

BOARD OF PUBLIC WORKS AND SAFETY
Agenda Request Form

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted: 12.29.2020

Meeting Date: 01.04.2021

Contact Information:

Requested by: Lynnette Gray

On Behalf of Organization or Individual: City of Franklin

Telephone: 317-738-3365

Email address: lynng@igmlawfirm.com

Mailing Address: 63 E. Court St., P.O. Box 160, Franklin, IN 46131

Describe Request:

Request approval of Mitigation agreement with INDOT.

List Supporting Documentation Provided:

Mitigation Agreement
Exhibit A, B and C

Who will present the request?

Name: Lynnette Gray
Mark Richards

Telephone: 317-738-3365
317-736-3631

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.

AGREEMENT
Between
THE INDIANA DEPARTMENT OF TRANSPORTATION
And
THE CITY OF FRANKLIN
Concerning
USE OF PROPERTY FOR MITIGATION

EDS No. _____

This Mitigation Agreement ("Agreement") is made by and between the Indiana Department of Transportation (hereinafter referred to as "INDOT"), and the City of Franklin, Indiana (hereinafter referred to as the "CITY"), collectively referred to as the "PARTIES", is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the Parties agree as follows:

RECITALS

WHEREAS, INDOT has a construction project at State Road 144 ("SR 144") and Centerline Road under Des. No. 180221 in Franklin, Indiana (the "Project"), which is impacting a floodway; and

WHEREAS, the Indiana Department of Natural Resources ("IDNR") require that INDOT mitigate the impacts of the Project pursuant to the Flood Control Act (Indiana Code 14-28-1) and the terms of the Construction in a Floodway ("CIF") permit (Permit #FW-30524-0, hereinafter referred to as the "IDNR Permit") issued to INDOT; and

WHEREAS, IDNR has requested that mitigation be incorporated as a part of the Project development, and INDOT has contacted the CITY to aid in the development of an off-site mitigation plan on the CITY's property; and

WHEREAS, the CITY has agreed to allow INDOT to use the CITY's property for mitigation located south of Youngs Creek approximately 0.25-0.5 mile east of U.S. 31, as shown in Exhibit A, attached hereto and incorporated herein by reference (the "Site") at no cost; and

WHEREAS, INDOT shall plant trees and shrubs as mitigation, as shown in Exhibit B, attached hereto and incorporated herein by reference (the "Mitigation Plan"); and

WHEREAS, the Parties desire to delineate certain maintenance responsibilities concerning the Site; and

WHEREAS, it is of mutual interest for the Parties to cooperate in maintaining the Site for the convenience and safety of the public;

NOW, THEREFORE, in consideration of the promises and the mutually dependent covenants contained herein and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE I. PURPOSE AND TERM

1.1. **Preamble and Recitals.** The Preamble and Recitals recorded above are incorporated by reference into this Agreement. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Agreement.

1.2. **Purpose.** The purpose of this Agreement is to delineate installation and maintenance responsibilities and the costs associated with said installation and maintenance for the Site.

1.3. **Term.** This Agreement shall be effective on the date it is approved as to form and legality by the Office of the Indiana Attorney General and shall terminate on December 31, 2025, unless otherwise renewed. This agreement shall be subject to one (1) renewal term for no more than four (4) years. INDOT must give the City at least thirty (30) days' notice of its intent to renew the Agreement.

1.4. **No Interest in the Land.** The parties understand that this Agreement does not: (1) grant any interest or other rights in the land, either temporarily or permanently; or (2) establish a shared-use facility which would require replacement if INDOT has a need to use the affected property for highway purposes in the future.

ARTICLE II. INDOT'S RESPONSIBILITIES

2.1. INDOT shall provide all funding required for all work and materials (i.e., seedling plant materials, mulch, protective tubes, installation, etc.) for the Mitigation Plan.

2.2. INDOT and/or its contractors shall be responsible to acquire all materials and complete all work included in the Mitigation Plan.

2.3. Following completion of installation, INDOT and/or its contractors shall be responsible for monitoring and maintaining the mitigation Site such that it meets the performance standards in the IDNR Permit for a period of at least three (3) years beginning at completion of the Project, or until such time as the IDNR releases INDOT from further monitoring obligations.

2.4. INDOT and/or its contractors shall be responsible for annual monitoring and report preparation to be submitted to IDNR by December 31 of each year beginning at completion of the Project as scheduled for the duration of the monitoring period required under the IDNR Permit.

ARTICLE III. CITY'S RESPONSIBILITIES

3.1. The CITY agrees to allow INDOT to use the CITY's Site for the purposes of tree planting as described in the Mitigation Plan.

3.2. The CITY agrees that the Project will be implemented in accordance with the Mitigation Plan as prepared by INDOT and accepted by the IDNR.

3.3. The CITY grants permission to INDOT and its contractors to access the Site for the purposes of implementing all elements of the Mitigation Plan.

3.4. The CITY grants permission to INDOT and/or its contractors to access and enter the Site after planting is complete for the purpose of conducting mandatory monitoring activities at the Site as required by IDNR under INDOT's CIF permit until IDNR releases the Site from further monitoring. INDOT may complete some replanting or other additional work may during this period as required to achieve compliance with the Mitigation Plan. This monitoring period will last for at least three (3) years after planting is complete. INDOT will notify the CITY in writing once the monitoring period ends (IDNR releases the CIF permit).

3.5. The CITY grants permission to INDOT and/or its contractors to conduct any necessary maintenance activities (i.e., selective herbicide treatment) on the site following construction to ensure the site meets the applicable success criteria established for the site until such time as the Site has been released from additional monitoring by the IDNR.

3.6. The CITY agrees that the tree and shrub community will remain as such in perpetuity. To this end, the CITY agrees to execute and record a permanent Mitigation and Conservation Easement as required by IDNR (the form of which is attached as Exhibit C to this Agreement and herein incorporated by reference), on the portion of the Site used for the Project (in accordance with the Mitigation Plan). The CITY shall record the Mitigation and Conservation Easement on the property within six (6) months of executing this Agreement.

