STATE OF INDIANA) IN THE MARION ENVIRONMENTAL COURT
) SS:
COUNTY OF MARION) CAUSE NO. 49F12______________

CITY OF KOKOMO,

Plaintiff,

v.

DAVID KANE, in his official capacity as Executive Director of the Indiana Department of Homeland Security f/k/a Indiana State Emergency Management Agency, and THE INDIANA DEPARTMENT OF HOMELAND SECURITY,

Defendants.

49G12 1501 MI 002330

FILED
(220) JAN 26 2015
Myla A. Eldridge
CLERK OF THE MARION CIRCUIT COURT

COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE RELIEF

This lawsuit seeks to protect contractual rights to responsibly develop floodplain land. Plaintiff the City of Kokomo (the "City") has plans to complete construction of an open-air, public facility for baseball and other outdoor recreational activities on city-owned land in a floodplain along the downtown waterfront.

The City bought most of the land on which the facility will be built with its own funds. However, eight parcels of land, amounting to less than one-tenth (0.1) of the project site, were purchased in the early 2000s using grant money from the Indiana State Emergency Management Agency, which is now known as the Indiana Department of Homeland Security ("IDHS"). The City agreed, as a condition of receiving grants from IDHS, to restrict the use of the eight parcels to purposes compatible with open space or recreational uses. IDHS, in turn, agreed to allow the City to erect new structures on the parcels if they were (i) open on all sides and functionally related to the open space use, or (ii) public restrooms, among other allowable potential new structures.

The City designed the parts of the project that sit on those eight parcels to comply with these agreed terms. Each of the parcels will be used for open space or recreation. Half of the parcels will not include any structures. On the parcels that will contain structures to support recreational uses, the City designed them to comply with the contract terms by (i) raising the structures on pillars to ensure they are open on all sides of the parcels and functionally related to the open space use, or (ii) building public restrooms on the affected parcels, or (iii) both. The City has honored its agreement with IDHS.

IDHS now refuses to honor the City's contractual right to build the facility in accordance with the terms agreed to by the parties. IDHS has told the City not to construct on the parcels in question because the City's design allegedly violates the terms of the grant agreements. IDHS misinterprets and misapplies the terms of the parties' agreement to reach a conclusion that is both erroneous and contrary to law. IDHS threatens to irreparably harm the City and affiliated entities, which have entered into obligations for the construction of the facility and committed significant funds to the project's completion, on which surrounding development is contingent. The City will be left with no legal recourse if IDHS has, in fact, misinterpreted the agreements.

The City seeks emergency relief from this Court. The City's right to construct the facility as designed, consistent with the grant agreements, should be declared as a matter of law. IDHS should be enjoined from preventing the immediate construction of the project in Kokomo.

PARTIES

1. The City is a municipal corporation located in Howard County, Indiana.

2. Defendant David Kane is Executive Director of IDHS. Mr. Kane oversees IDHS programs and activities, including, the funding of grants for purposes of helping municipalities mitigate hazards caused by flooding and enforcement of contracts relating to such grants.

3. Defendant IDHS is a department of the State of Indiana.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action because it arises under the Indiana Declaratory Judgment Act, Ind. Code § 34-14-1-1, *et seq.*

5. Venue is proper pursuant to Indiana Trial Rule 75 because the principal office of the entity defendant, IDHS, is located in Marion County.

FACTS APPLICABLE TO ALL CLAIMS

The Stadium Project

6. Wildcat Creek (the "Creek") winds through downtown Kokomo.

7. Historically, the Creek has experienced periods of significant flooding, which have damaged homes and properties in the floodplain adjacent to the Creek.

8. The Creek last experienced a significant flood event in 2013.

9. The City adopted a strategy of trying to improve flooding conditions along the Creek by (a) buying land within the Creek floodplain when it becomes available, (b) mitigating the risk of future flood hazards on the land by, among other things, demolishing and/or removing buildings, and (c) converting the land into public space that benefits the City and its citizens, including, but not limited to, open space and land used for recreation.

10. The City recently developed a plan to build an open-air, public facility to host baseball games and other sports and community recreation events along the Creek on property

consisting almost entirely of parcels of land that the City purchased with its own money in the floodplain.

11. The multi-million dollar project, named the Kokomo Municipal Stadium and Flood Mitigation Project, contemplates the construction of a 4,000 person capacity stadium.

12. The stadium is the anchor project for additional developments, including, among others:

a) A $24 million housing project, which will include 165 residential units, 10,000 sq. ft. of retail space, and 165 space parking garage; and

b) A $4 million housing project to rehabilitate a site currently occupied by an asphalt surface parking lot into 16 townhouse units.

