new Bloomingfoods as the residents are excited about it. All tenants and homeowners have been notified.

McNamara made a motion to approve Resolution 2013-82: Use of Public Street for Elm Heights Neighborhood Block Party on Sunday, September 22nd. Hrisomalos seconded the motion. The motion passed. Resolution 2013-82 approved.

Wykoff stated Steve Llewellyn has requested permission to encroach on behalf of the owners of 108 East 6th Street as they are working to open Function Brewing Company and need to provide an accessible entrance. They have worked with Kevin Potter on the design of the ramp. This design is similar to other ramps done downtown for older

Resolution 2013-83: Request to Encroach into Public Right of Way with Accessible Ramp at 108 East 6th Street by

historic buildings. They need a 5' x 5' minimum size pad with slope extending 1/4 inch per foot in front of the door. This will serve the entire entrance. Staff recommended approval allowing the improved access to 108 6th Street. This encroachment would not interfere with the required 54" clear straight pathway.

Function Brewing Company

For clarification, McNamara stated the ramp is parallel to what is the front window. Wykoff stated correct.

McNamara asked if this ramp is only in front of one existing building. Wykoff stated it is one business but three doors.

Hrisomalos asked how many inches left for pedestrians. Wykoff stated it would be within the guidelines of 54 inches.

Wykoff added a Hold Harmless is also included in this Resolution.

McNamara made a motion to approve Resolution 2013-83: Request to Encroach into Public Right of Way with Accessible Ramp at 108 East 6th Street by Function Brewing Company. Hrisomalos seconded the motion. The motion passed. Resolution 2013-83 approved.

Wykoff stated staff advertised for bids twice with a 10 day separation between advertisements. Three bidders showed up at the pre-bid, but only one bid was submitted which was Dave O'Mara. Dave O'Mara's bid was \$183,300 which was within staff estimates. Staff recommended awarding the Greenways Implementation Plan for 2013 at a price of \$183,300 to Dave O'Mara contractors.

Award Contract for 2013 Greenways Implementation Plan

Zietlow asked if this was a company the City has dealt with. Wykoff stated yes, and they are the contractor currently finishing the South Walnut Streetscape.

Hrisomalos commented it would have been nice to have had another bid.

McNamara made a motion that the contract for the Greenways Implementation Plan be awarded to Dave O'Mara Contractors in the amount of \$183,300. Hrisomalos seconded the motion. The motion passed. Contract awarded to Dave O'Mara.

Wykoff explained this project started around the 1st of March, this year. The project was originally let for \$2,935,000. The project went through the INDOT bidding process which 80 percent is federal money, as will the change orders be 80 percent paid with federal dollars. The completion date for the project is November 1st, and is

Approval of Change Orders #1-5 for South Rogers Street Reconstruction Project

running a little ahead of schedule. There are only five change orders with the project so far. Most of these change orders are for underground issues. The Change Orders are as follows:

Change #1 - Sanitary manhole/reroute of sewer alignment - \$6,105.25

Change #2 - 12 inch linestop - \$942.90

Change #3 - Stormwater structure modifications - \$1009.00

Change #4 - Pavement undercut area/geogrid - \$7,390.72

Change #5 - Watermain relocation and tapping tee - \$5,046.72.

Total for all change orders is \$20,494.59, of which 80 percent is federally reimbursed.

The project will include a side path that will run the entire length of the project (1/2 miles) on the west side. The sidewalk will be along the east side. The side path that will connect the Broadview Neighborhood to the B-Line Trail is complete. There is also a big stormwater quality feature with the project. Staff recommended approval.

McNamara moved to approve Change Orders #'s 1 - 5 for the South Walnut Streetscape Project for a total of \$20,494.59. Hrisomalos seconded the motion. The motion passed. Change Orders # 1 - 5 approved.

Wykoff stated this Change Order is #9 for the South Walnut Streetscape, and is a very minor Change Order. The total amount is \$1,630.00. This change is for addition of an underdrain to Structure 39. Structure 39 is an inlet that currently exists behind the Players Pub. This will allow for drainage to be backfilled underneath the Players Pub and the channel has been relocated to Smith Avenue. This will allow moisture to drain into the inlets. Wykoff added for the size of this project, \$5,487,000, only 9 change orders is a very good thing.

McNamara moved to approve Change Order #9 for South Walnut Streetscape Project in the amount of \$1,630. Hrisomalos seconded the motion. The motion carried. Change Order #9 approved.

None

McNamara moved to approve claims. Hrisomalos seconded the motion. The motion passed; claims approved.

McNamara moved adjournment. Hrisomalos seconded the motion.

Approval of Change Order #9 for South Walnut Streetscape Project

STAFF REPORTS & OTHER BUSINESS

APPROVAL OF CLAIMS

ADJOURNMENT

Meeting adjourned at 6:56 p.m.

Accepted by:

Charlotte Zietlow, President

James McNamara, Vice President

Dr. Frank N. Hrisomalos, Secretary

Date:

Attest to:

DRAFT

Appeal of Noise Ordinance Citation #31882

Appellant Information:

Chancea Roberts
2615 E. 5th Street
Bloomington, IN 47408
Date Appealed: 08/26/2013

Citation Information:

Issued: 08/19/2013 at 11:56 p.m.
By: Officer Jan Guess
Place: 2615 E. 5th Street
For: Excessive Loud Noise from Residence

Officer Weisheit's description:

At approximately 11:26 p.m. the Monroe County Central Emergency Dispatch Center received a complaint alleging that loud noise associated with a party could be heard coming from somewhere near the 2600 block of East 5th Street. At 11:49 p.m., Officer Jan Guess was dispatched to the area to determine if he could locate the source of the noise and to investigate the noise to see if there was a violation of the municipal code. Officer Guess parked his vehicle near the intersection of 5th Street and Overhill Drive. Officer Guess could hear the noise coming from a large party at 2615 East 5th Street. The noise Officer Guess heard included both music and people talking in loud voices. Officer Guess estimates that he witnessed approximately twenty individuals at the location.

Mr. Roberts timely and properly filed his appeal of the citation. His appeal indicates that he does not believe his music was as loud as Officer Guess asserts.

Staff Recommendation:

Deny the appeal.

- The police officer could hear both music and loud voices from off of Mr. Robert's property. The noise being emitted from Mr. Robert's property was excessive and unreasonable and being played at a level that violated the City's Noise Ordinance.
 - § 14.09.030(a) defines unreasonable noise in terms of time of day, environment and nature of the noise.
 - § 14.09.030(b) specifies that the following people can violate the noise ordinance:
 - **A Person who makes the unreasonable noise,**
 - **A person who allows the unreasonable noise to be made in or on property occupied by the person, and/or**
 - A person who allows the noise to be made in or on property controlled by the person.
 - § 14.09.030(c)(4) states that it is a violation of the noise ordinance:
 - Play or allow to be played any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any other machine or device for producing or reproducing sound in such a manner that the sound produced persists continuously or intermittently for a period of at least fifteen minutes and can be heard outside the immediate premises from the location of the emitter by a person with normal hearing.

- Sound that is clearly audible to a person with normal hearing from any place other than the premises from which the source of the sound is located, when the sound occurs between the hours of nine p.m. and seven a.m., is prima facie evidence of a violation of this section.
- The Appellant was in violation of the noise ordinance and an ordinance citation was written according to the law.

Appeal of Noise Citation
to the City of Bloomington's Board of Public Works

Please complete this form in its entirety. Use black or blue ink and print legibly. A copy of the noise citation you were issued MUST be attached to this form. You are encouraged to attach all documents that you believe support your appeal. All of these documents must be submitted within seven days after the noise citation was issued. The Board of Public Works ("Board") will primarily consider the written materials submitted, including this appeal form, documents you provide, a statement from the police officer including any complaints made, and staff recommendations. In addition, on the date given below you will have the opportunity to speak to the Board for two minutes. You will be notified of the Board's decision by first class mail. If your appeal is denied, you may file an appeal with the Monroe County Circuit Court within seven (7) days from the date of the Board's decision.

Name: Chance Roberts

Local Address: 2615 East 5th Street Bloomington, IN 47408

Permanent Address: 2120 East Elm Street New Albany, IN 47150

Phone Number: 502-303-0128

Noise Citation Number (located in the top right hand corner of the citation): 31882

Date on Noise Citation: August 19, 2013 Today's Date: August 26, 2013

Reason for Appeal: I had no idea the music was as loud as the officer said it was. I checked the noise from my street and I couldn't hear it.

(you may continue on another page if necessary)

On this day, I submitted my completed appeal of noise citation and received the date of Sept. 10, 2013 when the Board of Public Works will consider my appeal.

Chance Roberts
Signature

8-26-13
Date

For use by Public Works:	
Date Appeal Received: <u>AF</u>	By: <u>8-26-13</u>
Date Appeal Forwarded to Legal Department: <u>8-26-13</u>	

9/10/2013
5:30 pm

COUNTY OF MONROE
CITY OF BLOOMINGTON
ORDINANCE VIOLATION

NO. 31882

The undersigned having probable cause to believe and being duly sworn upon his/her oath says that on:

Day of Week <u>Mon</u>	Day <u>17</u>	Month <u>08</u>	Year <u>2013</u>	Time <u>2356</u>
Last Name <u>Robert</u>			First <u>Chase</u>	MI <u>T</u>
Street Address <u>2615 E 5th St</u>				D.O.B. <u>11/17/93</u>
City <u>Bloomington</u>			State <u>IN</u>	Zip Code <u>47401</u>
Sex <u>M</u>	Race <u>BL</u>	SSN/OLN <u>4030-11-E-73A</u>		
DID COMMIT THE FOLLOWING OFFENSE: <u>Noise Violation</u>				
<input checked="" type="checkbox"/> Excessive Loud Noise <u>X</u> Residence _____ Vehicle _____				
Contrary to the BMC § <u>14-07.030</u> at <u>2615 E 5th St</u> , Bloomington, IN.				
Officer's Signature <u>[Signature]</u>				I.D. No. <u>1539</u>
City of Bloomington, Indiana Date <u>08/17/2013</u>				
I promise to appear in the City of Bloomington Legal Department, City Hall, Showers Building, Suite 220, 401 North Morton Street, Bloomington, Indiana, on the <u>17</u> day of <u>Aug</u> , 2013, at 8:30 a.m.				
Signature <u>[Signature]</u>				
Your signature is not an admission of guilt.				
SEE OTHER SIDE FOR ADDITIONAL INFORMATION				



Board of Public Works Staff Report

Project/Event: YMCA Fall Run 5K and 10K
Petitioner/Representative: Monroe County YMCA
Staff Representative: Miah
Meeting Date: September 10, 2013

The YMCA is sponsoring its Fall Run on Saturday, November 16, this year and is requesting that they be allowed to use city streets as they have in the past. There will be a 5K and a 10K. Streets will remain open with traffic control at each intersection for the safety of the participants. Set up starts at 5:00 a.m., with the run starting at 9:00 a.m., and will be over by 11:00 a.m.

This event has between 400 & 480 participants. All proceeds from the event are used for the Youth Scholarship Program.

BPD has issued Parade Permits for this event pending the Board's approval.

Staff recommends approval of this request.

Recommend **Approval** **Denial by**

Board of Public Works
Staff Report

RESOLUTION 2013-84
MONROE COUNTY YMCA FALL RUN

WHEREAS, the Board of Public Works is empowered by I.C. 36-9-6-2 to supervise city streets;
and

WHEREAS, the Monroe County YMCA has requested use of city streets as indicated on Attachment A of this resolution, to conduct the YMCA Fall Run which raises funds for the YMCA Youth Scholarship Fund; and

WHEREAS, the Monroe County YMCA has agreed to provide all traffic control as deemed necessary and as instructed by Bloomington Engineering Department and/or Bloomington Police Department and to incur the complete cost; and

WHEREAS, the Monroe County YMCA, herein after “Sponsor”, has agreed to execute the “Release, Hold Harmless and Indemnification Agreement” regarding the use of the City of Bloomington’s property as described in Attachment B of this resolution and has agreed to provide the City with a Certificate of Insurance which names the City as an additional insured.