ARTICLE IV. GENERAL PROVISIONS

4.1. **Access to Records.** The CITY shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Agreement, and shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for ten (10) years from the date of final payment under the terms of this Agreement, for inspection or audit by INDOT, or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT. The CITY agree that, upon request by any Party or state or federal agency, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CITY in connection with this Agreement, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

4.2. **Assignment; Successors.** The CITY binds their successors and assignees to all the terms and conditions of this Agreement. Except as otherwise specifically provided herein, the CITY shall not assign or subcontract the whole or any part of this Agreement without INDOT's prior written consent.

4.3. **Assignment of Antitrust Claims.** [OMITTED – NOT APPLICABLE.]

4.4. **Audits.** The CITY acknowledges that it may be required to submit to an audit of funds paid, if any, through this Agreement. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

4.5. **Authority to Bind the CITY.** The signatory for the CITY represents that he/she has been duly authorized to execute this Agreement on behalf of the CITY and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the CITY when his/her signature is affixed, and accepted by the State.

4.6. **Changes in Work.** [OMITTED – NOT APPLICABLE.]

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

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, 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 agreements, 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 agreement, grant, loan, or cooperative agreement.

B. 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 such federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The CITY also agrees by signing this Agreement that it shall require that the language of this certification be included in all contractor agreements including 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.

4.8. **Compliance with Laws.**

A. The CITY shall comply with all applicable federal, state, and CITY 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 thereunder after execution of this Agreement shall be

reviewed by the State and the CITY to determine whether the provisions of this Agreement require formal modification.

B. The CITY 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 IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the CITY has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the CITY shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the CITY is not familiar with these ethical requirements, the CITY should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the CITY or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the CITY and CITY. In addition, the CITY may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. [OMITTED – NOT APPLICABLE.]

D. [OMITTED – NOT APPLICABLE.]

E. [OMITTED – NOT APPLICABLE.]

F. The CITY warrants that the CITY and its contractors shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall 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 Agreement and grounds for immediate termination and denial of further work with the State.

G. [OMITTED – NOT APPLICABLE.]

H. As required by IC §5-22-3-7:

(1) The CITY and any principals of the CITY certify that:

(A) the CITY, 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 CITY will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.

(2) The CITY and any principals of the CITY certify that an affiliate or principal of the CITY and any agent acting on behalf of the CITY or on behalf of an affiliate or principal of the CITY, 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 Agreement, even if IC §24-4.7 is preempted by federal law.

- 4.9. Condition of Payment. [OMITTED – NOT APPLICABLE.]
- 4.10. Confidentiality of State Information. [OMITTED – NOT APPLICABLE.]
- 4.11. Continuity of Services. [OMITTED – NOT APPLICABLE.]
- 4.12. Debarment and Suspension. [OMITTED – NOT APPLICABLE.]
- 4.13. Default by State. [OMITTED – NOT APPLICABLE.]
- 4.14. Disputes. [OMITTED – NOT APPLICABLE.]
- 4.15. Drug-Free Workplace Certification.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the CITY hereby covenant and agrees to make a good faith effort to provide and maintain a drug-free workplace. The CITY will give written notice to the State within ten (10) days after receiving actual notice that the CITY, or an employee of the CITY, 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 Agreement 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 Agreement is in excess of \$25,000.00, the CITY certifies and agrees that it will provide a drug-free workplace by:

A. 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 CITY's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CITY'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;

C. 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 CITY of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. 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;

E. 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 CITY health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

4.16. Employment Eligibility Verification. As required by IC §22-5-1.7, the CITY swears or affirms under the penalties of perjury that the CITY does not knowingly employ an unauthorized alien. The CITY further agrees that:

A. The CITY shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The CITY is not required to participate should the E-Verify program cease to exist. Additionally, the CITY is not required to participate if the CITY is self-employed and does not employ any employees.

B. The CITY shall not knowingly employ or contract with an unauthorized alien. The CITY shall not retain an employee or contract with a person that the CITY subsequently learns is an unauthorized alien.

C. The CITY shall require his/her/its subcontractors, who perform work under this Agreement, to certify to the CITY that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The CITY agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the CITY fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

4.17. Employment Option. [OMITTED – NOT APPLICABLE.]

4.18. Force Majeure. In the event that any Party is unable to perform any of its obligations under this Agreement 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 or as soon as is reasonably possible under the circumstances give notice to the other Parties and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement 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 Agreement.

4.19. **Funding Cancellation Clause.** As required by Financial Management Circular 2007-1 and IC 5-22-17-5, 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 Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

4.20. **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

4.21. **HIPAA Compliance.** [OMITTED – NOT APPLICABLE.]

4.22. **Indemnification.** [OMITTED – NOT APPLICABLE.]

4.23. **Independent Entity; Workers’ Compensation Insurance.** [OMITTED – NOT APPLICABLE.]

4.24. **Information Technology Enterprise Architecture Requirements.** [OMITTED – NOT APPLICABLE.]

4.25. **Insurance.** [OMITTED – NOT APPLICABLE.]

4.26. **Key Person(s).** [OMITTED – NOT APPLICABLE.]

4.27. **Licensing Standards.** [OMITTED – NOT APPLICABLE.]

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

4.29. **Minority and Women’s Business Enterprises Compliance.** [OMITTED - NOT APPLICABLE.]

4.30. **Non-Discrimination.**

A. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the CITY covenants that it shall not

discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The CITY certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the CITY or any subcontractor.

B. INDOT is a recipient of federal funds. Pursuant to that understanding, the CITY agrees that if the CITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CITY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CITY complies 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.

The CITY agrees that if the CITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CITY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CITY 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 nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, income status, limited English proficiency, or status as a veteran.)

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

1. Compliance with Regulations: The CITY 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 Agreement.

2. Nondiscrimination: The CITY, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, 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 CITY shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CITY 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 CITY of the CITY's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

4. Information and Reports: The CITY 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 a CITY is in the exclusive possession of another who fails or refuses furnish this information, the CITY 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.