13. These projects in the floodplain will transform downtown Kokomo – which formerly contained substandard housing and vacant or underutilized industrial properties – into a vibrant area complete with new residential, commercial, and recreational opportunities.

14. The benefits to the community include:

a) New affordable recreational and entertainment activities for the residents of Kokomo and the surrounding area;

b) Events that will bring visitors to the community and have a positive economic impact on local restaurants, hotels and other businesses;

c) New jobs associated with the construction of the stadium and surrounding projects, and new employment opportunities once they are completed; and

d) Anticipated local tax revenue.

15. The projects also accomplish the City's goal of reducing the floodplain to decrease the risks of future floods and limit the City's need for future disaster assistance.

16. Flood studies conducted by the City confirm that no adverse floodplain impacts would result from the project. The design for the project includes three detention areas for surface water at the site. Further, the City has created and will create new flood retention areas along the Creek elsewhere in the City to further reduce the impact of future flooding.

17. The City and affiliated entities have committed funds and signed contracts necessary to design and build the stadium. Local high schools are scheduled to play baseball games in the facility in the spring of 2015.

The City's Right To Build The Stadium

18. The stadium, as designed, sits on approximately seventy (70) parcels of land in the floodplain. The vast majority of the parcels for the project were purchased using only the City's funds. However, eight (8) of the parcels, scattered among the larger project area, were purchased with grant money obtained through agreements between IDHS and the City (the "Parcels").

19. The grant agreements, as consideration for IDHS granting funds to the City, include specific terms relating to how the City can use the land acquired with the funds. Those terms are memorialized in restrictive covenants recorded on the Parcels.

20. Specifically, the City and IDHS agreed to the following terms in the restrictive covenants:

> a. Compatible uses. The land shall be used only for purposes compatible with open space, recreational or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434 as it reads now or may be amended in the future.
>
> b. Structures. No new structures or improvements shall be erected on the property other than:

> i. A public facility that is open on all sides and functionally related to the open space use;
>
> ii. A public restroom; or
>
> iii. A structure that is compatible with the uses described in paragraph 1(a), above, and approved by the Director in writing prior to the commencement of construction of the structure.
>
> Any structures built on the property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

These covenants are hereinafter referred to as the Agreed Terms.

21. The Agreed Terms appear in the deeds for each of the eight parcels (attached as Exhibits 1-8) and the 2003 grant agreement (attached as Exhibit 9).[1]

22. Locations of the eight Parcels are designated on the map attached as Exhibit 10.

23. The City, in its original design of the stadium, sought to comply with the Agreed Terms by designing the parts of the stadium that sit on the eight Parcels to be used exclusively for purposes compatible with open space or recreational purposes.

24. In July 2014, IDHS contacted a representative of the City and indicated that IDHS may have concerns about the original design.

25. The City, in response on July 17, 2014, sent a letter to IDHS requesting that IDHS explain its position and requesting a meeting to discuss any concerns prior to planned construction.

26. Months later in October 2014, IDHS informed the City that there was a dispute between the parties. Upon notice from IDHS of a dispute, the City took measures to ensure no construction would occur on the eight Parcels at issue while discussions with IDHS continued.

[1] Neither the City nor IDHS has located a copy of an additional grant agreement from 2000.

27. The City, over the following months, participated in meetings and teleconferences with IDHS and the Federal Emergency Management Agency ("FEMA") to better understand the concerns about the project and to determine how the City and IDHS could resolve the dispute.

28. The City, as a result of this dialogue, redesigned the parts of the facility that sit on the Parcels to ensure strict compliance with the Agreed Terms (the "Redesign").

29. An initial redesign was submitted to IDHS on December 29, 2014. A true and accurate copy of the December 29, 2014 redesign is attached as Exhibit 11.

30. After discussions with IDHS on December 30, 2014, the City made further revisions to the design for the project and submitted the final Redesign on January 7, 2015. A true and accurate copy of the final Redesign is attached as Exhibit 12.

31. In the Redesign, identified as Exhibit 12, each of the eight Parcels will continue to be used for open space or recreation in satisfaction of the Agreed Terms. Half the Parcels will not include any structures. Where the Parcels do include partial structures, the City redesigned them to honor the Agreed Terms by (i) raising the structures on pillars to ensure they are open on all sides at ground level and functionally related to the open space use, (ii) building public restrooms on the Parcels; or (iii) both.