NOW, THEREFORE, BE IT RESOLVED:

1. That the City of Bloomington Board of Public Works agrees that public streets and sidewalks may be utilized to conduct Monroe County YMCA Fall Run between the hours of 5:00 a.m. and noon on Saturday, November 16, 2013.
2. The City of Bloomington Board of Public Works agrees that vehicular traffic may be restricted for short periods of time as runners and walkers use the following streets, Highland Avenue, E. Winslow Road, E. Allendale Drive, S. Bainbridge Drive, E. Elliston Drive, S. Laurel Court, S. Laura Way and E. Heather Drive during the hours of the event.
3. The Sponsor shall be responsible for obtaining any and all required permits as well as being responsible for all legal and financial expenditures.
4. The Sponsor shall be responsible for all clean-up that may be necessary as a result of the event to be completed by noon, Saturday, November 16, 2013.
5. That by granting permission to utilize City property to facilitate this activity, the Board of Works also waives the City Noise Ordinance in accordance with Section 14.09.070 of the Bloomington Municipal Code, and therefore amplified music may be played during the hours of the event.
6. The Sponsor shall be responsible for notifying the general public in advance by notice to the press, Bloomington and IU Transits, local cab companies and all emergency services 48 hours prior to the event and the fact that vehicular traffic may be temporarily delayed at times.
7. _____, by signing this agreement, represents that he/she has been fully empowered by proper action of the entity to enter into

RESOLUTION 2013-84

the agreement and has authority to do so.

8. That by approval of this Resolution, an officer of the Board of Public Works is authorized to sign the attached Release, Hold Harmless and Indemnification Agreement.

ADOPTED THIS ____ DAY OF _____, 2013.

BOARD OF PUBLIC WORKS:

MONROE COUNTY YMCA

Charlotte Zietlow, President

Signature

James McNamara

Printed Name

Dr. Frank N. Hrisomalos

Position

**RELEASE, HOLD HARMLESS
AND
INDEMNIFICATION AGREEMENT**

WHEREAS, the Monroe County YMCA, (hereinafter referred to as "RELEASOR") desires to use the facilities or public property of the CITY OF BLOOMINGTON (hereinafter referred to as "RELEASEE"), and specifically sections of Highland Avenue, E. Winslow Road, E. Allendale Drive, S. Bainbridge Drive, E. Elliston Drive, S. Laurel Court, S. Laura Way and E. Heather Drive which is operated, supervised and maintained by the RELEASEE'S Board of Public Works, for the purpose of sponsoring the YMCA Fall Run, on RELEASEE's property from 5:00 a.m. – noon on Saturday, November 16, 2013; and

WHEREAS, the RELEASEE wishes to cooperate in said endeavor by allowing such activities to be conducted upon its property;

NOW, THEREFORE, in consideration for the use of the property of RELEASEE for said purposes, the RELEASOR and its officers, directors, agents, employees, members, successors and assigns, does hereby acknowledge and agree to assume full and complete responsibility for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of the use of said property, and for the same consideration hereby agrees to indemnify, defend, hold harmless, release, waive and forever discharge the RELEASEE, its officers, directors, agents, employees, successors and assigns, and all other persons and entities associated with the RELEASEE, for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of the use of said property, including, but not limited to, any claim or claims brought by third parties, whether or not sounding in tort or contract.

RELEASOR expressly agrees that the foregoing RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT is intended to be as broad as permitted by law and if any portion thereof is not found to be enforceable, it is agreed that the balance shall, notwithstanding, continue in full force and effect.

THE PARTIES, INTENDING TO BE BOUND, have executed this RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT.

RELEASOR

RELEASEE

Monroe County YMCA

Board of Public Works Officer

Printed name, Title

Date

Date

City of Bloomington
PARADE PERMIT APPLICATION

The purpose of this application is to promote and protect the safety of both the general public and parade participants.

Organization name and mailing address: **2013 YMCA Fall Run 5K Race/Racewalk, Monroe County YMCA 2125 South Highland Ave. Bloomington, IN 47401**

Contact person and phone number: **Matt Osgood, 961-2157**

Information regarding proposed parade:

Date: **November 16th, 2013**

Time of commencement: **8:00 AM**

Expected duration: **8:00-9:00 AM**

Proposed route of Parade - commencement point, route, ending point: **See attached map**

Expected number of participants: **300**

Please describe general make-up of the parade, including such information as Vehicles used, floats, bands, animals, etc.

YMCA van, emergency vehicles

Traffic control shall be supplied by: **Bruce Wilds Security**

At the following points on the parade route: **See attached map**

NEXT PAGE

The organization requesting the permit is responsible for traffic control.

Law Enforcement Agency providing traffic control: **Uniformed officers contracted through Bruce Wilds Security**

Confirmation received from Law Enforcement agency providing parade route traffic control: **CONFIRMED**

Signature of Person requesting Permit

Permit Granted _____ **Permit Denied** _____

Chief of Police, Bloomington, Indiana Date

Action taken by Police Department:

The permit is granted _____, with the following conditions:

The permit is denied _____

For the following reasons

City of Bloomington
PARADE PERMIT APPLICATION

The purpose of this application is to promote and protect the safety of both the general public and parade participants.

Organization name and mailing address: **2013 YMCA Fall Run 10K Race, Monroe County YMCA 2125 South Highland Ave. Bloomington, IN 47401**

Contact person and phone number: **Matt Osgood, 961-2157**

Information regarding proposed parade:

Date: **November 16, 2013**

Time of commencement: **9:00 AM**

Expected duration: **9:00-10:30 AM**

Proposed route of Parade - commencement point, route, ending point: **See attached map**

Expected number of participants: **180**

Please describe general make-up of the parade, including such information as Vehicles used, floats, bands, animals, etc.

YMCA van, emergency vehicles, and Police vehicles.

Traffic control shall be supplied by: **Bruce Wilds Security**

At the following points on the parade route: **See attached map**

The organization requesting the permit is responsible for traffic control.

Law Enforcement Agency providing traffic control: **Uniformed officers contracted through Bruce Wilds Security**

Confirmation received from Law Enforcement agency providing parade route traffic control: **Yes**

Signature of Person requesting Permit

Permit Granted _____ **Permit Denied** _____

Chief of Police, Bloomington, Indiana Date

Action taken by Police Department:

The permit is granted _____, with the following conditions:

The permit is denied _____

For the following reasons



Board of Public Works Staff Report

Project/Event: Noise Permit for Channel Your Animal

Petitioner/Representative: Indiana Bicycle Polo Cooperative

Staff Representative: Miah

Meeting Date: September 10, 2013

This is a bike polo event to be held at RCA Park on Saturday and Sunday, September 14 & 15, 2013. Amplified announcements will be made. The event ends at 9:00 p.m. each evening.

Staff supports the request.

Recommend **Approval** **Denial** Miah Michaelsen



CITY OF BLOOMINGTON

NOISE PERMIT

City of Bloomington
401 N. Morton St., Suite 120
Bloomington, Indiana 47404
812-349-3418

Application and Permit Information

This is an application for a permit for relief from Chapter 14.09 (Noise Control) of the Bloomington Municipal Code. Any permit granted by the City of Bloomington must contain all conditions upon which said permit shall be effective. The City may prescribe any reasonable conditions or requirements it deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Once a completed application is submitted to the City, it will be reviewed by the Board of Public Works. If the permit is approved, the holder must still abide all other city, state, and federal laws.

Contact Miah Michaelsen with any questions: (812) 349-3418 or michaelm@bloomington.in.gov

Event and Noise Information

Name of Event:	"Channel Your Animal" Bike Polo Tournament		
Location of Event:	RCA Park		
Date of Event:	Sept 14-15	Time of Event:	Start: 9am End: 7pm
Calendar Day of Week:	Sat/Sun		
Description of Event:	A hardcourt bicycle polo tournament hosted by the Bloomington Bike Polo Club. Teams from the surrounding states travel to Bloomington to play a five-man-a-bench version of the up and coming sport.		
Source of Noise:	<input type="checkbox"/> Live Band	<input type="checkbox"/> Instrument	<input checked="" type="checkbox"/> Loudspeaker
			Will Noise be Amplified? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is this a Charity Event?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes, to Benefit:	

Applicant Information

Name:	Zachary Woodward		
Organization:	Indiana Bicycle Polo Cooperative	Title:	Sec.
Physical Address:	315 E. Deeds St 47401 but mail to 315 P.O. Box 311, 47402		
Email Address:	woodcraft@thewoods@gmail.com	Phone Number:	812-219-6170
Signature:			Date:

FOR CITY OF BLOOMINGTON USE ONLY

In accordance with Section 14.09.070 of the Bloomington Municipal Code, We, the Board of Public Works, the designee of the Mayor of the City of Bloomington, hereby waives the City Noise Ordinance for the above mentioned event.

BOARD OF PUBLIC WORKS

Charlotte T. Zietlow, President

James McNamara

Date

Dr. Frank N. Hrisomalos



Board of Public Works Staff Report

Project/Event: Itinerant Merchant in right of way

Petitioner/Representative: Nick Palmiotto – Naughty Dog

Staff Representative: Miah

Meeting Date: September 10, 2013

Nick Palmiotto owner of Naughty Dog has applied for an Itinerant Merchant Permit renewal. It has been determined that when the applicant wants to operate in the right of way that before the permit is issued, permission must be obtained from the Board of Public Works. The Department of Economic & Sustainable Development has reviewed the application and the Board of Public Works' approval to operate in the public right of way is one of the items on the check list that is required before a permit can be issued. ESD will confirm that all rules and regulations have been met prior to a permit being issued.

The business will operate from a food cart selling hot dogs

This application is for one year.

Staff is supportive of the request.

Recommend **Approval** **Denial by** Jason Carnes

RESOLUTION 2013-85
Itinerant Merchant Food Vendor in Public Right of Way
Nick Palmiotto – Naughty Dog

WHEREAS, the Board of Public Works is empowered by I.C. 36-9-6-2 to supervise City streets, alleys, sewers, public grounds, and other City property; and

WHEREAS, Nick Palmiotto (“Vendor”) is desirous of using public on-street parking and sidewalks within the City of Bloomington for the purpose of selling food via a mobile kitchen and food cart; and

WHEREAS, Vendor has agreed to hold the City of Bloomington, City of Bloomington Board of Public Works, or any of their agents or employees harmless for any and all actions, losses or claims arising from said event, a copy of which is attached hereto and made a part hereof;

NOW, THEREFORE, BE IT RESOLVED that the City of Bloomington Board of Public Works declares that Vendor has permission to use on-street public parking and sidewalks for the purposes of selling food via a mobile kitchen for one year beginning on the day that License is issued by the City _____, 2013 thru _____ 2014.

The following conditions attach to this approval:

1. Vendor agrees to maintain a clear five-foot path for pedestrians at all times.
2. Vendor will comply with all other laws, ordinances, rules and regulations in effect at the time it conducts their business.
3. Vendor will have obtained a valid Itinerant Merchant license issued by the City of Bloomington Controller’s Office prior to operation on City property.
4. Vendor shall not conduct business on the same side of the street and within fifty (50) feet of a primary entry way into a ground level retail establishment which offers the same types of goods, wares, services, foods, or products.
5. Vendor shall honor parking restrictions as posted for any parking spot that they may utilize, but may not park in a street median strip or an alleyway.
6. Vendor shall locate his business a reasonable distance from any posted bus stop, taxi stand, crosswalk, driveway, alleyway, building entrance or walk-up window.
7. Vendor shall locate his business a reasonable distance from another mobile kitchen, food cart or food stand.
8. Vendor shall not locate his business in front of the primary entrance to a retail business, office building or church.
9. Vendor shall not locate his business on the following portions of the B-Line Trail:
 - a) From the north side of Country Club Road to the south side of Dodds Street;
 - b) From the north side of 2nd Street to the south side of 3rd Street; and
 - c) From the north side of 4th Street to the south side of 6th Street.
10. Vendor shall not locate his business within a one block radius of the following special events during the hours of their operation unless prior written consent has been provided by the coordinator or director of the special event:
 - a) City of Bloomington Farmers’ Market;
 - b) City of Bloomington Holiday Market;
 - c) The Taste of Bloomington;
 - d) Lotus World Music and Arts Festival;

RESOLUTION 2013-85

- e) The Fourth Street Festival;
 - f) Arts Fair on the Square;
 - g) Strawberry Festival;
 - h) Canopy of Lights;
 - i) Fourth of July Parade; and
 - j) Any other special events approved by the City Controller.
11. Vendor may locate his business in a public parking space according to parking restrictions for that space including Bloomington Municipal Code section 15.32 which is attached as Exhibit A of this document.
 12. Vendor shall not locate his business in a manner which would significantly impede or prevent the use of any City of Bloomington property, or which would endanger the safety or property of the public.
 13. Vendor shall conduct their business in accordance with the Standards of Conduct noted in Bloomington Municipal Code section 4.16.100.

