

DELEGATION OF PAYMENT

THIS DELEGATION ("Delegation") executed this ____ day of _____, 2023, by and between CITY OF FRANKLIN, INDIANA, acting by and through its Board of Public Works and Safety ("City") and FRANKLIN REDEVELOPMENT COMMISSION ("Commission"), as the governing body of the City of Franklin Redevelopment District ("District") under IC 36-7-14 et seq, as amended, (collectively City and Commission referred to as "Parties" or individually as "Party").

RECITALS:

WHEREAS, City is a party to a certain agreement with the INDIANA DEPARTMENT OF TRANSPORTATION ("INDOT") concerning the construction of bike/pedestrian facilities throughout the City of Franklin, dated the 21st day of May, 2021 and was subsequently amended on the 8th day of November, 2022 (collectively referred to as "INDOT Bike/Pedestrian Facilities Agreement");

WHEREAS, City is a party to a certain agreement with CROSSROAD ENGINEERS, P.C. ("CrossRoad") concerning the providing of engineering services to the City for the construction of bike/pedestrian facilities throughout the City of Franklin, dated the 20th day of June, 2022. ("CrossRoad Bike/Pedestrian Facilities Agreement")

WHEREAS, City is a party to a certain agreement with GAI CONSULTANTS, INC. ("GAI") concerning the reconstruction of certain City roadways, specifically Yandes Street from the northern edge of Jefferson Street to Ohio Street (approximately seventeen hundred (1700) feet) and Madison Street from Depot Street to Yandes Street (approximately three hundred and forty (340) feet), dated the 6th day of July, 2021. ("GAI Agreement")

WHEREAS, City is a party to a certain agreement with INDOT concerning the reconstruction of certain City roadways, specifically Yandes Street-Jefferson Street to Ohio Street and Madison Street-Depot Street to Yandes Street dated the 22nd day of June, 2021. ("INDOT Road Construction Agreement")

WHEREAS, City is a party to a certain agreement with DAVE O'MARA CONTRACTOR, INC. ("O'Mara") concerning the providing of asphalt milling, patching and resurfacing to the City for the 2022 Maintenance Improvement Program, dated the 16th day of May, 2022. ("O'Mara MIP Agreement")

WHEREAS, City is a party to a certain agreement with O'Mara concerning the construction of road improvements for the City for the CR 200 N. Simon Road, Commerce Drive, and Cumberland Drive Intersection Improvements Project. ("O'Mara S.C.C. Intersection Agreement")

WHEREAS, City is a party to a certain agreement with CrossRoad concerning providing engineering services to the City for the CR 200 and Simon Road Roundabout Project, dated the 2nd day of August, 2021. ("CrossRoad CR200 and Simon Road Agreement")

WHEREAS, City is a party to a certain agreement with CrossRoad concerning providing engineering services to the City for the Graham Road Extension Project, dated the 21st day of November, 2021. (“CrossRoad Graham Road Agreement”)

WHEREAS, City is a party to a certain agreement with CrossRoad concerning providing engineering services to the City for the Essex Drive Extension (from end of existing Essex Drive to Paul Hand Road), Paul Hand Road Improvements (from Louisville & Indiana Railroad to Graham Road), and Paul Hand Road and Graham Road Intersection Improvements, dated the 21st day of November, 2022. (“CrossRoad Paul Hand Agreement”)

WHEREAS, City is a party to a certain agreement with CrossRoad concerning providing engineering services to the City for the Graham and Earlywood Roundabout Project, dated the 17th day of February, 2021. (“CrossRoad Graham/Earlywood Roundabout Agreement”)

WHEREAS, INDOT, CrossRoad, GAI, and O’Mara are collectively referred to as “Contractors”; INDOT Bike/Pedestrian Facilities Agreement, CrossRoad Bike/Pedestrian Facilities Agreement, GAI Agreement, INDOT Road Construction Agreement, O’Mara MIP Agreement, O’Mara S.C.C. Intersection Agreement, CrossRoad CR200 and Simon Road Agreement, CrossRoad Graham Road Agreement, CrossRoad Paul Hand Agreement and the CrossRoad Graham/Earlywood Roundabout Agreement are collectively referred to as “Agreements”; and the above referenced projects are collectively referred to as “Projects”;

WHEREAS, the Commission had previously established the Franklin/I-65 Integrated Economic Development Area (“Area”), as amended; and designated within the Area certain allocation areas (“Allocation Areas”) for purposes of capturing tax increment; and created an allocation fund or funds (“Allocation Fund”) for the Area into which the tax increment is deposited; and approved the Franklin/I-65 Economic Development Plan (the “Plan”), as amended;

