

## Board of Park Commissioners Approval Form

### Salomon Farm Park Conservation Easement

**Project: NA**

**PO Number: NA**

#### Project Description

In 2010, Fort Wayne Parks and Recreation Partnered with the Indiana Department of Transportation (INDOT) on a creek mitigation project at Salomon Farm Park. The project was mutually beneficial and was completed with no City funds.

The site has been monitored for performance since its completion and we are now at the point where we have committed to create a Conservation Easement for the project area. This easement protects this area from development in perpetuity.

#### **Board Approval:**

At this time, I would like to ask the Board of Park Commissioners for approval to record a Conservation Easement on the property described in the attached supporting board documents.

---

The Fort Wayne Parks and Recreation and the Board of Park Commissioners met to host their regularly scheduled monthly Board meeting on **June 13, 2024**, to approve the above-referenced project.

***We, the Board of Park Commissioners, on the date stated, do ATTEST,*** sign the above-referenced and attached documents, and approve as presented.

---

Justin Shurley, President

---

Cory Miller, Vice President

---

Richard Briley, Commissioner

---

Jenna Jauch, Commissioner

---

Steve McDaniel, Director/ Board Secretary

**EXECUTIVE DOCUMENT SUMMARY**

State Form 41221 (R10/4-06)

**Received**

Instructions for completing the EDS and the Contract process.

**JUN 16 2010**

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

**IDA Contracts**

|  |  |   |  |
|--|--|---|--|
| 1. EDS Number:<br><b>A249-10-321438</b>  |  | 2. Date prepared:<br><b>6/2/2010</b>                        |  |
| <b>3. CONTRACTS &amp; LEASES</b>   |  |   |  |
| <input type="checkbox"/> Professional/Personal Services  |  | <input type="checkbox"/> Contract for procured Services     |  |
| <input type="checkbox"/> Grant   |  | <input type="checkbox"/> Maintenance                        |  |
| <input type="checkbox"/> Lease   |  | <input type="checkbox"/> License Agreement                  |  |
| <input type="checkbox"/> Attorney  |  | <input type="checkbox"/> Amendment#                         |  |
| <input type="checkbox"/> MOU   |  | <input type="checkbox"/> Renewal #                          |  |
| <input type="checkbox"/> QPA   |  | <input checked="" type="checkbox"/> Other <b>MITIGATION</b> |  |
| <b>FISCAL INFORMATION</b>  |  |   |  |
| 4. Account Number:<br><b>63200-</b>  |  | 5. Account Name:<br><b>INDOT DOT Fund</b>                   |  |
| 6. Total amount this action:<br><b>\$180,923.36</b>  |  | 7. New contract total:<br><b>\$160,923.36</b>               |  |
| 8. Revenue generated this action:<br><b>\$0.00</b>   |  | 9. Revenue generated total contract:<br><b>\$0.00</b>       |  |
| 10. New total amount for each fiscal year:   |  |   |  |
| Year <b>2011</b>   |  | <b>\$180,923.36</b>   |  |
| Year   |  | \$  |  |
| Year   |  | \$  |  |
| Year   |  | \$  |  |
| <b>TIME PERIOD COVERED IN THIS EDS</b>   |  |   |  |
| 11. From (month, day, year):<br><b>6/11/2010</b>   |  | 12. To (month, day, year):<br><b>6/11/2014</b>              |  |
| 13. Method of source selection:<br><input type="checkbox"/> Bid/Quotation <input type="checkbox"/> Emergency <input checked="" type="checkbox"/> Negotiated  |  | <input type="checkbox"/> Special Procurement                |  |
| <input type="checkbox"/> RFP# <input type="checkbox"/> Other (specify)   |  |   |  |
| 35. Will the attached document involve data processing or telecommunications systems(s)?<br><b>Yes: IOT or Delegate has signed off on contract</b>   |  |   |  |
| 36. Statutory Authority (Cite applicable Indiana or Federal Codes):<br><b>33 U.S.C.</b>  |  |   |  |
| 37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)<br><b>Off-site mitigation of the property known as the Salomon Farm Park.</b> |  |   |  |
| 38. Justification of vendor selection and determination of price reasonableness:<br><b>Cost has been negotiated as reasonable and fair.</b>  |  |   |  |
| 39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)  |  |   |  |
| 40. Agency fiscal officer or representative approval<br>   |  | 41. Date Approved<br><b>6-7-10</b>                          |  |
| 44. Attorney General's Office approval<br><b>EAB</b>   |  | 45. Date Approved<br><b>6-28-10</b>                         |  |
| 42. Budget agency approval   |  | 43. Date Approved   |  |
| 46. Agency representative receiving from AG  |  | 47. Date Approved   |  |