This approval may be renewed by the Director of Public Works no more than once a year provided Vendor has complied with all conditions of this approval; complied with all applicable laws, ordinances, rules and regulations; and the City has received no valid complaints regarding Vendor's activities associated with this approval.

ADOPTED THIS _____ DAY OF _____, 2013.

BOARD OF PUBLIC WORKS:

Charlotte Zietlow, President

James McNamara

Dr. Frank N. Hrisomalos

ALL TERMS AND CONDITIONS CONTAINED IN THIS RESOLUTION 2013-xx ARE ACCEPTABLE AND AGREED TO BY VENDOR:

Nick Palmiotto

Date: _____



CITY OF BLOOMINGTON
economic & sustainable development

Itinerant Merchant, Solicitor and Peddler License Application Checklist

City of Bloomington
Department of Economic and Sustainable Development
401 N. Morton St.
Bloomington, Indiana 47404
812-349-3418

License Length and Fee Information

Valid License:	<input type="radio"/>	<input checked="" type="radio"/>				
Length of License:	24 hours	72 hours	1 Calendar Week	30 Days	6 Months	1 Year
License Fee:	\$15	\$40	\$75	\$125	\$175	\$240

Applicant Information

Name: Nick Palmiotto d.b.a. Naughty Dog
 Title: Owner Date of Birth: 10/22/1979
 Physical Address: 3860 W 3rd Street
 City, State, Zip: Bloomington, IN, 47404
 E-Mail Address: nickpalmiotto@yahoo.com
 Phone Number: 812-330-6888 Mobile Phone: 812-345-2493

Corporate Contact Information

Name of Employer: Naughty Dog
 Physical Address of Employer: same as above
 City, State, Zip: same as above
 Phone Number of Employer: same as above
 Employer is a: Firm Limited Liability Corporation Corporation Partnership Sole Proprietor

Description of product or service to be sold and any equipment to be used (You may attach additional information as needed):

We sell hot dogs from a small hot dog cart.

If applicable, a description of Motor Vehicle or Mobile Trailer to be used:

License Plate Number: Vehicle Identification Number (VIN):

Please attach two (2) pictures of the vehicle and trailer.

You Must Obtain the Following:

- Proof of insurance in accordance with the limits described in Section 4.16.070 of the Bloomington Municipal Code:
 - Personal Injury: \$100,000.00 per occurrence and \$300,000 in the aggregate
 - Property Damage: \$25,000.00 per occurrence and \$50,000.00 in the aggregate
- Release of liability wherein the Applicant agrees to indemnify and hold harmless the City of Bloomington for losses or expenses arising out of the operation of his/her business.

You May Need To Obtain and Provide the Following (Staff will advise):

- If you will be using, handling, selling or distributing food, you must submit a copy of the Monroe County Health Department permit and a Certified Food Handler Certificate.
- If you will conduct business in the City of Bloomington public right-of-way, you need to obtain a letter of approval from the Board of Public Works.
- If you will conduct business in or on property owned and/or managed by the City of Bloomington Parks and Recreation Department, you need to obtain a letter of approval from the Parks Department.
- If your product or service will produce any type of spark, flame or fire in the course of your business, you need to submit a copy of a Permit for Open Burning issued by the City of Bloomington Fire Department.

RELEASE, HOLD-HARMLESS AND INDEMNIFICATION AGREEMENT

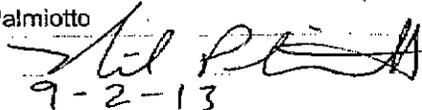
The undersigned, in consideration for the issuance of a license by the City of Bloomington Controller, agrees to the following:

1. The undersigned, in exchange for the issuance of a license by the City of Bloomington Controller, agrees to release, hold harmless, and forever indemnify the City of Bloomington and any and all City employees, officers, and agents from any claim or claims which may arise out of any incident connected with or in any way related to his/her issuance of a license by the City of Bloomington or his/her operation of a business which was licensed by the City of Bloomington. This includes claims for personal injury, death, property damage, and/or any other type of harm or injury.
2. The undersigned shall, and hereby does, indemnify, defend, and hold harmless the City of Bloomington and any and all City employees, officers, and agents from and against any and all actions, costs, claims, suits, losses, expenses or damages, including but not limited to attorneys' fees and court costs, arising out of the undersigned's operation of a business which has been licensed by the City of Bloomington.
3. The undersigned understands this release binds him/herself, his/her spouse, and all heirs, executors and administrators of those individuals. The undersigned acknowledges that he/she has read this release and understands all of its terms. The undersigned signs this release voluntarily and with full knowledge of its significance.

Name (printed):

Nick Palmiotto

Signature:



Date Release Signed:

9-2-13



CERTIFICATE OF LIABILITY INSURANCE

8/30/2013

PRODUCER Pampalone Insurance Agency 6695 Broadway Merrillville, IN 46410 219-736-6000	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC#
INSURED Naughty Dog 3824 W 3rd Street Bloomington, IN 46404-4864	INSURER A: <u>Cincinnati Insurance</u>	
	INSURER B: <u>Accident Fund</u>	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INBR LTR	ADOL MSRG	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMSMADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	EPP 0123437	2/3/13	2/3/14	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occu/enco) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOR AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANYAUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	EBA 0123437	2/3/13	2/3/14	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANYAUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EAACC \$ AGG \$
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMSMADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in IN) If yes, describe under SPECIAL PROVISIONS below	WCV6080930	2/3/13	2/3/14	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A		OTHER Liquor Liability	EPP 0123437	2/3/13	2/3/14	\$1,000,000 Each Occurrence \$2,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER The City of Bloomington 401 North Morton Street Bloomington, IN 47404	CANCELLATION. SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>M. J. Pampalone Jr.</i>
--	---

ACORD 25 (2009/01)

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Food Service Establishment

Monroe County Health Department

Bloomington, IN 47404-3989

812-349-2542

NAUGHTY DOG MOBILE
3860 W 3RD ST
BLOOMINGTON, IN 47404

Having complied with the rules and regulations of the Monroe County Health Department as authorized by the Indiana Administrative Code and the Board of Commissioners of Monroe County, Indiana, is hereby authorized to operate a Food Service Establishment at the above location for the calendar year.

Issued JAN 31 2013
By Thomas W. Shapiro

MOBILE 2013

Expires 1/31/14

This License Is Not Transferable to Another Individual or Location







Board of Public Works Staff Report

Project/Event: Request to change street name from South Tech Park Boulevard to South Cooperative Way

Petitioner/Representative: Matt Mabrey/Hoosier Energy

Staff Representative: Eli Eccles/Rick Alexander

Date: September 3, 2013

Report: Hoosier Energy has purchased all of the lots along S Tech Park Blvd and is in the process of constructing their new headquarters. They wish to change the name of the street to S Cooperative Way to better represent their company. The Address Coordination Committee had no objection to the change. The change will not affect any other residents or businesses.

Recommendation and Supporting Justification: Staff supports the change and recommends approval.

Recommend Approval Denial by _____

RESOLUTION 2013-86
TO CHANGE THE NAME OF SOUTH TECH PARK BOULEVARD
TO SOUTH COOPERATIVE WAY

WHEREAS, the Board of Public Works for the City of Bloomington, Indiana, has authority to regulate streets and roadways that are part of subdivisions within the jurisdiction of the Bloomington City Plan Commission pursuant to Indiana Code 36-9-6, Indiana Code 36-7-4-405(c), and Bloomington Municipal Code Chapters 2.09 and 2.10; and

WHEREAS, South Tech Park Boulevard is located in Mill Creek Technology Park, a subdivision to the City of Bloomington, as shown in the plat recorded at Plat Cabinet D Envelope 22 in the Office of the Recorder of Monroe County, Indiana; and

WHEREAS, Hoosier Energy has purchased all of the lots along South Tech Park Boulevard and would like the street name to better reflect their company; and

WHEREAS, Hoosier Energy desires that the street platted as South Tech Park Boulevard, be changed to South Cooperative Way.

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works of the City of Bloomington, Indiana that:

1. The street depicted as "South Tech Park Boulevard" is hereby renamed as "South Cooperative Way."
2. A copy of this Resolution shall be recorded in the Office of the Recorder of Monroe County, Indiana and shall be cross-referenced to the plat of Mill Creek Technology Park.

Approved this 10th day of September, 2013

CITY OF BLOOMINGTON, INDIANA
BOARD OF PUBLIC WORKS

Charlotte Zietlow, President

James McNamara

Dr. Frank N. Hrisomalos

STATE OF INDIANA)
) SS
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, personally appeared Charlotte Zietlow, James McNamara and Dr. Frank N. Hrisomalos, City of Bloomington, Board of Public Works, and acknowledged the execution of the foregoing instrument this ____ day of _____, 2013.

Witness my hand and official seal:

Laurel Waters, Notary Public

My Commission Expires: 9-10-17

County of Residence: Monroe

This document prepared by Jacquelyn F. Moore, Attorney at Law , City of Bloomington Engineering Department, P.O. Box 100, Bloomington, Indiana 47402

I affirm under penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jacquelyn F. Moore

HOOSIERENERGY

RURAL ELECTRIC COOPERATIVE, INC.

A Touchstone Energy® Cooperative 

September 3, 2013

via E-mail

Mr. Eli Eccles
Engineering Technician/Address Coordinator
Engineering Division
401 N. Morton St.
Bloomington, IN 47402

Re: Street name change at Tech Park Blvd.

Mr. Eccles:

Hoosier Energy plans to construct a corporate office building to be located in the 2700 block of Tech Park Blvd. Hoosier Energy respectfully requests the street name changed from Tech Park Blvd. to S. Cooperative Way.

Please let us know if you have questions or require further information.

Very Truly,



Matt Mabrey,
Facilities Construction Project Mgr.



Christina Smith <smithc@bloomington.in.gov>

Fwd: PIC Mill Creek Hoosier Energy Centerpiece

1 message

Eli Eccles <ecclese@bloomington.in.gov>

Tue, Sep 3, 2013 at 4:43 PM

To: Christina Smith <smithc@bloomington.in.gov>

----- Forwarded message -----

From: **Richard Alexander** <alexandr@bloomington.in.gov>

Date: Tue, Sep 3, 2013 at 3:58 PM

Subject: Fwd: PIC Mill Creek Hoosier Energy Centerpiece

To: Eli Eccles <ecclese@bloomington.in.gov>

----- Forwarded message -----

From: **Theodore J. Ferguson** <tjf@ferglaw.com>

Date: Tue, Sep 3, 2013 at 2:34 PM

Subject: PIC Mill Creek Hoosier Energy Centerpiece

To: "alexandr@bloomington.in.gov" <alexandr@bloomington.in.gov>

Cc: Matt Mabrey <Mmabrey@hepn.com>, "'Dee Burris' (bdburris@comcast.net)" <bdburris@comcast.net>