5. Sanctions for Noncompliance: In the event of the CITY's noncompliance with the nondiscrimination provisions of this Agreement, 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 CITY under the Agreement until the CITY complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions: The CITY shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

4.31. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised:

A. For INDOT: Seymour Permits Manager
INDOT Seymour District
185 Agrico Lane
Seymour, IN 47274

With Copy to: Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

B. For CITY: City Engineer
City of Franklin
70 East Monroe Street
Franklin, IN 46131

With Copy To: Lynn Gray
Johnson Gray & Johnson
63 East Court Street
PO Box 160
Franklin, IN 46131

4.32. Order of Precedence; Incorporation by Reference. [OMITTED – NOT APPLICABLE.]

4.33. Ownership of Documents and Materials. [OMITTED – NOT APPLICABLE.]

4.34. Payments.

A. All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the CITY 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 Agreement except as permitted by IC §4-13-2-20.

B. If the CITY has any outstanding balances on any Agreement with INDOT (including any repayment to INDOT owed under this Agreement), and such outstanding balances due to INDOT are at least sixty (60) calendar days past the due date, INDOT may proceed in accordance with IC §8-14-1-9 to invoke the powers of the Auditor of the State of Indiana to make a mandatory transfer of funds from the CITY's allocation of the Motor Vehicle Highway Account and the CITY Roads and Streets Account, if any, to INDOT's account, or INDOT may withhold

or garnish payments otherwise due to the CITY from INDOT under this or any other Agreement to partially or wholly satisfy such outstanding balances. In addition, to satisfy any outstanding balance owed, INDOT reserves the right to withhold any and all distributions of discretionary federal funds normally issued or allocated to the CITY.

4.35. Penalties, Interest and Attorney's Fees. [OMITTED – NOT APPLICABLE.]

4.36. Progress Reports. [OMITTED – NOT APPLICABLE.]

4.37. Public Record. The CITY acknowledges that the State will not treat this Agreement as containing confidential information, and will post this Agreement on its website as required by Executive Order 05-07. Use by the public of the information contained in this Agreement shall not be considered an act of the State.

4.38. Renewal Option. This Agreement may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed Agreement may not be longer than the term of the original Agreement.

4.39. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

4.40. Status of Claims. [OMITTED – NOT APPLICABLE.]

4.41. Substantial Performance. [OMITTED – NOT APPLICABLE.]

4.42. Taxes. The State is exempt from most state and CITY taxes and many federal taxes. The State will not be responsible for any taxes levied on the CITY or its contractors as a result of this Agreement.

4.43. Termination for Convenience. [OMITTED – NOT APPLICABLE.]

4.44. Termination for Default. [OMITTED – NOT APPLICABLE.]

4.45. Travel. [OMITTED – NOT APPLICABLE.]

4.46. Indiana Veteran's Business Enterprise Compliance. [OMITTED – NOT APPLICABLE.]

4.47. Waiver of Rights. [OMITTED – NOT APPLICABLE.]

4.48. Work Standards. [OMITTED – NOT APPLICABLE.]

4.49. State Boilerplate Affirmation Clause. [OMITTED – NOT APPLICABLE.]
Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Party, or that the undersigned is the properly authorized representative, agent, member or officer of the Party. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Party, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the Party attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, the PARTIES have, through their duly authorized representatives, entered into this Agreement. The PARTIES, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

I understand that this Agreement will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:
https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTR CTS.GBL

City of Franklin, Indiana, By its Board of Public Works and Safety:

Voting Affirmative:

Voting Opposed:

Mayor Steve Barnett

Mayor Steve Barnett

Melissa Jones, Member

Melissa Jones, Member

Robert Swinehamer, Member

Robert Swinehamer, Member

Attest:

Jayne Rhoades, Clerk Treasurer

City of Franklin, Indiana, By its Common Council:

Voting Affirmative:

Voting Opposed:

Kenneth Austin, Council President

Kenneth Austin, Council President

Andrew Eggers, Vice-President

Andrew Eggers, Vice-President

Chris Rynerson

Chris Rynerson

Daniel Blankenship

Daniel Blankenship

Shawn Taylor

Shawn Taylor

Robert D. Heuchan

Robert D. Heuchan

Ann McGuinness

Ann McGuinness

Attest:

Jayne Rhoades, City Clerk Treasurer

STATE OF INDIANA
Indiana Department of Transportation
Recommended for approval by:

Anthony K. McClellan
Seymour District Deputy Commissioner
Indiana Department of Transportation

Date: _____

Executed By:

_____ (for)
Joseph McGuinness, Commissioner
Indiana Department of Transportation

Date: _____

APPROVALS

STATE OF INDIANA

Budget Agency

By: _____ (FOR)
Zachary Q. Jackson, Director

Date: _____

STATE OF INDIANA

Department of Administration

By: _____ (FOR)
Lesley A. Crane, Commissioner

Date: _____

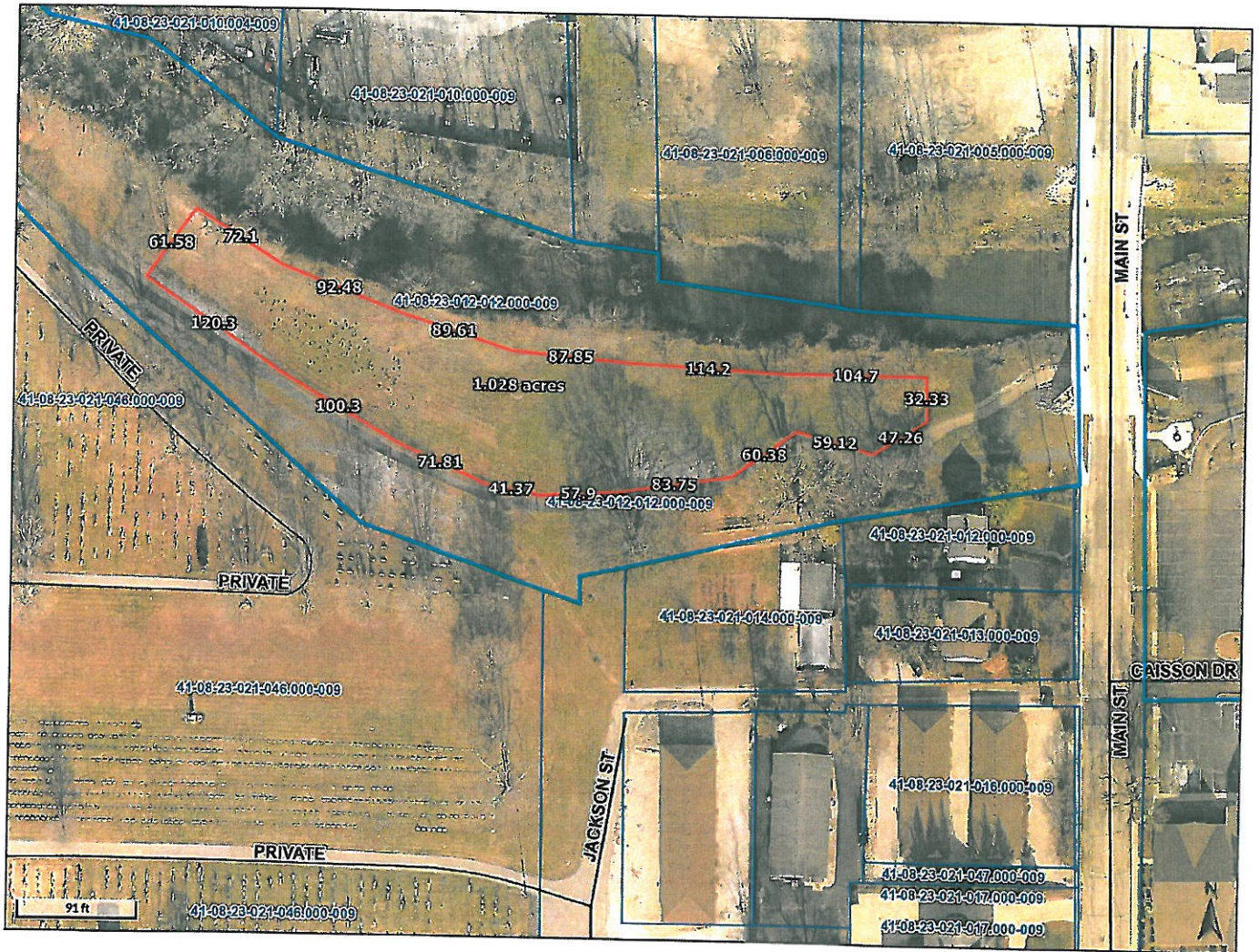
Approved as to Form and Legality:
Office of the Attorney General

By: _____ (FOR)
Curtis T. Hill, Jr.
Attorney General of Indiana

Date : _____

This instrument was prepared for the Indiana Department of Transportation, 100 N. Senate Avenue, Indianapolis, IN 46204, by the undersigned attorney.

Marjorie A. Millman, Attorney No. 21748-36



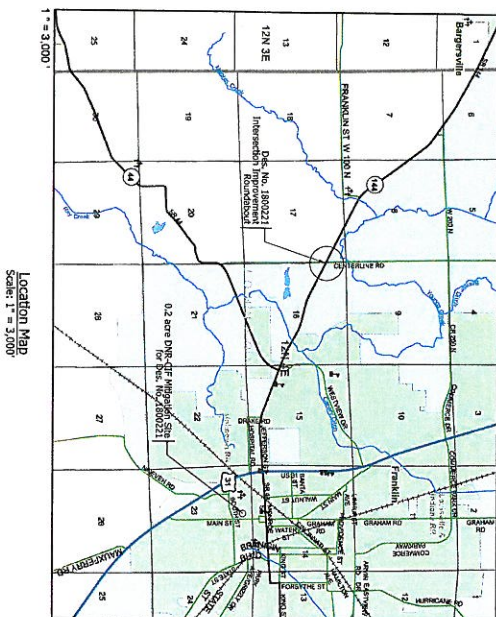
- Notes:**

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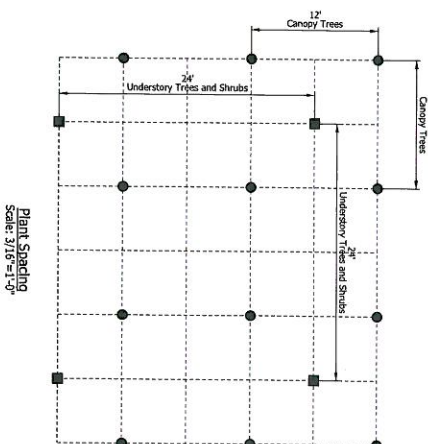
Upland Woodland Seed Mix		
Grasses and Sedges		P.L.S
<i>Carex acuticulata</i>	Straw-Matted Broadleaf Sedge	100000
<i>Carex lasiocarpa</i>	Coarsest Narrow Sedge	100000
<i>Carex diandra</i>	Barned Sedge	1
<i>Dicentra aconitifolia</i>	Barned Sedge	1
<i>Erymus hyemalis</i>	Bobolink Grass	16
<i>Erymus spensii</i>	Russetawn Wild Ryegrass	16
<i>Erymus repens</i>	Sheep Fescue	500000
<i>Erymus repens</i>	Virginia Wild Ryegrass	48
Erymus repens	Grass/Sedge total	95
Temporary Cover		P.L.S
<i>Avena sativa</i>	Straw-Oats	500000
<i>Colera multiflorum</i>	Annual Ryegrass	86
	Temporary Cover total	608
Forbs		P.L.S
<i>Agrostis altissima</i>	Wides Spurred	2
<i>Aquilegia canadensis</i>	Wild Columbine	2
<i>Erechtium purpureum</i>	Spiny Leaf-Pink Weed	1
<i>Hieracium hirsutifolium</i>	Fishes Tailwort	2
<i>Penstemon sparsus</i>	Smooth Penstemon	3
<i>Solidago canadensis</i>	Blue-Blended Goldenrod	1
<i>Syrnophloeos canadensis</i>	Heart-leaved Wood Aster	2
<i>Syrnophloeos hirsutifolius</i>	Spice-Boxing Aster	1
<i>Syrnophloeos alberti</i>	Short Aster	2
	Fishes tailwort	720
	Total P.L.S. seedlings	1700

obilization and Dermobilization for Seeding

MITIGATION SUMMARY OF QUANTITIES	
ITEM	QUANTITY
Mobilization and Demobilization for Seeding	1 each
Seed Mixture, Native	9 lbs
Mulching Material	0.4 km
Invasive Species Control	1 ls
Plant Deciduous Tree, Simple Stem, 1/28 in. or Under	60 each
Plant Deciduous Shrub, 24 to 38 in.	30 each
Sprig, Do Not Mow or Spray	4 each
Herbicide Treatment	0.2 acre