48965-000

**RECEIVED****JUN 28 2010****OAG-ADVISORY**

**AGREEMENT**  
BETWEEN  
THE INDIANA DEPARTMENT OF TRANSPORTATION  
AND  
THE CITY OF FORT WAYNE, INDIANA

EDS No. A249-10-321438

This Agreement (hereinafter referred to as the "Agreement" or "Contract") is entered into this 6th day of June, 2010, by and between the Indiana Department of Transportation ("INDOT"), and the City of Fort Wayne, Indiana, acting by and through the Board of Park Commissioners ("CITY"), and collectively referred to herein as "Party" or "Parties".

**RECITALS**

WHEREAS, INDOT is constructing the State Road 1 Added Travel Lanes project (Des. No. 9700220, STP-045-2), which will increase capacity on a 1.8 mile stretch of SR 1 in the CITY beginning at the I-69 northbound ramps and ending at the Tradewinds Court (hereinafter referred to as the "SR1 ATL Project"), and which will result in the encapsulation and/or relocation of approximately 908 linear feet of various stream reaches in Allen County within the contributing St. Joseph River watershed (hereinafter referred to as "SR1 streams"), and which will result in the placement of fill material within 0.13 acres of wetlands (hereinafter referred to as "SR1 wetlands"); and

WHEREAS, the U.S. Army Corps of Engineers ("USACE") and the Indiana Department of Environmental Management ("IDEM") has required that INDOT mitigate the impacts of the SR1 ATL Project pursuant to Clean Water Act Section 404 (33 U.S.C. §1341) and Clean Water Act Section 401 (33 U.S.C. §1344); and

WHEREAS, USACE and IDEM have 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 Parks Department property within the Salomon Farm Park; and

WHEREAS, INDOT requires 244 linear feet of stream mitigation and 0.16 acre of wetland mitigation for the SR 1 ATL Project; and

WHEREAS, INDOT, with the assistance of the CITY, has developed a proposed mitigation plan for the SR1 ATL Project that includes the restoration of approximately 630 linear feet of stream channel and construction of approximately 0.16 acres in emergent wetland (hereinafter referred to as the "Mitigation and Monitoring Plan," relevant portions of which are attached to this Agreement as Attachment A); and



WHEREAS, the CITY owns and manages the property known as the Salomon Farm Park, located approximately 3000 feet west of SR 3 (Lima Road) and about 1500' north of Till Road in the CITY (hereinafter referred to as the "Park Property" and described in the attached Attachment A; and

WHEREAS, the Park Property encompasses an area of concern where wetlands were formerly drained via tiles for agricultural purposes (hereinafter referred to as the "Mitigation Site"); and

WHEREAS, the mitigation efforts described herein are compatible with the CITY's management plans within the Park Property and the St. Joseph River watershed;

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:

**1.1 INDOT's Responsibilities.**

- a. INDOT shall be responsible for providing all necessary funding required for all construction aspects of the Mitigation Site as included in the design plans (i.e., grading, tree/shrub removal and disposition, erosion control materials and installation, toe protection materials and installation, herbicide weed control, burning, seed and seedling plant materials and installation, etc.). As of December 5, 2009 construction costs for the site are estimated at ONE HUNDRED SIXTY THOUSAND NINE HUNDRED TWENTY-THREE DOLLARS AND THIRTY-SIX CENTS (\$160,923.36).

The CITY shall bear no cost for the construction of the Mitigation Site or the monitoring and/or maintenance of the Mitigation Site during the five (5) year period identified in subsection c. of this Section 1.1. To the extent that the CITY is required to incur any direct cost which relates directly to such construction, monitoring and/or maintenance of the Mitigation Site, INDOT shall reimburse the CITY for the same, except that the CITY shall provide ten (10) business days notice to INDOT of any problem requiring corrective action before taking action that causes the CITY to incur such costs.