Hi Rick,

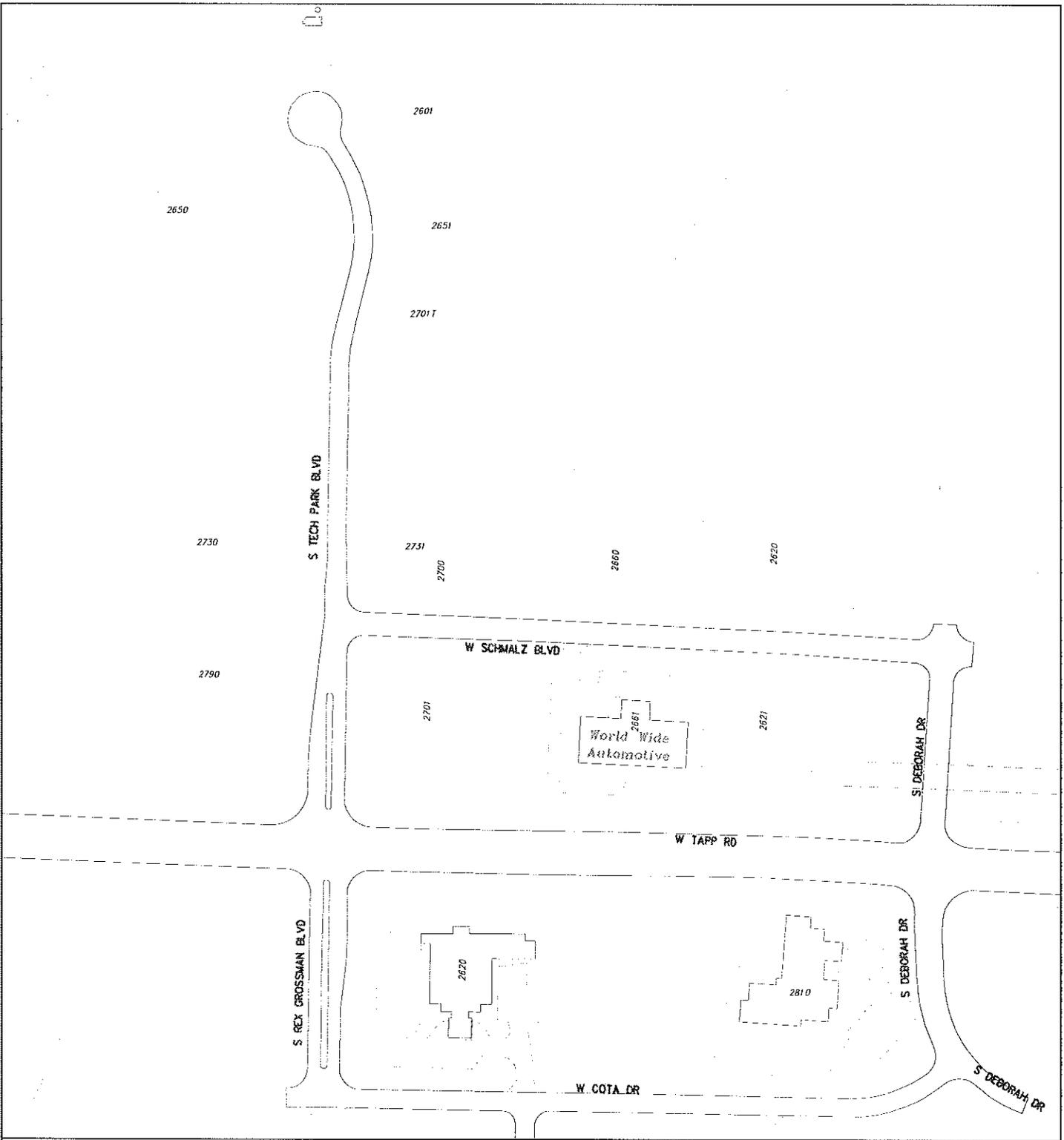
Public Investment Corporation consents and agrees to the change of the name of Tech Park Blvd. to Cooperative Way.

We hope this will be a good name for Hoosier Energy, and is appropriate.

If you have any questions, please let me know.

Thanks, Ted

Theodore J. Ferguson
FERGUSON & FERGUSON
Attorneys at Law
403 East Sixth Street
Bloomington, IN 47408
Office: 812-330-2030 (ext. 211)



Request to change the name of S Tech Park Blvd to S Cooperative Way.

By: ecclese
3 Sep 13



City of Bloomington
Engineering



Scale: 1" = 200'

For reference only; map information NOT warranted.





Board of Public Works Staff Report

Project/Event: Plat approvals: 1710 N Kinser Pk Plat

Staff Representative: Rick Alexander

Petitioner/Representative: Kinser Group LLC/ Bynum Fanyo and Associates

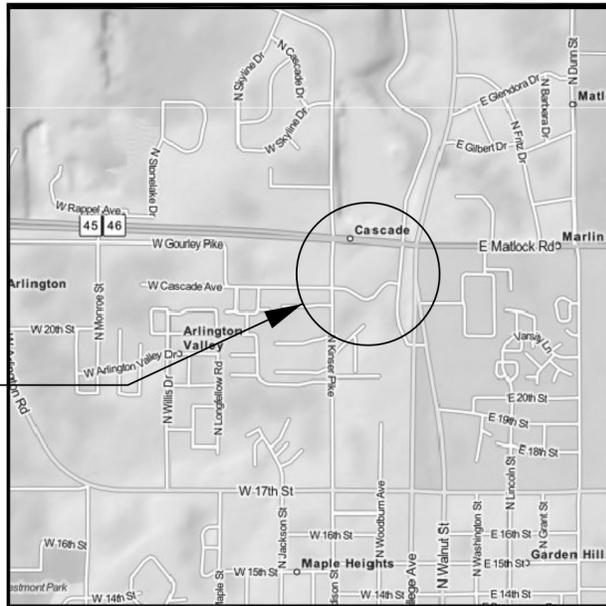
Date: September 3, 2013

Report: The petitioner is requesting a two lot commercial/industrial subdivision of property at 1710 N Kinser Pike. The property is located south of the Bypass, east of Kinser Pike and north of Gourley Pike. For many years this has been the location of a hotel. Approximately 6 years ago a second hotel was built at the site south of the existing hotel. Now there is a Holiday Inn as well as a Comfort Inn and the petitioner would like to place each hotel on its own lot. No new construction is proposed. All utilities are already in place.

Recommendation and Supporting Justification: The request was approved by the Plat Committee as case DP-19-13. Right of way 40' from the centerline of North Kinser is dedicated with this plat. Street trees and sidewalks are required to be installed on both the east and west sides of the property. Street tree type must be approved by the city's Urban Forester. A bond is in place for those items in the amount of \$29,500. Staff recommends approval.

Recommend **Approval** **Denial** by _____

1710 N. KINSER PIKE SUBDIVISION FINAL PLAT



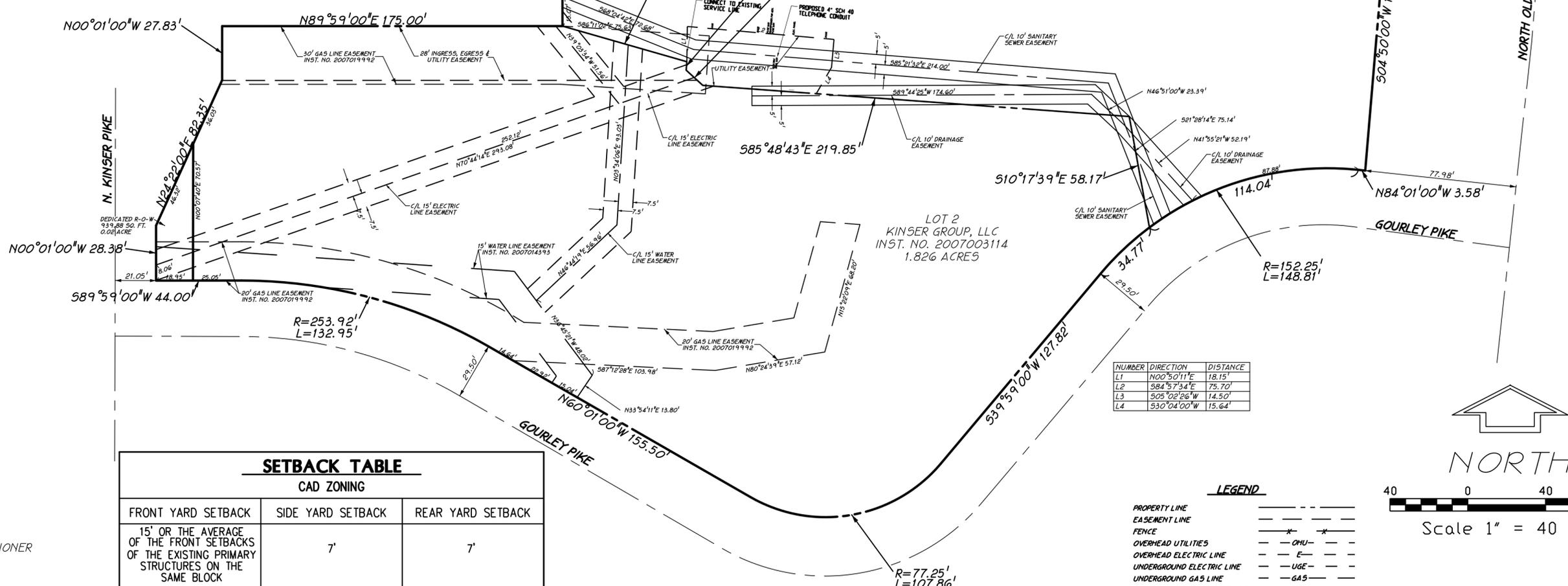
LOCATION MAP

PROJECT LOCATION

NORTH KINSER REAL ESTATE, LLC
D.R. 429, P. 77

45/46 BYPASS
585°50'00"E 433.44'
LOT 1
KINSER GROUP, LLC
INST. NO. 2007003114
2.248 ACRES

LOT 2
KINSER GROUP, LLC
INST. NO. 2007003114
1.826 ACRES



NUMBER	DIRECTION	DISTANCE
L1	N00°50'11"E	18.15'
L2	S84°57'34"E	75.70'
L3	S05°02'26"W	14.50'
L4	S30°04'00"W	15.64'

SETBACK TABLE		
CAD ZONING		
FRONT YARD SETBACK	SIDE YARD SETBACK	REAR YARD SETBACK
15' OR THE AVERAGE OF THE FRONT SETBACKS OF THE EXISTING PRIMARY STRUCTURES ON THE SAME BLOCK	7'	7'

LEGEND

PROPERTY LINE	---
EASEMENT LINE	- - - -
FENCE	-x-x-
OVERHEAD UTILITIES	-OHU-
OVERHEAD ELECTRIC LINE	-E-
UNDERGROUND ELECTRIC LINE	-UGE-
UNDERGROUND GAS LINE	-GAS-
UNDERGROUND TELEPHONE LINE	-UGT-
WATER LINE	-W-
SANITARY SEWER LINE	-S-
DEED RECORD BOOK AND PAGE	XXX/XXX
5/8" REBAR WITH CAP SET	9o
MAG NAIL SET	ANYo
RECORD	R
MEASURED	M
RIGHT-OF-WAY	ROW
LANDSCAPE AREA	L.S.
INGRESS AND EGRESS EASEMENT	I. & E. E.
DRAINAGE EASEMENT	D.E.
WATER LINE EASEMENT	W.E.
PARKING EASEMENT	P. E.
UTILITY EASEMENT	U.E.
SANITARY SEWER EASEMENT	S.S.E.



Scale 1" = 40 ft

PETITIONER

Kinser Group, LLC
3857 E. Tanglewood Drive
Phoenix Arizona
85048

FLOOD NOTE:
According to Flood Insurance Rate Map (FIRM) Community-Panel Number: 18105C
0141 D having an Effective Date: December 17, 2010, the subject property is not
in a special flood hazard area.
Source: FEMA

I affirm under penalties of perjury, that I have taken reasonable care to redact
each social security number in this document, unless required by law.

Douglas R. Curry

This instrument prepared by Douglas R. Curry.

1710 N. KINSER SUBDIVISION
FINAL PLAT
223 W. DODDS STREET
JOB NO. 201304
MARCH 27, 2013
SHEET 1 OF 2

LEGAL DESCRIPTION

1710 N. KINSER PIKE SUBDIVISION
FINAL PLAT

Owner: Kinser Group, LLC
Instrument No. 2007003114

A part of the Southwest quarter of Section 28, Township 9 North, Range 1 West,
Monroe County, Indiana, described as follows:

Commencing at the northwest corner of said Southwest quarter section, Thence South
00 degrees 01 minute East 91.86 feet on the west line of said quarter section; Thence South 85
degrees 50 minutes East 230.61 feet to the real point of beginning, said point being on the south
right-of-way line of State Route No. 46 Bypass, Thence on said right-of-way line South 85
degrees 50 minutes East 433.44 feet to the west right-of-way line of Cascades Road; Thence
South 04 degrees 10 minutes West on said Cascades Road right-of-way line 88.94 feet;
Thence continuing on said right-of-way line South 04 degrees 50 minutes West 154.82 feet to
the north right-of-way line of the proposed Gourley Pike extension; Thence North 84 degrees
01 minute West on said north right-of-way line 4.00 feet; Thence continuing on said north right-
of-way line on the arc of a curve to the left 148.81 feet, said curve having a radius of 152.25
feet and a deflection angle of 56 degrees 00 minutes; Thence continuing on said right-of-way
line South 39 degrees 59 minutes West 127.82 feet; Thence continuing on said right-of-way line
on the arc of a curve to the right 106.86 feet, said curve having a radius of 77.25 feet and a
deflection angle of 80 degrees 00 minutes; Thence continuing on said right-of-way line North 30
degrees 01 minute West 155.50 feet; Thence continuing on said right-of-way line on the arc of
a curve to the left 132.95 feet, said curve having a radius of 253.92 feet and a deflection angle
of 30 degrees 00 minutes; Thence continuing on said right-of-way line South 89 degrees 59
minutes West 44.00 feet to a point on the east right-of-way line of Kinser Pike; Thence North
00 degrees 01 minute West on said east right-of-way line 28.00 feet; Thence continuing on said
east right-of-way line North 24 degrees 22 minutes East 82.34 feet; Thence continuing on said
east right-of-way line North 00 degrees 01 minute West 27.83 feet; Thence North 89 degrees
59 minutes East 175.00 feet; Thence North 00 degrees 01 minute West 200.00 feet to the
point of beginning, containing 4.094 acres, more or less.