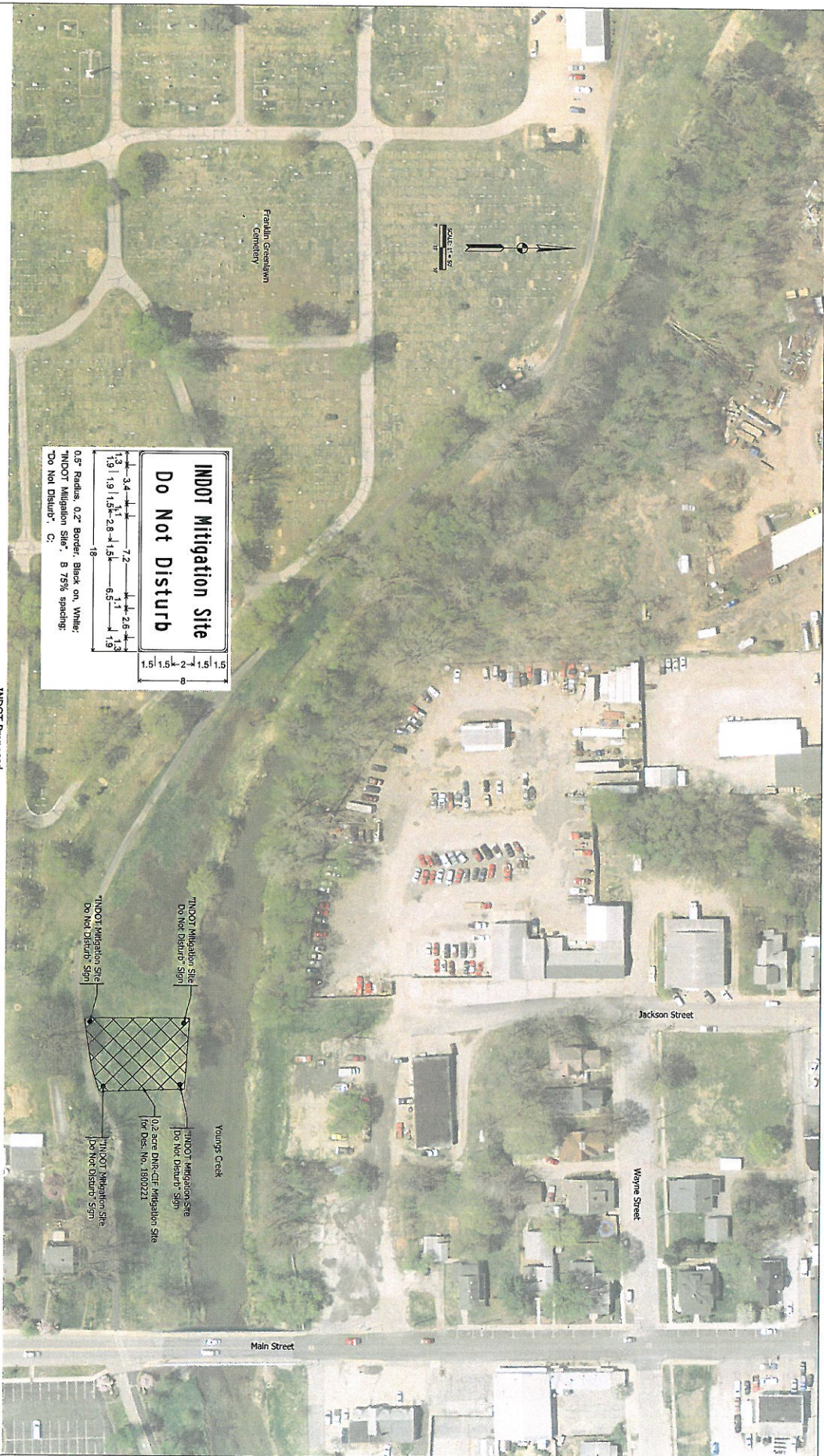


Location Map
Scale: 1" = 3,000



Plant Spacing
Scale: 3/16"=1'-0"

RECOMMENDED FOR APPROVAL	DESIGN ENGINEER	DATE
INDIANA DEPARTMENT OF TRANSPORTATION		
DESIGNED: AAS	May, 2020	DRAWING AAS
CHECKED BY	June 2020	CHECKED BY
MITIGATION DETAILS		
CONTRACT		
M-4130		
SHEETS		
36 of 76		
PROJECT		
1600210675		



Note:
"INDOT Mitigation Site Do Not Disturb" signs will be paid for as "Do Not Mow or Spray" signs.

INDOT Proposed
Mitigation Site
Scale: 1" = 50'

Scale: 1" = 50'

RECOMMENDED FOR APPROVAL _____		DATE _____	
DESIGN NUMBER _____			
DESIGNED BY _____	May 2022	BY _____	May 2022
CHECKED BY _____	June 2022	PROJECT BY _____	June 2022
INDIANA DEPARTMENT OF TRANSPORTATION			
MITTIGATION DETAILS			
SCALE AS SHOWN		RIDGE FILE NA	
DISSEMINATION		DISSEMINATION	
100021		100021	
SHEETS 37 of 76		PROJECT R-41-90	
16002100515		16002100515	

EXHIBIT C

Project: _____
Code: _____
Parcel: _____

MITIGATION AND CONSERVATION EASEMENT

THIS INDENTURE WITNESSETH, that the City of Franklin, "Grantor," for and in consideration of valuable consideration for forest mitigation for impacts to the floodway, receipt of which is hereby acknowledged, does hereby convey, grant, and assign in perpetuity to the State of Indiana ("Holder") and its successors and assigns, the perpetual right and privilege to perform mitigation work and to monitor and enforce the stated Mitigation and Conservation Easement ("Conservation Easement") pursuant to Indiana Code 32-23-5 in, over, and across the following described real estate in the County of Johnson, State of Indiana, as shown in Exhibit A, which is attached hereto and incorporated herein.