- b. INDOT and/or its contractors shall be responsible for all elements of construction included within the Mitigation and Monitoring Plan.
- c. INDOT and/or its contractors shall be responsible for maintaining the Mitigation Site such that it meets the performance standards in the Mitigation and Monitoring Plan for a period of five (5) years beginning at completion of the project as scheduled.
- d. INDOT and/or its contractors shall be responsible for annual monitoring and report preparation to be submitted to USACE and IDEM by December 31 of each

year beginning at completion of the project as scheduled for the duration of the monitoring period required under the Mitigation and Monitoring Plan.

- e. In the event any portion of the Park Property is damaged or disturbed in any manner in connection with the construction and the monitoring and/or maintenance of the Mitigation Site by INDOT, INDOT shall promptly restore such damaged or disturbed portion of the Park Property to the condition which existed prior to such damage or disturbance to the reasonable satisfaction of the CITY.

## **1.2 The CITY's Responsibilities.**

- a. The CITY agrees to allow INDOT to utilize at the Mitigation Site on the Park Property for the purposes of stream and wetland mitigation as described in the Mitigation and Monitoring Plan, attached hereto as Attachment A.
- b. The CITY agrees that the project will be constructed in accordance with the final design as prepared by INDOT and accepted by the USACE and IDEM.
- c. The CITY grants permission to INDOT and/or its contractors to access the Park Property for the purposes of constructing all elements of the Mitigation and Monitoring Plan. If necessary, the CITY agrees to provide a construction access to the Park Property capable of supporting excavation and construction equipment.
- d. The CITY grants permission to INDOT and/or its contractors to access and enter the Property after construction is complete for the purpose of conducting mandatory monitoring activities at the site as required by USACE and IDEM under INDOT's Section 404 and 401 permits until USACE and IDEM release the permits. This monitoring period will last for at least 5 years after construction of the mitigation site is complete. The route of access to the mitigation site for the purposes of monitoring shall be the same as that established for construction.
- e. The CITY grants permission to INDOT and/or its contractors to conduct any necessary maintenance activities (i.e., mowing, herbicide treatment, etc.) at 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 USACE and IDEM.
- f. The CITY understands and agrees that, following the 5 year monitoring period, the CITY shall be solely responsible for the long term management and protection of the Mitigation Site.
- g. The CITY agrees that the constructed stream and associated emergent wetland will remain as such in perpetuity. To this end, THE CITY agrees to place a permanent deed restriction or permanent conservation easement, as required by



USACE and IDEM, on the portion of the Park Property used for the Mitigation Project and surrounding areas. In accordance with the Mitigation and Monitoring Plan, 2.25 acres of the Park Property will be placed in the permanent conservation easement.

- 1.3. **Duration and Renewal of Agreement.** This Agreement shall expire four (4) years after the date of the last signature or when both IDEM and USACE have accepted the mitigation site as successful following the monitoring period, whichever occurs last. This Agreement may be renewed under the same terms and conditions subject to the approval of the signing parties.
- 1.4. **Termination.** Either Party may terminate this Agreement upon thirty (30) days written notice to the others, provided the agency requesting the termination can show cause that there has been a failure on the part of the other to substantially fulfill its responsibilities pursuant to this Agreement or that the Agreement is otherwise not working to the satisfaction of either agency, and after providing notice and sufficient opportunity for remedy. The terminating party shall be responsible for any and all costs associated with or resulting from termination of the Agreement.
- 1.5. **Amendment.** No alteration, modification, or amendment to this Agreement is permitted, except by written agreement signed by the parties.
- 1.6. **Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of this Agreement, the Agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- 1.7. **Dispute Resolution.** Any dispute arising hereunder shall be submitted to the Department of Administration for final resolution.
- 1.8. **Captions.** 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.
- 1.9. **Integration.** This Agreement and any documents or exhibits incorporated into this Agreement represent the entire understanding between the Parties. By signing this Agreement, the Parties recognize that no other oral or written contracts or agreements concerning the Project exist, and that if any such oral or written contracts or agreements exist, they are hereby superseded. Each Party hereby represents that it will not rely upon any agreement, contract or understanding not reduced to writing and incorporated into this Agreement prior to the execution hereof or not reduced to writing and incorporated into written amendments of this Agreement.