WHEREAS, the Commission is authorized, pursuant to IC 36-7-14-25(b)(3)(J), to pay expenses incurred by the Commission for local public improvements that are in the Area or serving the Area;

WHEREAS, the services provided by the Contractors for the Projects as described in the Agreements are for local public improvements within the Area or serving the Area;

WHEREAS, City desires to delegate its responsibility to pay the Contractors to the Commission for the services described in the Agreements;

WHEREAS, Commission desires to accept such delegation to pay the Contractors for the services described in the Agreements;

WHEREAS, the Agreements do not require the Contractors to consent to the delegation;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the Parties hereby agree that the terms and conditions of this delegation are as follows:

SECTION 1. DELEGATION

- 1.1 City transfers the responsibility and authority for performing the contractual duty of payment to the Contractors, as described in the Agreements, to the Commission ("Delegation").

SECTION 2. ASSUMPTIONS OF THE DELEGATION

- 2.1 Upon receipt by the Commission of the City's written approval of the Contractor's Application for Payment for services performed, based on a written schedule approved by the Contractor's and the City, and the City's certification that the payment is for services for local public improvements within the Area or serving the Area, the Commission shall pay the Contractors within thirty (30) days.

SECTION 3. REPRESENTATIONS

- 3.1 City represents and warrants:
 - (a) that the Agreements are valid and subsisting;
 - (b) that the City has performed necessary inspections to confirm that the Contractor's services were performed only for the Projects;
 - (c) that the Contractor's services comply with the terms of the Agreements, laws, ordinances and regulations that pertain to the Projects;
 - (d) that Contractors are not in default under the Agreements;
 - (e) that the Delegation is valid and subsisting.

SECTION 4. TOTAL AGREEMENT; APPLICABLE TO SUCCESSORS

- 4.1 This Delegation contains the entire agreement between the Parties and cannot be changed or terminated except by a written instrument subsequently executed by the Parties hereto;
- 4.2 This Delegation and the terms and conditions hereof apply to and are binding on the legal representatives, successors and assigns of both Parties.

SECTION 5. GOVERNING LAW

- 5.1 This Delegation shall be construed in accordance with and governed by the laws of the State of Indiana. This Delegation has been entered into in Indiana and shall be performable for all purposes in such State.

SECTION 6. TIME OF THE ESSENCE

- 6.1 Time is of the essence in all provisions of this Delegation.

SECTION 7. NOTICES

- 7.1 All notices, requests, demands and other communications that are required or permitted to be given pursuant to the terms of this Delegation shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting Party if by facsimile transmission; (c) on the third day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 7; or (d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section 7 as follows:

To City:

City Engineer
70 East Monroe Street
Franklin, Indiana 46124

To Commission:

Franklin Redevelopment Commission
70 East Monroe Street
Franklin, Indiana 46131
Attention: President

SECTION 8. AUTHORITY

- 8.1 Except as expressly provided otherwise herein, each undersigned person signing on behalf of any Party certifies that:
- (a) He/she is fully empowered and duly authorized by any and all necessary action or consent required under any applicable laws, and ordinances to execute and deliver this Delegation for and on behalf of said Party;
 - (b) That said Party has full capacity, power and authority to enter into and carry out its obligations under this Delegation; and
 - (c) That this Delegation has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of such Party.

SECTION 9. CONSTRUCTION

- 9.1 Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Delegation. Whenever required by the context of this Delegation, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Delegation shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Delegation. In the event the date on which Commission or City is required to take any action under the terms of this Delegation is not a business day, the action shall be taken on the next succeeding business day.

SECTION 10. COUNTERPARTS; SEPARATE SIGNATURES

- 10.1 To facilitate execution, this Delegation may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Delegation to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the Parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. Provided, however, that the Delegation shall be of no force or effect until signed by all Parties hereto;
- 10.2 This Delegation together with any document contemplated to be executed in connection herewith may be transmitted between the Parties electronically or digitally. The Parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on the Parties. The original documents shall be promptly executed and/or delivered.

IN WITNESS WHEREOF, the Parties hereto have executed this Delegation as of the date and year as indicated below.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ON FOLLOWING PAGE]**

City:

CITY OF FRANKLIN, BOARD OF WORKS AND
SAFETY, FRANKLIN INDIANA

Steve Barnett, Mayor

Dated: _____

Kenneth Austin, Member

Dated: _____

Tina Gross, Member

Dated: _____

Attest:

Jayne Rhoades, Clerk-Treasurer

Dated: _____

Commission:

FRANKLIN REDEVELOPMENT COMMISSION

By: _____

Richard Wertz, President

Dated: _____