RECITALS

WHEREAS, Grantor is the owner in fee simple of a certain parcel of land in the County of Johnson, State of Indiana; and

WHEREAS, the Holder by and through its Department of Transportation ("INDOT") desires to perform forest mitigation on the Easement Area for impacts to the floodway from its construction project at State Road 144 and Centerline Road under Des. No. 180221 (the "Project"); and

WHEREAS the conditions of the Project's permits include the implementation of a mitigation and monitoring plan as submitted as part of the permit process and as authorized by the Indiana Department of Natural Resources ("IDNR") under Permit No. FW-30524-0 (referred to as "Mitigation Party"); and

WHEREAS, the conditions of the Project's permits require the Holder to comply with certain restrictions and conditions on the use of the Easement Area; and

WHEREAS, Grantor desires to subject the Easement Area to such restrictions and conditions;

NOW, THEREFORE, in consideration of the good and valuable consideration and for the purpose of protecting the ecological value and integrity of the Easement Area, the parties agree as follows:

TERMS AND CONDITIONS OF THIS CONSERVATION EASEMENT

1. Term. The Grantor hereby declares that the Easement Area shall be bound by, held, transferred, sold, conveyed, leased, improved, hypothecated, occupied or otherwise disposed of and used subject to the terms and conditions contained herein. The Conservation Easement granted herein shall run with the land and shall take effect upon execution of this Conservation Easement. The duration of this Conservation Easement shall be perpetual and shall bind all assigns and successors of the Grantor.
2. Conservation Values. The Easement Area possesses natural resource values of prominent importance to the

Grantor, Holder and the Public. These Conservation Values include retaining or protecting natural or scenic values, assuring its availability for forest, wetland, fish and wildlife habitat, scientific, biological, and ecological uses, protecting natural resources, and maintaining or enhancing water quality of the Easement Area.

3. Purpose and Extent. The Grantor is fee simple owner of the Easement Area and is committed to preserving and protecting the Conservation Values of the Easement Area. This Conservation Easement restricts the current and future use of the Easement Area and assures that the Easement Area will be perpetually preserved in its predominantly natural condition for the retention, protection, availability, maintenance, and enhancement of the Conservation Values.
4. Definitions.
 - a) Natural Condition. The term "natural condition" shall mean the condition of the Easement Area at the time of the declaration and as restored, created, enhanced, and preserved pursuant to the Mitigation Plan. The natural condition shall be evidenced in part by the mitigation plan site plan which shows all relevant property lines, all existing man-made improvements and features, and major distinct natural features such as waters of the United States and is attached hereto as Exhibit A. The natural condition of the Easement Area may also be evidenced by:
 - (i) A current aerial photograph of the Easement at an appropriate scale taken as close as possible to the date the declaration is made; and
 - (ii) On-site photographs taken at appropriate locations on the Easement Area, including major natural features.
 - b) Mitigation Plan. The term "Mitigation Plan" shall mean the plan approved by the IDNR Permit #FW-30524-0.
5. Prohibited Uses. Except as expressly provided herein and subject to any existing easements, interests or restrictions of record prior to the creation of this Conservation Easement, any activity on, or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement is prohibited. Grantor covenants that they shall not undertake, or consent to third parties undertaking, the following prohibited activities in the Easement Area:
 - a) the subdivision of the Easement Area into two or more parcels. Any future dedication or classification of all, or part, of the Easement Area as a Nature Preserve, Classified Forest or Wildlife Habitat will not be considered to constitute a subdivision of the Easement Area;
 - b) any agricultural, residential, commercial, or industrial use or activity on the Easement Area except as permitted under Item 7.
 - c) the placement, construction, or maintenance of any new man-made modifications such as buildings, structures, fences, parking lots, and other improvements except those permitted under item 7, with the prior written approval of the Holder and the Mitigation Parties;
 - d) the right to drill explore or in any way penetrate the surface area for the purpose of mining, exploration for, or extraction of, oil, gas, or other minerals, hydrocarbons, soils, sand, gravel, rock, peat, or other materials on or

from the surface or subsurface. Grantor may conduct subsurface mining/recovery if resources are at least 200 feet below the surface and access is obtained from an adjacent parcel and no surface disturbance of any kind is required on the Easement Area;

- e) the dumping or other storage or disposal of trash, garbage, sewage, debris, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or industrial, municipal, or agricultural waste or other refuse of any nature whatsoever;
- f) the cutting, burning, harvesting or otherwise destroying of trees, wood products or any other vegetation, except as allowed under this provision, the provisions of item 7.d or in accordance with sound forest management principles, and with the prior written approval of the Holder and the Mitigation Parties. Grantor may remove any trees or other vegetation, living or dead, which pose a threat of personal or bodily harm. Trees or other vegetation (living or dead) that do not pose a threat of personal or bodily harm shall remain, except where removal is allowed under the provisions of item 7.d;
- g) earth moving, grading, cultivation, grazing, pasturing, dredging, filling, flooding, or excavating; no removal of natural materials; and no alteration of topography in any manner except with the prior written consent of the Holder and the Mitigation Parties;
- h) the construction, maintenance, or erection of any commercial advertisement, sign or billboard, except for the posting of signs depicting the Grantor's ownership of the Easement Area, signs depicting designations or classifications affecting the Easement Area and signs designated by the Holder indicating that the property is subject to a conservation easement;
- i) the construction or extension of roads, trails or utility systems, except in easements or right-of-ways of record prior to the date of this Conservation Easement and with the prior written approval of the Holder and the Mitigation Parties;
- j) altering the vegetation and hydrology of the Easement Area in any way so as to destroy or impair its character, including diverting or affecting the natural flow of surface or underground water into, within, or out of the Easement Area or dredging, channeling, filling, pumping, diking, impounding, draining or other related activities, except with the prior written consent of the Holder and the Mitigation Parties;
- k) implementing new wetland or forest management plans without prior written approval by the Holder and the Mitigation Parties;
- l) use of horses, ponies, bicycles or motorized off-road vehicles such as snowmobiles, dune buggies, all-terrain vehicles and motorcycles, except the use of vehicles necessary for the ecological management of the Easement Area, or the use of vehicles used for access to the Easement Area by persons with disabilities;
- m) any other activities, actions or uses that would be detrimental or adverse to good soil and water Conservation Values or that would derogate from the provisions of IC 32-23-5;
- n) intentional introduction of non-native and invasive species at the Easement Area.