[Remainder of Page Intentionally Left Blank]

## **GENERAL PROVISIONS**

### **2.1 Access to Records**

The CITY and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

### **2.2 Assignment; Successors**

The CITY binds its successors and assignees to all the terms and conditions of this Contract. The CITY shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The CITY may assign its right to receive payments to such third parties as the CITY may desire without the prior written consent of the State, provided that the CITY gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

### **2.3 Authority to Bind Parks Department**

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

### **2.4 Compliance with Laws**

The CITY 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 thereunder after execution of this Contract shall be reviewed by the State and the CITY to determine whether the provisions of this Contract require formal modification.

- 2.4.1 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.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. 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 Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the CITY or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to THE CITY. In addition, the CITY may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.



- 2.4.2 The CITY certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The CITY agrees that any payments currently due to the State of Indiana may be withheld from payments due to the CITY. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the CITY is current in its payments and has submitted proof of such payment to the State.
- 2.4.3 The CITY warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the CITY agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
- 2.4.4 If a valid dispute exists as to the CITY's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the CITY, the CITY may request that it be allowed to continue, or receive work, without delay. The CITY must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC 5-17-5.
- 2.4.5 The CITY warrants that the CITY and its subcontractors, if any, 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 for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- 2.4.6 The CITY affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- 2.4.7 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 Contract, 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
- (A) except for de minimis and nonsystematic violations, 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.

## **2.5 Drug-Free Workplace Certification**

The CITY hereby covenants 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 Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the CITY hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the CITY and made a part of the contract or agreement as part of the contract documents.

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 local 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.

## **2.6 Force Majeure**

In the event that 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.

## **2.7 Funding Cancellation**

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

## **2.8 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.

## **2.9 Indemnification**

The CITY agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the CITY and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the CITY.



## **2.11 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, except by written agreement signed by all necessary parties.

## **2.12 Nondiscrimination**

This covenant is enacted 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. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of THE CITY or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal 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 Contract 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 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"). Furthermore, Parks Department certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The CITY understands that the State is a recipient of federal funds, and therefore, where applicable, Parks Department and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

## **2.13 Notice to Parties**

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

### **A. Notices to INDOT shall be sent to:**

Nathan Saxe  
Administrator, Ecology and Waterway Permitting Section  
Office of Environmental Services  
Indiana Department of Transportation  
100 N. Senate Ave., N642  
Indianapolis, IN 46204-2216

**B. Notices to the CITY shall be sent to:**

Alec Johnson  
City Landscape Architect, ASLA  
Fort Wayne Parks and Recreation  
Lawton Park  
1900 North Clinton Street  
Fort Wayne, IN 46805  
260.427.6425  
alec.johnson@ci.ft-wayne.in.us

Tony Acosta  
Supervisor for Outdoor Recreation  
Fort Wayne Parks and Recreation  
Lawton Park  
1900 North Clinton Street  
Fort Wayne, IN 46805  
260-427-6008  
tony.acosta@ci.ft-wayne.in.us

**2.14 Payments**

All payments (if any) shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, 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 Contract except as permitted by IC 4-13-2-20.

**2.15 Penalties/Interest/Attorney's Fees**

The State 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 permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

**2.16 Severability**

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

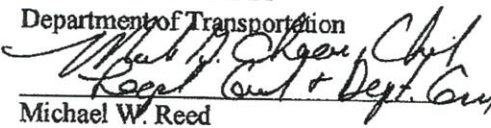
**2.17 Substantial Performance**

Non-Collusion and Acceptance

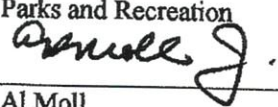
The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the properly authorized representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the contracting party, directly or indirectly, to the best of the undersigned's 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, the PARTIES have, through their duly authorized representatives, entered into this Contract. The PARTIES, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