SOURCE OF TITLE: Instrument Number 2007003114

OWNER: Kinser Group, LLC

ZONING: CA

The undersigned, as owners of the real estate described on this plat, for and in
consideration of the City of Bloomington, Indiana, granting to the undersigned the right
to tap into and connect to the sewer system of the City of Bloomington for the
purpose of providing sewer service to the described real estate, now release the right
of the undersigned as owners of the platted real estate and their successors in title
to remonstrate against any pending or future annexation by the City of Bloomington,
Indiana, of such platted real estate.

Kinser Group, LLC, the owner of the real estate shown and described herein,
does hereby lay off, plat, and subdivide said real estate in accordance with the within plat.

This subdivision shall be known and designated as 1710 N. KINSER PIKE SUBDIVISION, an addition
to the City of Bloomington. All streets and alleys shown, and not heretofore dedicated are
dedicated to the public.

Front and side yard building setback lines are established as shown on the plat, between
which lines and the property lines of the adjacent streets no building or other structure
shall be erected or maintained.

The strips of ground that are shown on the plat and marked "easement" are owned by the
owners of the lots that they respectively affect, subject to the rights of public utilities for
the installation and maintenance of water and sewer mains, poles, ducts, lines, and wires.
Buildings or other structures shall not be erected or maintained on these strips.

This subdivision shall be subject to the Declaration Of Covenants, Conditions, and Restrictions
as set forth in Instrument Number _____ in the
Office of the Recorder of Monroe County, Indiana.

This subdivision shall be subject to the Declaration Of Incorporation Of _____ in
Subdivision Owners Association, Inc. as set forth in Instrument Number _____ in
the Office of the Recorder of Monroe County, Indiana.

CERTIFICATE OF SURVEYOR

I, Douglas R. Curry, hereby certify that I am a professional Land Surveyor licensed in compliance with
the laws of the State of Indiana; that this plat correctly represents a survey completed by me on
_____, 2013; that all the monuments shown thereon actually exist; and that their
location, size, type, and material are accurately shown.



Douglas R. Curry Indiana L.S. No. 890006
Bynum Fanyo & Associates, Inc.
528 North Walnut Street
Bloomington, Indiana 47404
(812) 332-8030

EASEMENT DEFINITIONS

Easement: A non-possessory interest in land granted by a property owner to the City, the general public, a
corporation, or other persons for specific purposes including but not limited to the construction of utilities,
drainage ways, and streets, or for the protection of natural features.

Easement, Drainage: An easement that permits the unobstructed flow of upstream storm water runoff. A
drainage easement may include detention or retention ponds, swales, wetlands or underground pipes, and
which allows the City Utilities Department exclusive access for installation, maintenance, repair or removal
of drainage facilities.

Easement, Pedestrian: An easement that permits the general public the right to access the easement for
purposes of walking, running, bicycling, skating, or utilizing certain classes of non-motorized vehicles, and
grants the City the right to construct, alter, repair, maintain, or remove improvements within the easement
area.

Easement, Sanitary Sewer: An easement that allows the City Utilities Department exclusive access for
installation, maintenance, repair, or removal of sanitary sewer facilities.

Easement, Utility: An easement that allows both private and public utility providers access associated with
the installation, maintenance, repair, or removal of utility facilities.

Easement, Waterline: An easement that allows the City Utilities Department exclusive access for
installation, maintenance, repair, or removal of potable water facilities.

CERTIFICATE OF APPROVAL
OF COMMISSION AND BOARD OF PUBLIC WORKS

Under the authority of Chapter 174 -Acts of 1947- enacted by the General Assembly of
the State of Indiana and Ordinance adopted by the Common Council of the City of
Bloomington, Indiana, this plat was given approval by the City of Bloomington, as follows:

Approved by the City Plan Commission at a meeting held _____, 2013.

(Tom Micuda)

(Jack Baker) President Bloomington Plan Commission

Approved by the Board of Public Works at a meeting held _____, 2013

(Chairperson)

(Member)

(Member)

Kinser Group, LLC

Signed and Sealed _____, 2013.

Signature

Name Printed

Office

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, the undersigned Notary Public, in and for the said county and state, personally
appeared _____, and acknowledged the execution of the foregoing
for the purposes therein expressed.

Witness my hand and notarial seal this _____ day of _____, 2013.

County of Residence

Commission Expiration

Notary Public, Written

Notary Public, Printed

1710 N. KINSER SUBDIVISION
FINAL PLAT
223 W. DODDS STREET
JOB NO. 201304
MARCH 27, 2013
SHEET 2 OF 2

revisions:
 REV. # - ADD HANDICAPPED PARKING SPACES TO COMFORT INN PROPERTY AS REQUESTED BY CITY OF BLOOMINGTON PLANNING REVIEW 13 APRIL 13
 REV. # - ADD SIDEWALKS AND REQUIRED STREET TREES AS REQUESTED BY CITY OF BLOOMINGTON ENGINEERING REVIEW 30 APRIL 13

drawn by: *dgb*

ARCHITECTURE
 CIVIL ENGINEERING
 PLANNING
 Bloomington, Indiana

BFB
 BYNUM FANNO & ASSOCIATES, INC.
 528 north walnut street

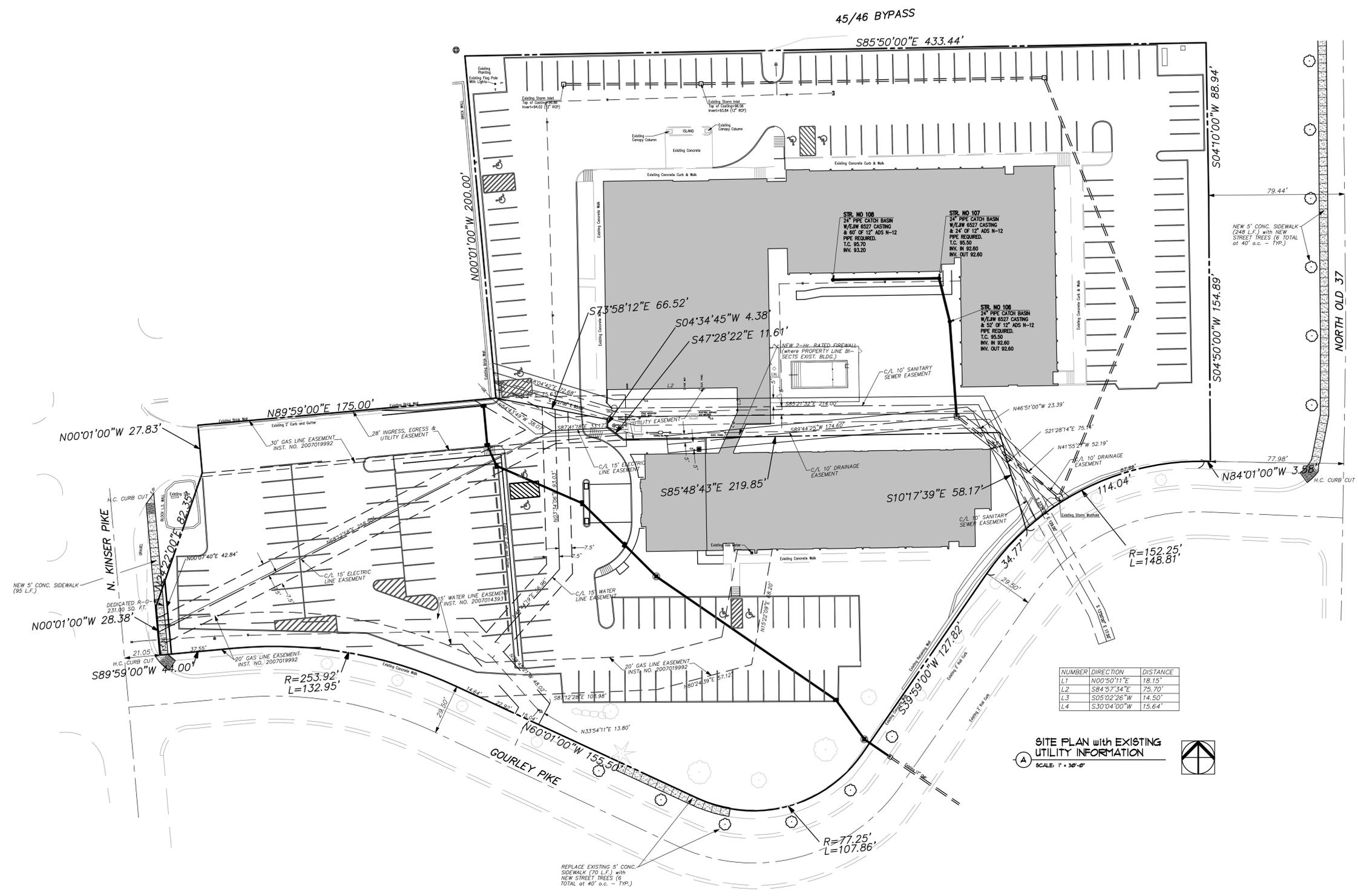
certified by:

Indiana

Proposed Lot Subdivision of:
COMFORT INN/HOLIDAY INN PROPERTY
 1710 Kinsler Pike
 Bloomington, Indiana

title: SITE PLAN with EXIST. UTILITY INFORMATION

S-11
 date: 4/30/13 201304



revisions:
 REV. # - ADD HANDICAPPED PARKING SPACES to COMFORT INN PROPERTY as REQUESTED by CITY of BLOOMINGTON PLANNING REVIEW 13 APRIL 13
 REV. # - ADD SIDEWALKS and REQUIRED STREET TREES as REQUESTED by CITY of BLOOMINGTON ENGINEERING REVIEW 30 APRIL 13

drawn by: *dgb*

ARCHITECTURE
 CIVIL ENGINEERING
 PLANNING
 bloomington, Indiana

BFB
 BYNUM FAYO & ASSOCIATES, INC.
 528 north walnut street

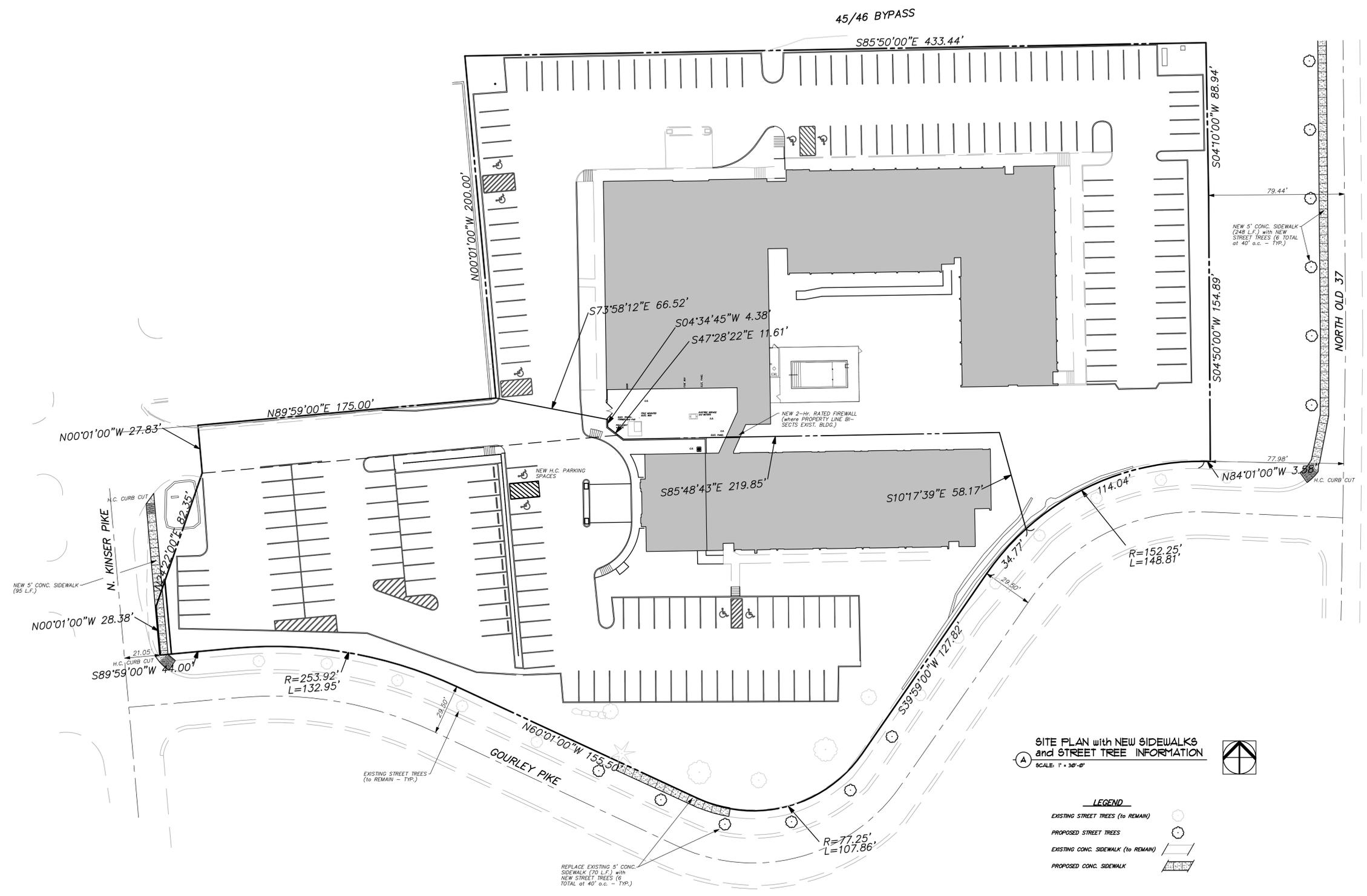
certified by:

Indiana

Proposed Lot Subdivision of:
COMFORT INN/HOLIDAY INN PROPERTY
 1710 Kinser Pike
 Bloomington,

title: SITE PLAN with NEW SIDEWALKS and STREET TREE INFORMATION

S-12
 date: 4/30/13 201304



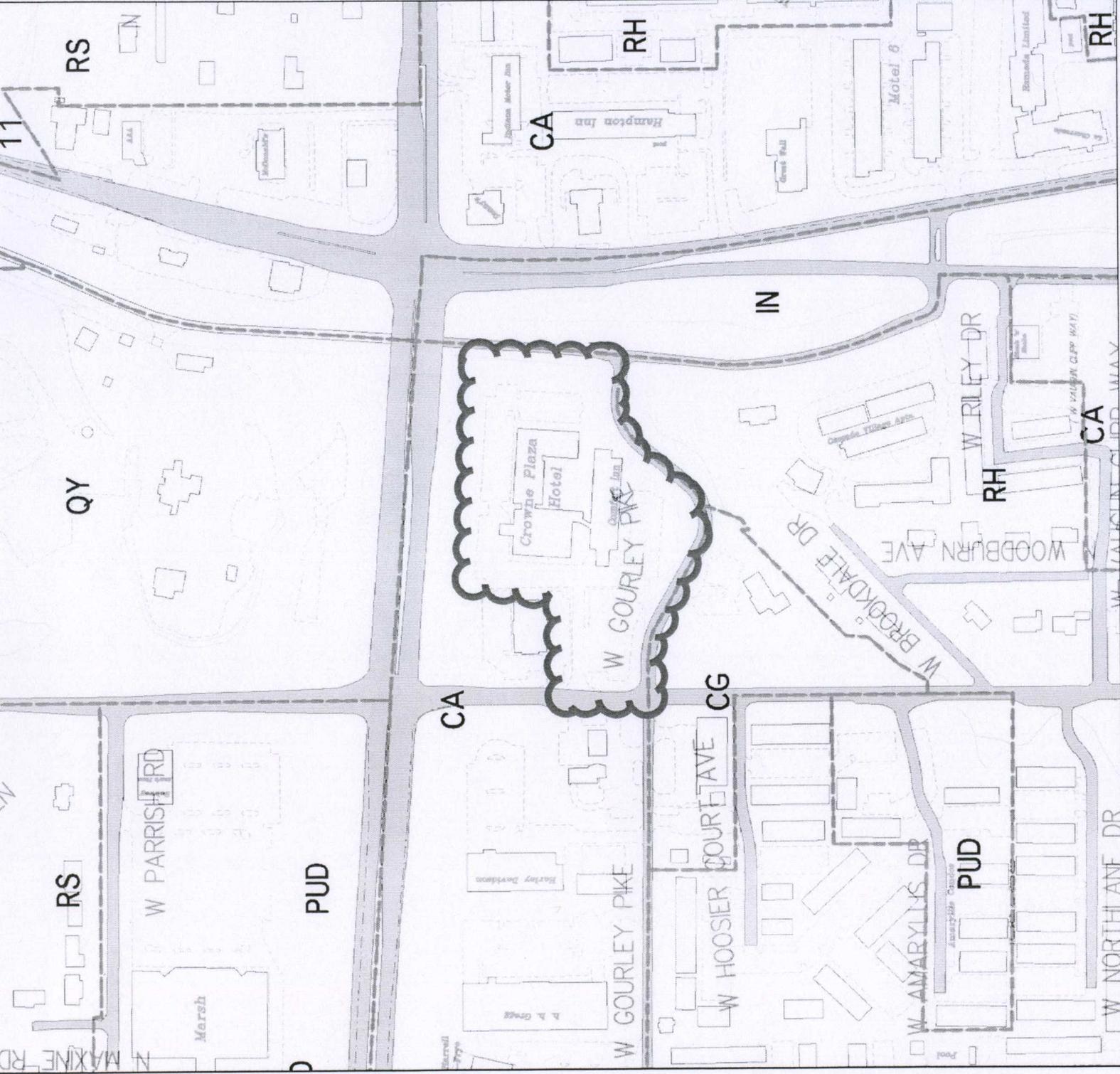
SITE PLAN with NEW SIDEWALKS and STREET TREE INFORMATION
 SCALE: 1" = 30'-0"

- LEGEND**
- EXISTING STREET TREES (to REMAIN)
 - PROPOSED STREET TREES
 - EXISTING CONC. SIDEWALK (to REMAIN)
 - PROPOSED CONC. SIDEWALK

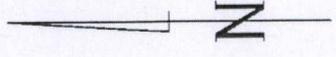
Holiday Inn

Comfort INN

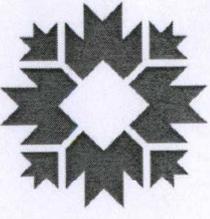




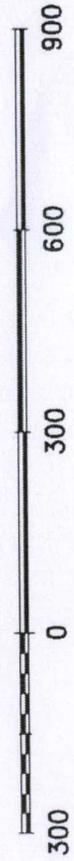
DP-19-13
Location Map



City of Bloomington
Planning



Scale: 1" = 300'



By: roachja
10 Apr 13

For reference only; map information NOT warranted.



Board of Public Works Staff Report

Project/Event: Project Coordination Contract for Park Avenue Brick Street Restoration

Petitioner/Representative:

Staff Representative: Justin Wykoff, Senior Project Manager

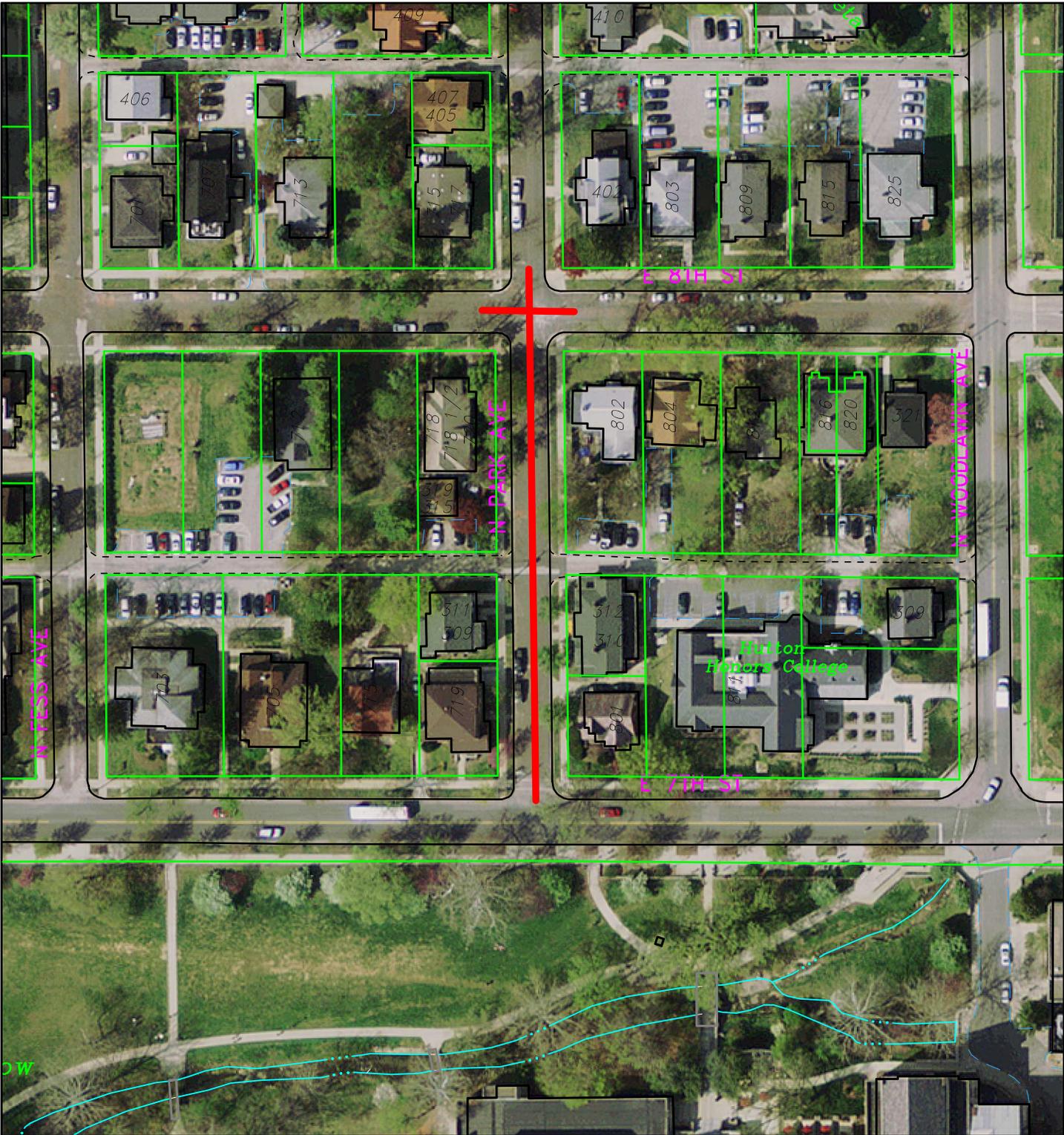
Meeting Date: September 10, 2013

Design and Section 106 (Historical) work has recently been completed and approved by the Indiana Department of Transportation (INDOT). This project is scheduled for letting/bid opening on February 12, 2014, with construction anticipated to begin approximately 6 to 8 weeks later.

The City of Bloomington has programmed funding for construction through the Transportation Improvement Program (TIP) which is administered by INDOT. This agreement outlines the duties and responsibilities of the City, and INDOT with relation to the usage of this programmed money for the project.

We recommend the approval of this agreement to continue our working relationship with INDOT and to continue the progress of this important public project.

Recommend **Approval** **Denial by**

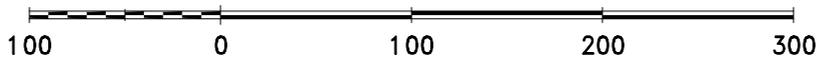


Des 0902258 Park Avenue Brick Street Restoration Project

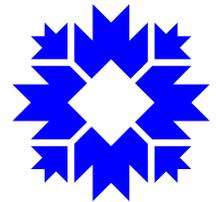
Location Map

By: wykoffj

5 Sep 13



City of Bloomington
Engineering



Scale: 1" = 100'

For reference only; map information NOT warranted.

**INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY
PROJECT COORDINATION CONTRACT**

EDS #: A249-14-320126

Des. No.: 0902258

CFDA No.: 20.205

This Contract is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the **City of Bloomington**, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N955
Indianapolis, Indiana 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

Seymour District Office
185 Agrico Lane
Seymour, Indiana 47274

- C. Notices to the LPA shall be sent to:

City of Bloomington
401 North Morton Street
Bloomington, Indiana 47402

RECITALS

WHEREAS, LPA has applied to INDOT, and INDOT has approved the LPA's application to receive federal funds for the Project described in Attachment A, and

WHEREAS, LPA agrees to pay its share of the Project cost as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation, and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana, and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations, and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all Federal requirements and fiscally manage the Project, and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The “Recitals” and “Notice to PARTIES” above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I PROJECT DESCRIPTION. INDOT and the LPA enter into this Contract to complete the project described in Attachment A (the “Project”), herein attached to and made an integral part of this Contract.

SECTION II LPA RESPONSIBILITIES. The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA’s Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

SECTION III INDOT RESPONSIBILITIES. INDOT will provide the information and services as set out in Attachment C (INDOT’s Rights and Duties), herein attached to and made an integral part of this Contract.

SECTION IV PROJECT FUNDS. INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is herein attached to and made an integral part of this Contract.

SECTION V TERM AND SCHEDULE.

- A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract) between **July 1, 2013 and June 30, 2014**, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible.
- B. In the event that federal funds for the Project are not obligated during the period listed in section V.A., the federal funds allocated to the Project will lapse.

SECTION VI GENERAL PROVISIONS

- A. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration (“FHWA”) or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in

federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

- B. Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- C. Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the LPA to be a “sub-recipient” for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled “Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources,” and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the LPA’s fiscal year. The LPA agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the LPA is not out of compliance with the financial aspects of this Contract.

- D. Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the

undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.

3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

E. Compliance with Laws.

1. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44-1-3 and under any other applicable State or Federal laws.
5. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this agreement. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.
6. As required by I.C. 5-22-3-7:
 - (1) The LPA and any officials of the LPA certify that:
 - (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or

- (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
- (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
- (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

F. Disadvantaged Business Enterprise Program. Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

G. Disputes.

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.
3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
5. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.

H. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
3. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

5. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

I. Force Majeure. In the event either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

J. Funding Cancellation Clause. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

K. Governing Laws. This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

L. Indemnification. The LPA agrees to and shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

M. Merger & Modification. This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

N. No Investment in Iran. As required by IC 5-22-16.5, the LPA certifies that the LPA is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.

O. Non-Discrimination.

1. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the LPA, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
2. The LPA understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the LPA, agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

- a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.
- d. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
- f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United

States of America to enter into such litigation to protect the interests of the United States of America.

- P. Payment.** All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by I.C. 4-13-2-20.
- Q. Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.
- R. Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:
1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.
- S. Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- T. Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

The remainder of this page is intentionally left blank.

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, LPA and the State of Indiana have, through duly authorized representatives, entered into this Contract. The PARTIES having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

LPA: City of Bloomington

**STATE OF INDIANA
Department of Transportation**

Recommended for approval by:

Print or type name and title

Robert D. Cales, Director
Contract Administration Division

Signature and date

Date: _____

Print or type name and title

Executed by:

Signature and date

Troy A. Woodruff, Chief of Staff

Print or type name and title

Date: _____

Signature and date

Department of Administration

Jessica Robertson, Commissioner

Attest

Date: _____

State Budget Agency

Auditor or Clerk Treasurer

Brian E. Bailey, Director

Date: _____

This instrument prepared by:

Approved as to Form and Legality:

Ellen Hite
August 28, 2013

(FOR)
Gregory F. Zoeller, Attorney General of Indiana

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **0902258**
Program: **Group II Transportation Enhancement**
Type of Project: **Enhancement**
Location: **University Court Brick Street Restoration**

A general scope/description of the Project is as follows:

An enhancement project for University Court brick street restoration in the City of Bloomington, Monroe County, Indiana.

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See <http://www.in.gov/div/contracts/standards/dm.html>) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/7287.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/3018.htm>).
2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be accordance with INDOT's consultant selection procedure.
3. REQUIREMENTS FOR ADDITIONAL CONTRACTS
 - A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:
 1. use the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/div/projects/LPASection/> and is incorporated by reference; or
 2. use a form of agreement that has been reviewed and approved by INDOT.
4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
6. At least ninety to one hundred twenty (90 to 120) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

7. If the LPA has failed to meet any of the requirements of sections 1, 2, 4, 5, or 6 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
8. The LPA shall pay the cost of the invoice of the construction, utility, and/or railroad work within thirty (30) calendar days from the date of INDOT's award of the construction contract.
9. The LPA understands time is of the essence regarding the Project timeline and payment of costs by the LPA. Delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the amount billed by INDOT, in accordance with Attachment D, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this contract including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
10. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.
11. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
 - A. If project inspection will be provided by full-time LPA employees:

The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal-aid shall be submitted to the District office, referenced on Page 1, for payment.

or

- B. If project inspection will be provided by the LPA's consultant:

INDOT must approve, in writing, the consultant personnel prior to their assignment to the project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's construction letting for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal-aid shall be submitted to the District office, referenced on page 1, for payment.

12. The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2376.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
14. If FHWA or INDOT invokes sanctions per Section VI.D.2. of the General Provisions of this contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
 - a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.
 - b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:
 1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.
 2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.
 3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
 - c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:
 1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.
 2. INDOT may elect to pay its obligations under the provisions of the construction contract.
 3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

4. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA or INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of federal funds allowed by FHWA.
- d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for federal participation.
 - e. If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.
2. INDOT shall complete all railroad coordination for the Project on behalf of the LPA.
3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.
4. If the LPA owes INDOT money which is more than 60 days past due, INDOT will not open the construction bids for the Project.
5. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules (including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11), conduct a scheduled letting.
6. Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.
7. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.
8. If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA share of the construction cost.
9. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.
10. In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.
11. After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's bill, make final payment to INDOT pursuant to Attachment D or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

ATTACHMENT D**PROJECT FUNDS****I. Project Costs.**

- A. If the Program shown on Attachment A is receiving **Group II Transportation Enhancement** federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay **80%** of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is **\$ 130,000.00.**

 X

OR

- B. Federal-aid Funds made available to the LPA by INDOT will be used to pay _____ % of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$ _____.

- C. The LPA understands and agrees that federal reimbursement for construction inspection and testing construction materials is limited to:

- (1) 17% of the final construction cost if the final construction cost is less than or equal to \$500,000; or
- (2) 15% of the final construction cost if the final construction cost is greater than \$500,000.

- D. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

- E. Costs will be eligible for FHWA participation provided that the costs:

- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
- (2) Are verifiable from INDOT's or the LPA's records;
- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;
- (4) Are included in the approved budget, or amendment thereto; and

- (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

B. Other Costs:

1. In accordance with I.C. 8-23-2-14, the LPA shall pay INDOT the actual cost, plus INDOT's 2.5% overhead rate, less the amount eligible for Federal-aid reimbursement, for performing laboratory testing of materials. The cost of providing material testing is included in the maximum limitation number shown in section I.C. of Attachment D.
2. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.
3. The LPA shall pay INDOT for expenses incurred in supervising the Project out of the maximum limitation shown in section I.C. of Attachment D.

III. Repayment Provisions.

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.



Board of Public Works Staff Report

Project/Event: Project Coordination Contract for 17th Street and Monroe Street Intersection Project

Petitioner/Representative:

Staff Representative: Justin Wykoff, Senior Project Manager

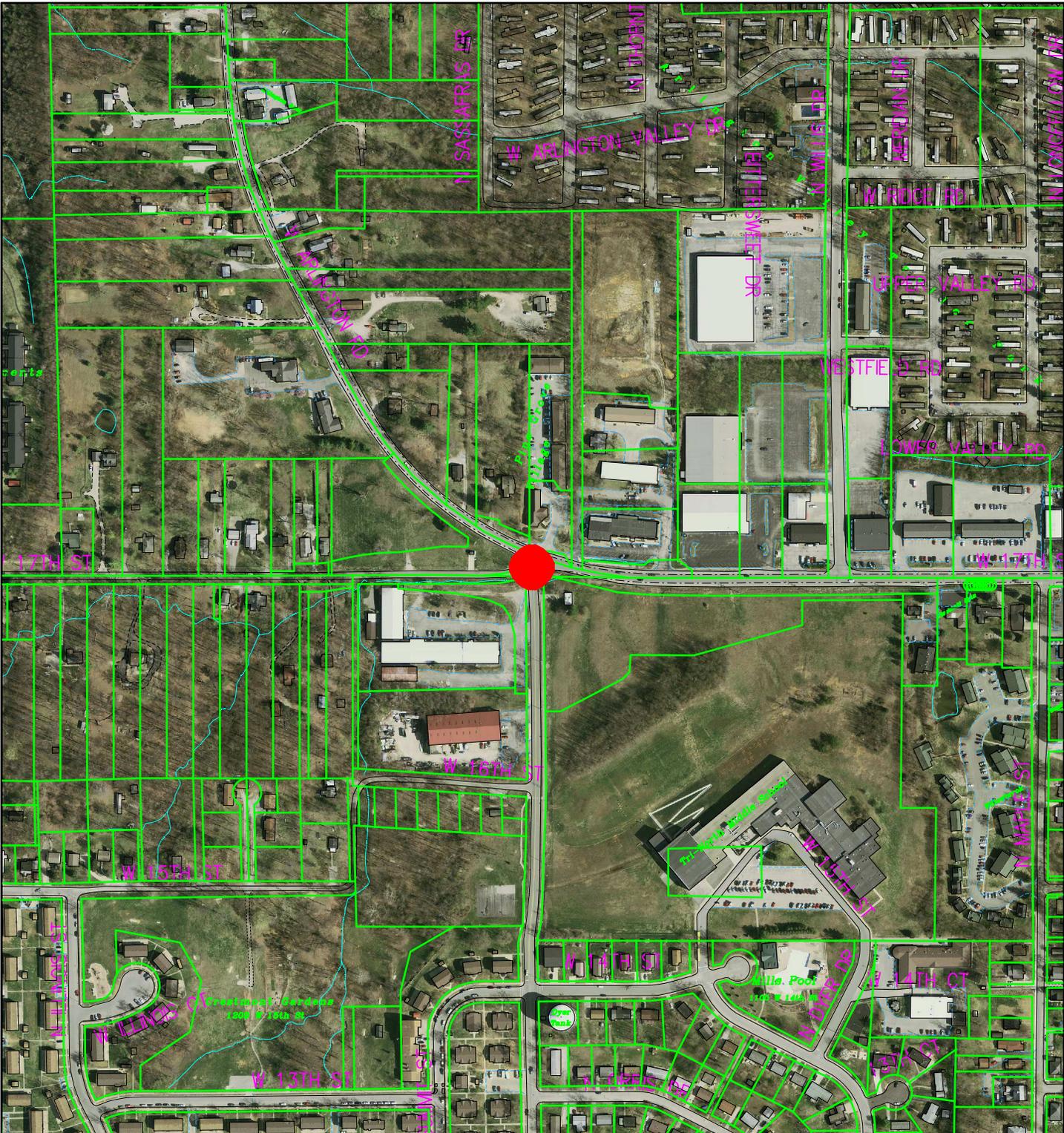
Meeting Date: September 10, 2013

Right of Way acquisition for 17th Street/Monroe Street/Arlington Road Intersection Improvement Project has recently been completed and approved by the Indiana Department of Transportation (INDOT) (August 22nd). This project is scheduled for letting/bid opening on February 12, 2014, with construction anticipated to begin approximately 6 to 8 weeks later.

The City of Bloomington has programmed funding for construction through the Transportation Improvement Program (TIP) which is administered by INDOT. This agreement outlines the duties and responsibilities of the City, and INDOT with relation to the usage of this programmed money for the project.

We recommend the approval of this agreement to continue our working relationship with INDOT and to continue the progress of this important public project.