6. Rights of Holder. To accomplish the purposes of the Conservation Easement granted hereunder, the following rights are granted and conveyed to the Holder, the Mitigation Parties, and their agents, successors and assigns:
- a) the right to perform mitigation work and related maintenance and monitoring work in the Easement Area in accordance with the Mitigation Plan and all applicable permits, including, but not limited to, the right to construct wetlands, make plantings, excavate, install erosion control, and take samples, with 24-hour advanced notice to the Grantor;
 - b) the right of ingress and egress over Grantor's adjacent real estate by any reasonable, convenient route of access, for purposes of access to the Easement Area, including, but not limited to, installing temporary concrete box culverts for stream crossing during mitigation construction, provided that Holder shall be responsible for any damage it or its contractors cause to the adjacent property in accessing this easement.
 - c) the right to install signs relating to this Conservation Easement with 24-hour advanced notice to the Grantor;
 - d) the right to enter upon the Easement Area in order to monitor compliance with, and enforce the terms of, this Conservation Easement with 24-hour advanced notice to Grantor;
 - e) the right to prevent any activity on, or use of, the Easement Area that is inconsistent with the purposes of this Conservation Easement.
7. Rights Retained by Grantor. Grantor reserves to itself and Grantor's heirs, successors and assigns, the rights of entry and use, and all other rights accruing from its ownership of the Easement Area that are not expressly prohibited herein and are not inconsistent with the purposes of the Conservation Easement granted herein. Without limiting the generality of the foregoing, the following rights are expressly reserved:
- a) the right to lease, convey, give, sell, assign, or otherwise transfer the Easement Area by deed or by operation of law, in each case subject and subordinate to this Conservation Easement. Grantor and his/her/its heirs, successors and assigns shall give Holder and the Mitigation Parties a minimum of 60-day advanced notice of any lease, conveyance, gift, sale, assignment or any other legal action affecting this Conservation Easement, at the address set forth in paragraph 15, below. Notice shall include the name and address of the transferee, a copy of the proposed deed, and a description of the transferred or affected property;
 - b) Grantor retains ingress and egress to the Easement Area, subject to any limitations or conditions set forth in this Conservation Easement;
 - c) the right to use the Easement Area for non-commercial recreation. For purposes of this Conservation Easement, non-commercial recreation is defined as non-developed, recreational activities including, but not limited to hiking, photography, nature and walking trail and other low impact, non-extractive uses not inconsistent with the allowable uses and Conservation Values of this Conservation Easement;
 - d) the right to manage the property to preserve and/or enhance native plant and animal communities on the Easement Area. The Grantor shall not take measures to restore native plant and animal communities on the Easement Area without prior notice and approval of the Holder and the Mitigation Parties. The right to manage

the property includes the right to control invasive species of plants and animals which are considered noxious by State law or regulation and exotic species and/or aggressive native species which are considered detrimental to the quality of the Conservation Values of the Easement Area. In the case of plants, the control and removal may be by manual or mechanical methods, and by use of herbicides or biocontrols with prior written approval of Holder and the Mitigation Parties. In the case of animals, the control and removal may be by trapping or hunting pursuant to all applicable state laws and regulations as published by IDNR's Division of Fish and Wildlife;

- e) the right to provide additional protection for all, or part, of the Easement Area by the following means: dedication as a State Nature Preserve through the IDNR's Division of Nature Preserves; classification as Classified Forest through the IDNR's Division of Forestry; and/or, classification as Wildlife Habitat through the IDNR's Division of Fish and Wildlife; and,
 - f) the right to restrict trespass and, subject to the rights and limitation contained herein, the Grantor has the right to allow, control or prohibit non-commercial public access to, or use of, all or part of the Easement Area, at times or on occasions, and under such terms and conditions as may be approved or established from time to time by the Grantor.
8. No Rights Granted to the Public. Nothing herein shall be construed as the Holder granting or conveying to members of the general public any rights of access, ownership, interest in, or use of, the Easement Area, except as may be allowed by the Grantor pursuant to paragraph 6.f above.
9. Enforcement/ Holder's and Mitigation Parties' Remedies.
- a) Neither Holder nor the Mitigation Parties may bring an action against the Grantor for modifications of the Easement Area resulting from causes beyond the Grantor's control, such as unintentional fires, storms, natural earth movement, floods, or trespassers. Grantor has no responsibility under this Conservation Easement for such unintended modifications.
 - b) Holder and/or each of the Mitigation Parties, acting individually or jointly, has the discretionary right to bring an action at law or in equity in a court of competent jurisdiction to enforce this Conservation Easement and to enjoin any activity by temporary or permanent injunction against any third party for acts inconsistent with the Conservation Values and uses of this Conservation Easement and require restoration by any such third party of the Easement Area to the condition that existed prior to any such injury, and payment of costs, including attorney fees. In any enforcement action, an enforcing agency shall be entitled to complete restoration for any violation, as well as any other remedy available under law or equity, such as injunctive relief and administrative, civil or criminal penalties. No omission or delay in acting by the Holder or the Mitigation Parties shall bar subsequent enforcement rights or constitute a waiver of any enforcement right.
 - c) If Holder or any of the Mitigation Parties, acting either individually or jointly, determines that the Grantor is in violation of this Conservation Easement, or that a violation is threatened, the Holder or the Mitigation Parties may provide written notice to the Grantor unless the violation constitutes immediate and irreparable harm. The written notice will identify the violation and request corrective action to cure the violation or restore the Easement Area. If for a 28 day period after the date of the written notice, the Grantor continues to violate this Conservation Easement, or if the Grantor does not abate the violation and implement corrective or restorative