STATE OF INDIANA  
Department of Transportation

  
Michael W. Reed  
Commissioner

CITY OF FORT WAYNE, INDIANA  
Parks and Recreation


  
Al Moll  
Director

Date: 6/9/10

Date: 5/20/10

**APPROVALS**

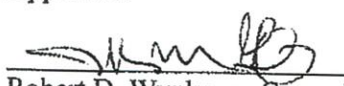
STATE OF INDIANA  
State Budget Agency

  
Christopher A. Ruhl, Director

Date: 6/24/10

STATE OF INDIANA  
Department of Administration


Approved:

  
Robert D. Wynkoop, Commissioner  
Department of Administration

(For)

Date: 6-16-10

Approved as to Form and Legality:

  
Gregory F. Zoeller  
Attorney General of Indiana

Date Approved: 6-28-10



This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

[Remainder of Page Intentionally Left Blank]

**DECLARATION OF RESTRICTIONS AND  
COVENANTS UPON REAL ESTATE**

**THIS DECLARATION OF RESTRICTIONS AND COVENANTS UPON REAL ESTATE** (the "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Fort Wayne Parks and Recreation ("Owner"), under the following circumstances:

**WITNESSETH:**

**WHEREAS**, Owner is the title holder of certain real property in Allen County, Indiana, the legal description of which is attached hereto as Exhibit "A" (the "Mitigation Site"), which property is located in the Sections 2 and 3, Township 31 North, Range 12 East, as generally shown on Exhibit "B", attached hereto;

**WHEREAS**, The Indiana Department of Transportation ("INDOT") was authorized by the United States Army Corps of Engineers ("USACE") and/or the Indiana Department of Environmental Management ("IDEM") to place fill in State and/or Federally jurisdictional waters in order to construct Project: STP-045-2, SR 1 Added Travel Lanes, for approximately 1.84 miles from I-69 ramps to Tradewinds Ct, Allen County, Indiana;

**WHEREAS**, the USACE and IDEM authorizations were granted provided INDOT comply with certain listed conditions;

**WHEREAS**, the following conditional authorizations from IDEM ("Water Quality Certification") and from the USACE ("Department of the Army Permit") were granted to INDOT via letter pursuant to Section 401 of the Clean Water Act (33 USC 1341) and Section 404 of the CWA (33 USC 1344);

| <b>Permit Type</b> | <b>ID Number</b>   | <b>Date of Letter</b> |
|--------------------|--------------------|-----------------------|
| 401 WQC            | 2009-211-02-JPS-A  | June 8, 2009          |
| IDEM IWGP          | Not applicable     |                       |
| 404 Permit         | LRE-2008-00254-102 | June 12, 2009         |

**WHEREAS**, one of the conditions of the Water Quality Certification was implementation of the mitigation plan submitted as part of the application to IDEM for authorization (the "Salomon Farm Park Off-site Wetlands and Stream Mitigation and Monitoring Plan" dated March 2009);

**NOW, THEREFORE**, in consideration of the foregoing and for the purpose of protecting the ecological value and integrity of the Mitigation Site, Owner hereby declares and impresses upon the Mitigation Site the following restrictions and covenants:

1. The restrictions and covenants stated herein shall run with the land and the conveyance of any interest therein, and shall bind and inure to the benefit and burden of the Owner, its successors and assigns.

2. The restrictions and covenants herein shall be enforceable by the State of Indiana, the Owner, and its successors and assigns.

3. The following restrictions shall apply after IDEM has approved the construction and post-construction monitoring of the Mitigation Site:

- A. Soil, rock, stone, gravel, earth or other material may not be excavated from the Mitigation Site.
- B. The final grade of the Mitigation Site as set forth in the Mitigation Plan may not be changed.
- C. No ditching or draining of or in the Mitigation Site may occur.
- D. Stormwater may not be routed into the Mitigation Site.
- E. The Mitigation Site may not be filled with soil or other material, nor may soil be removed from the Mitigation Site.
- F. No addition, removal or mowing of vegetation in the Mitigation Site may occur, except for the removal of exotic and invasive wetland plant species.
- G. No waste materials may be disposed of in the Mitigation Site.
- H. No utilities, pavement, curbs or paved walkways may be placed in the Mitigation Site.
- I. No pesticide or herbicide application may occur in the Mitigation Site unless prior authorization is received from IDEM.
- J. No pumping of water or other alteration of hydrology may occur in the Mitigation Site.