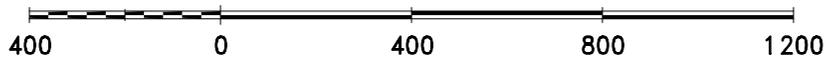
Recommend **Approval** **Denial by**



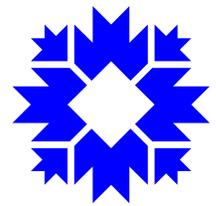
17th Street / Arlington Road / Monroe Street Intersection Project

Location Map

By: wykoffj
5 Sep 13

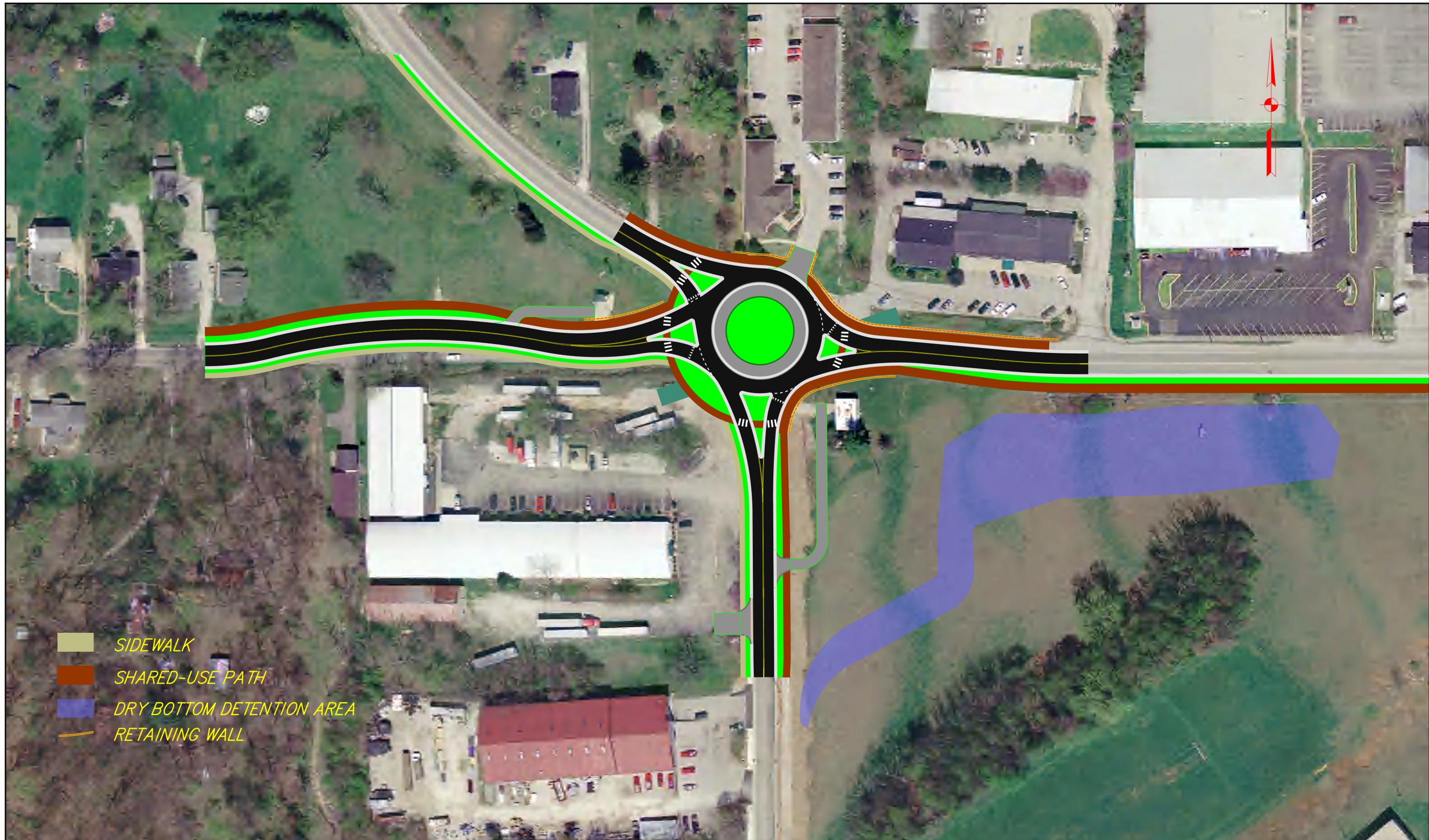


City of Bloomington
Engineering



Scale: 1" = 400'

For reference only; map information NOT warranted.



- SIDEWALK
- SHARED-USE PATH
- DRY BOTTOM DETENTION AREA
- RETAINING WALL

W. 17th ST. AND ARLINGTON RD. - REVISED PLAN

RECOMMENDED FOR APPROVAL _____	
DESIGN ENGINEER _____	DATE _____
DESIGNED: _____	DRAWN: _____
CHECKED: _____	CHECKED: _____

INDIANA
DEPARTMENT OF TRANSPORTATION

HORIZONTAL SCALE 1" = 50'	BRIDGE FILE N/A
VERTICAL SCALE N/A	DESIGNATION NO. 0900216
SURVEY BOOK	SHEETS of
CONTRACT	PROJECT NO.

**INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY
PROJECT COORDINATION CONTRACT**

EDS #: A249-14-320138

Des. No.: 0900216

CFDA No.: 20.205

This Contract is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the **City of Bloomington**, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N955
Indianapolis, Indiana 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

Seymour District Office
185 Agrico Lane
Seymour, Indiana 47274

- C. Notices to the LPA shall be sent to:

City of Bloomington
401 North Morton Street
Bloomington, Indiana 47402

RECITALS

WHEREAS, LPA has applied to INDOT, and INDOT has approved the LPA's application to receive federal funds for the Project described in Attachment A, and

WHEREAS, LPA agrees to pay its share of the Project cost as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation, and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana, and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations, and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all Federal requirements and fiscally manage the Project, and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The “Recitals” and “Notice to PARTIES” above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I PROJECT DESCRIPTION. INDOT and the LPA enter into this Contract to complete the project described in Attachment A (the “Project”), herein attached to and made an integral part of this Contract.

SECTION II LPA RESPONSIBILITIES. The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA’s Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

SECTION III INDOT RESPONSIBILITIES. INDOT will provide the information and services as set out in Attachment C (INDOT’s Rights and Duties), herein attached to and made an integral part of this Contract.

SECTION IV PROJECT FUNDS. INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is herein attached to and made an integral part of this Contract.

SECTION V TERM AND SCHEDULE.

- A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract) between **July 1, 2013 and June 30, 2014**, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible.
- B. In the event that federal funds for the Project are not obligated during the period listed in section V.A., the federal funds allocated to the Project will lapse.

SECTION VI GENERAL PROVISIONS

- A. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration (“FHWA”) or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in

federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

- B. Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- C. Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the LPA to be a “sub-recipient” for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled “Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources,” and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the LPA’s fiscal year. The LPA agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the LPA is not out of compliance with the financial aspects of this Contract.

- D. Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the

undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.

3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

E. Compliance with Laws.

1. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44-1-3 and under any other applicable State or Federal laws.
5. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this agreement. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.
6. As required by I.C. 5-22-3-7:
 - (1) The LPA and any officials of the LPA certify that:
 - (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or

- (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
- (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
- (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

F. Disadvantaged Business Enterprise Program. Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

G. Disputes.

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.
3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
5. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.

H. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
3. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

5. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
 6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.
- I. Force Majeure.** In the event either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- J. Funding Cancellation Clause.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- K. Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
- L. Indemnification.** The LPA agrees to and shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:
- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
 - (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
 - (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
 - (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

M. Merger & Modification. This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

N. No Investment in Iran. As required by IC 5-22-16.5, the LPA certifies that the LPA is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.

O. Non-Discrimination.

1. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the LPA, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
2. The LPA understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the LPA, agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

- a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.
- d. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
- f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United

States of America to enter into such litigation to protect the interests of the United States of America.

- P. Payment.** All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by I.C. 4-13-2-20.
- Q. Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.
- R. Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:
1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.
- S. Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- T. Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

The remainder of this page is intentionally left blank.

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, LPA and the State of Indiana have, through duly authorized representatives, entered into this Contract. The PARTIES having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

LPA: City of Bloomington

**STATE OF INDIANA
Department of Transportation**

Recommended for approval by:

Print or type name and title

Robert D. Cales, Director
Contract Administration Division

Signature and date

Date: _____

Print or type name and title

Executed by:

Signature and date

Troy A. Woodruff, Chief of Staff

Print or type name and title

Date: _____

Signature and date

Department of Administration

Jessica Robertson, Commissioner

Attest

Date: _____

State Budget Agency

Auditor or Clerk Treasurer

Brian E. Bailey, Director

Date: _____

This instrument prepared by:

Approved as to Form and Legality:

Ellen Hite
August 29, 2013

(FOR)
Gregory F. Zoeller, Attorney General of Indiana

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **0900216**
Program: **Group II**
Type of Project: **Other Intersection Improvement**
Location: **"K" Intersection of Arlington Rd, 17th St & Monroe St**

A general scope/description of the Project is as follows:

A other type intersection improvement for the "K" intersection of Arlington Road, 17th Street and Monroe Street, in the City of Bloomington, Monroe County, Indiana.

ATTACHMENT B**LPA'S RIGHTS AND DUTIES**

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See <http://www.in.gov/div/contracts/standards/dm.html>) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/7287.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/3018.htm>).
2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be in accordance with INDOT's consultant selection procedure.
3. **REQUIREMENTS FOR ADDITIONAL CONTRACTS**
 - A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:
 1. use the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/div/projects/LPASection/> and is incorporated by reference; or
 2. use a form of agreement that has been reviewed and approved by INDOT.
4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
6. At least ninety to one hundred twenty (90 to 120) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

7. If the LPA has failed to meet any of the requirements of sections 1, 2, 4, 5, or 6 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
8. The LPA shall pay the cost of the invoice of the construction, utility, and/or railroad work within thirty (30) calendar days from the date of INDOT's award of the construction contract.
9. The LPA understands time is of the essence regarding the Project timeline and payment of costs by the LPA. Delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the amount billed by INDOT, in accordance with Attachment D, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this contract including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
10. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.
11. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
 - A. If project inspection will be provided by full-time LPA employees:

The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal-aid shall be submitted to the District office, referenced on Page 1, for payment.

or

- B. If project inspection will be provided by the LPA's consultant:

INDOT must approve, in writing, the consultant personnel prior to their assignment to the project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's construction letting for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal-aid shall be submitted to the District office, referenced on page 1, for payment.

12. The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2376.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
14. If FHWA or INDOT invokes sanctions per Section VI.D.2. of the General Provisions of this contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
 - a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.
 - b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:
 1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.
 2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.
 3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
 - c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:
 1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.
 2. INDOT may elect to pay its obligations under the provisions of the construction contract.
 3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

4. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA or INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of federal funds allowed by FHWA.
- d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for federal participation.
 - e. If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.
2. INDOT shall complete all railroad coordination for the Project on behalf of the LPA.
3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.
4. If the LPA owes INDOT money which is more than 60 days past due, INDOT will not open the construction bids for the Project.
5. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules (including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11), conduct a scheduled letting.
6. Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.
7. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.
8. If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA share of the construction cost.
9. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.
10. In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.
11. After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's bill, make final payment to INDOT pursuant to Attachment D or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

ATTACHMENT D**PROJECT FUNDS****I. Project Costs.**

A. If the Program shown on Attachment A is Group I or Group II, this contract is just for the one (1) phase checked below:

Preliminary engineering or
 Right-of-way or
 Construction;

B. If the Program shown on Attachment A is receiving **Group II** federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP for the phase indicated above are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay **80%** of the eligible Project costs. The maximum amount of federal-aid funds allocated to the
 _____ Project is \$ **3,430,000.00**.

OR

C. Federal-aid Funds made available to the LPA by INDOT will be used to pay
 _____ % of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$ _____.

D. The LPA understands and agrees that federal reimbursement for construction inspection and testing construction materials is limited to:

- (1) 17% of the final construction cost if the final construction cost is less than or equal to \$500,000; or
- (2) 15% of the final construction cost if the final construction cost is greater than \$500,000.

E. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

F. Costs will be eligible for FHWA participation provided that the costs:

- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
- (2) Are verifiable from INDOT's or the LPA's records;

- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;
- (4) Are included in the approved budget, or amendment thereto; and

- (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

B. Other Costs:

1. In accordance with I.C. 8-23-2-14, the LPA shall pay INDOT the actual cost, plus INDOT's 2.5% overhead rate, less the amount eligible for Federal-aid reimbursement, for performing laboratory testing of materials. The cost of providing material testing is included in the maximum limitation number shown in section I.C. of Attachment D.
2. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.
3. The LPA shall pay INDOT for expenses incurred in supervising the Project out of the maximum limitation shown in section I.C. of Attachment D.

III. Repayment Provisions.

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.