measures requested by the Holder or the Mitigation Parties, the Holder or the Mitigation Parties may bring an action in law or in equity to enforce the terms of this Conservation Easement. The Holder or the Mitigation Parties are also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses, an order compelling restoration of the Easement Area or any other remedy available under law or equity. If the court determines that the Grantor has failed to comply with this Conservation Easement, then the Grantor also agrees to reimburse all reasonable costs and attorney fees incurred by the Holder compelling such compliance. No omission or delay in acting by the Holder or the Mitigation Parties shall bar subsequent enforcement rights or constitute a waiver of any enforcement right.

- d) If the Holder or the Mitigation Parties determine that this Conservation Easement is, or is expected to be violated, the Holder will make good faith efforts to notify the Grantor. If the Holder or the Mitigation Parties determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Values and purposes of this Conservation Easement, then the Holder or the Mitigation Parties may pursue its lawful remedies without prior notice and without awaiting the Grantor's opportunity to cure. The Grantor agrees to reimburse all costs associated with this effort, which are attributable to actions or inaction of the Grantor.
 - e) The Grantor acknowledges that actual or threatened events of non-compliance by Grantor under this Easement constitute immediate and irreparable harm. The Holder is entitled to invoke the equitable jurisdiction of the court to enforce this Conservation Easement.
 - f) The preceding remedies of the Holder are cumulative. The Holder may invoke any or all of the remedies if there is an actual or threatened violation of this Conservation Easement.
10. No Forfeiture. Nothing contained herein will result in forfeiture or reversion of Grantor's title in any respect.
11. Persons Bound/Covenants Run with the Land. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and shall inure to the benefit of the Grantor and Holder and their respective heirs, successors and assigns, and shall continue as an easement in servitude running with the Easement Area in perpetuity. This Conservation Easement is enforceable against Grantor and all present and future owners, tenants, and other holders of any interest in the Easement Area. The terms "Grantor" and "Holder", when used herein, shall be deemed to refer to Grantor or Holder, as the case may be, and their heirs, successors and assigns.
12. Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
13. Governing Law. This Conservation Easement shall be construed for all purposes under the laws of the State of Indiana. Any subsequent amendment to or repeal of any state law or order, which authorizes this Conservation Easement, shall not affect the rights conveyed by the Grantor or subsequently held by its heirs, successors or assigns.
14. Amendment. Except as provided in Section 17, this Conservation Easement may only be amended by written agreement of Grantor and Holder and with written approval of the Mitigation Parties. Any amendment shall not affect the perpetual duration of the Conservation Easement nor alter its purposes as defined herein.

15. Notices. All notices required or permitted from Holder to Grantor under this Conservation Easement shall be delivered to the Grantor addressed to: City of Franklin, 70 East Monroe Street, Franklin, IN 46131, or at such other address as the Grantor may identify to the Holder.

Notices shall be delivered to the Holder at: Indiana Department of Transportation, Office of Real Estate, 100 N. Senate Avenue, 6th Floor, Indianapolis, IN 46204, or at such other address as the Holder may identify to the Grantor.

Notices shall be delivered to the Mitigation Parties at the following individual addresses, or at such other addresses as may be hereafter provided by notice to the Grantor and Holder:

Indiana Department of Transportation
ATTN: Environmental Services
100 North Senate Avenue, N758-ES
Indianapolis, IN 46204

City of Franklin
ATTN: City Engineer
70 East Monroe Street
Franklin, IN 46131

16. Miscellaneous.

- a) The Grantor covenants to warrant and defend unto the Holder and its successors, the quiet and peaceable use and enjoyment of the Easement Area against all claims and demands.
- b) In the performance of any of its rights under this Conservation Easement, the Holder may, by contract or otherwise, provide for action by its employees, agents, or duly authorized contractors, which may include the Grantor.
- c) All rights in the Easement Area not reserved by the Grantor shall be deemed acquired by the Holder. Any ambiguities in this Conservation Easement shall be construed in favor of the Holder in order to effectuate the Conservation Values for which this Conservation Easement is being conveyed.
- d) The captions and paragraph numbers used in this Conservation Easement are inserted for convenience only and in no way define, limit, construe or describe the scope or intent of such paragraphs.
- e) No waiver of any condition or covenant of this Conservation Easement or failure to exercise a remedy by either Grantor or Holder shall be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant or remedy.
- f) Recordation. Holder shall record this instrument in a timely fashion in the official records of Delaware County, Indiana. Holder or its successors and assigns may re-record this instrument at any time as may be required to preserve its rights in this conservation easement.

THIS SPACE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the said Grantor(s) ha_____ executed this Conservation Easement this _____ day of _____, _____.

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

STATE OF _____ :

COUNTY OF _____ :

SS:

Before me, a Notary Public in and for said State and County, personally appeared _____

_____ the Grantor(s) in the above conveyance, and acknowledged the execution of the same on the date aforesaid to be _____ (his, her, their) voluntary act and deed and who, being duly sworn, stated that any representations contained therein are true.

WITNESS MY HAND and Notarial Seal this _____ day of _____, _____.

(Signature)

(Printed Name)

My Commission expires _____.

I am a resident of _____ County.

Project: _____
Code: _____
Parcel: _____

This instrument prepared by and I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Marjorie A. Millman, Attorney
Indiana Department of Transportation
100 North Senate Avenue, N758LS
Indianapolis, IN 46204

Interests in land acquired by the Indiana Department of Transportation
Holder mailing address:
100 North Senate Avenue
Indianapolis, IN 46204-2219
I.C. 8-23-7-31