4. No permit or easement on or across any portion of the Mitigation Site may be granted to any person, entity, corporation, utility or agency.

5. Owner, its successors and assigns, shall not conduct any activities in the Mitigation Site that have the potential for harming the ecological integrity of the Mitigation Site. All improvements not depicted in the above mentioned "Mitigation and Monitoring Plan" will be the responsibility of the Owner.

6. Owner, its successors and assigns, may conduct such activities in the Mitigation Site as are approved by IDEM and are necessary to restore the ecological integrity of the Mitigation Site in the event of an ecological problem in the wetland.

7. Owner, its successors and assigns, shall faithfully observe each of the restrictions and



covenants stated herein.

8. IDEM, INDOT, or an authorized representative thereof, or any other Agency, State or Federal to which the INDOT transfers the responsibility for inspection or maintenance shall have the right to enter the Mitigation Site at any time to conduct routine inspection and maintenance and to determine and monitor compliance with the Mitigation Plan and these restrictions and covenants.

9. If the Owner or its successors and assigns, at any time violates, threatens or attempts to violate, or fails to faithfully observe or perform each of the foregoing restrictions and covenants, it shall be lawful for the State of Indiana, in addition to other remedies available under law or equity, to institute and prosecute appropriate proceedings, judicial or other, at law or in equity for the violation done, threatened or attempted. IDEM may also seek to recover attorney fees and costs from Owner in the event of such action.

The most recent deed of record for the Real Estate is Instrument No. \_\_\_\_\_, recorded on \_\_\_\_\_ in the Office of the Recorder of Allen County, Indiana.

**IN WITNESS WHEREOF**, Owner has executed this Declaration of Restrictions and Covenants upon Real Estate as of day and year first written above.

\_\_\_\_\_  
"Owner"

STATE OF INDIANA )

COUNTY OF \_\_\_\_\_ )

) ss:

Before me, the undersigned, a Notary Public in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ personally appeared \_\_\_\_\_, (*name of person appearing*) and acknowledged the execution of the foregoing to be a voluntary act and deed, for the uses and purposes therein set forth.

**WITNESS** my hand and notaries seal.

\_\_\_\_\_  
Notary Public  
Printed Name

My Commission Expires:  
\_\_\_\_\_ (*date*)

County of Residence: \_\_\_\_\_

This instrument was prepared by: \_\_\_\_\_

Draft

# Exhibit A

## Perpetual Conservation Easement

A part of the South Half of Northwest Quarter of Section 2, Township 31 North, Range 12 East, in Allen County, Indiana, more particularly described as follows: Commencing at the Southwest corner of said quarter section; thence North 88 degrees 42 minutes 15 seconds East (Assumed Bearing) 1151.17 feet along the South line of said quarter section; thence North 4 degrees 19 minutes 58 seconds East 474.48 feet to the Point of Beginning of this description; thence continuing North 4 degrees 19 minutes 58 seconds East 123.82 feet; thence North 65 degrees 07 minutes 14 seconds West 214.48 feet; thence North 30 degrees 23 minutes 48 seconds West 175.97 feet; thence North 0 degrees 07 minutes 16 seconds East 240.87 feet; thence South 88 degrees 40 minutes 18 seconds West 181.63 feet; thence South 2 degrees 33 minutes 27 seconds East 111.64 feet; thence South 23 degrees 14 minutes 11 seconds East 399.14 feet; thence South 67 degrees 04 minutes 45 seconds East 317.79 feet to the point of beginning and containing 2.25 acres, more or less.

This description is not intended to be a retracement or original boundary survey, a route survey, or a Surveyor Location Report.



*Fred L. Bengt*

Revised: 9/22/2010



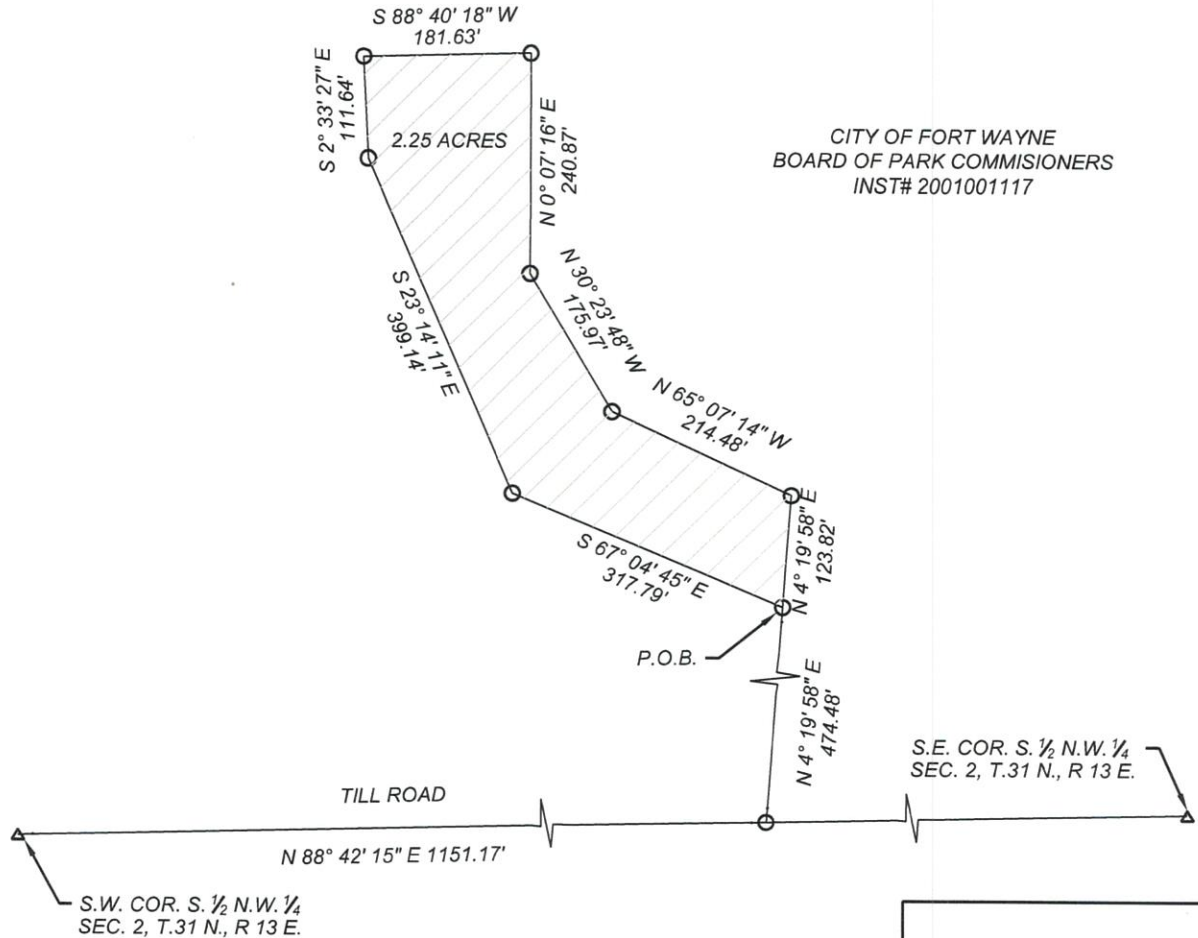
# EXHIBIT "B"

## EASEMENT PLAT

PREPARED BY R.W. ARMSTRONG & ASSOCIATES, INC.

0 100 200  
SCALE: 1" = 200'

N



CITY OF FORT WAYNE  
BOARD OF PARK COMMISSIONERS  
INST# 2001001117

FRED L. BENGE DATE  
REG. LAND SURVEYOR No. LS0408

OWNER: CITY OF FORT WAYNE  
BOARD OF PARK COMMISSIONERS  
PARCEL: PERPETUAL CONSERVATION EASEMENT  
ROAD:  
COUNTY: ALLEN  
SECTION: 2 PROJECT:  
TOWNSHIP: 31 DES. No.:  
RANGE: 12 EAST CODE:



HATCHED  
AREA IS THE  
APPROXIMATE  
EASEMENT

DRAWN BY: M. PARKER DATE: 4-20-09  
CHECKED BY: F. BENGE DATE: 4-20-09