32. The Redesign complies with the Agreed Terms as follows:[2]

Parcel No.	Proposed Redesign
1	Parcel No. 1 is outside the project area and no development is planned. No structures or improvements will be erected on Parcel No. 1.
2	Parcel No. 2 is outside the project area and no development is planned. No structures or improvements will be erected on Parcel No. 2.
3	Parcel No. 3 is positioned in the field of play of the baseball stadium. It is open space and is purposed for recreational use. No structures will be erected on Parcel No. 3.

[2] Parcel Nos. 1-8 are identified and described in the map at Exhibit 10 and the Redesign at Exhibit 12 using the same numbering conventions.

4	Parcel No. 4 is positioned in the field of play of the baseball stadium. It is open space and is purposed for recreational use. No structures will be erected on Parcel No. 4.
5-6	Adjacent Parcels No. 5 and 6 will be primarily open space for public use. A small portion of public restrooms associated with the baseball park overlap with the northern most part of the parcels. Therefore, these parcels are open space and are purposed for recreational use. To the extent any structures are constructed on Parcels No. 5 and 6, they will be raised high on pillars to ensure they are open on all sides of the parcel and functionally related to the open space use. The structures will be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.[3]
7	Parcel No. 7 includes a public restroom and a portion of a picnic area outside the stadium. It is purposed for recreational use. The structures on Parcel No. 7 will be raised high on pillars to ensure they are open on all sides of the parcel and functionally related to the open space use at the parcel. The structures will be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.
8	Parcel No. 8 includes a sidewalk, a ramp, a portion of a concession stand, public restroom, stair, and maintenance space. The structures on Parcel No. 8 are purposed for recreational use. They will be raised high on pillars to ensure they are open on all sides of the parcels at ground level and functionally related to the open space use. The structures will be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

33. IDHS has refused to honor the terms of its grant agreements with the City.

34. On January 23, 2015, IDHS indicated to counsel for the City that the City's redesign is not in compliance with the Agreed Terms and that the City is not permitted to build anything on the Parcels. That same day, IDHS representatives were quoted in the Kokomo newspapers threatening to bring legal action against the City.

35. IDHS has no right to impose the Agreed Terms to limit construction in areas outside the Parcels.

36. IDHS has no right to prevent the proposed construction on the Parcels that comply with the Agreed Terms.

[3] The same deed addresses the Agreed Terms for Parcels Nos. 5 and 6.

37. The Agreed Terms, which IDHS and the City agreed to govern the future use of the Parcels, allow the City to build on the Parcels pursuant to and consistent with the Redesign.

38. The City will suffer irreparable harm for which they have no adequate remedy at law if IDHS's ability to apply its misinterpretation is not immediately enjoined.

39. If IDHS is permitted to stop construction of the project, it will cripple or eliminate planned development in downtown Kokomo and drain the resources of the City. The City would suffer irreparable harm from delay of the proposed stadium and its surrounding projects. The City would lose significant amounts of money, as well as potential and realized economic development, jobs, and tax revenue, without any legal recourse against IDHS or anyone else.

40. The City has no recourse but to file this suit to protect its rights.

COUNT I – DECLARATORY JUDGMENT

41. The City incorporates by reference the allegations set forth in paragraphs 1 through 40 of the Complaint as if fully stated herein.

42. The parties dispute the meaning and effect of the Agreed Terms.

43. This Court can and should declare that IDHS has no right to obstruct the City's immediate, continued construction of the stadium as described in the Redesign because:

a) Each of the Parcels will be used for purposes "compatible with open space" or "recreational" purposes;

b) Half of the Parcels at issue will have no structures;

c) On each Parcel on which a structure or improvement will be erected, the structures will be "public facilit[ies] that [are] open on all sides and functionally related to the open space use" or "public restrooms"; and

d) On each Parcel on which a structure or improvement will be erected, the structures will be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

44. In the alternative, to the extent a question exists about whether one or more of the Parcels complies with the Agreed Terms and cannot be resolved by the above considerations, this Court can and should declare that IDHS has no right to prevent the City's immediate, continued construction of the project on any of the Parcels as set forth in the Redesign because:

a) The City is immune from penalty for any violation of the Agreed Terms under 42 U.S.C. § 5205(c) because (i) all IDHS grant payments made to the City were authorized by approved and executed contracts which specified costs associated with the grants, (ii) the specified costs were reasonable, and (iii) the purpose of the grant was accomplished;

b) On each Parcel on which a structure or improvement will be erected, the structures are "compatible with the uses described in paragraph 1(a)" of the Agreed Terms;

c) The Agreed Terms either contain unlawfully vague approval requirements at paragraph b(iii) that are unenforceable as a matter of law or approval of the Redesign was wrongfully withheld in breach of the Agreed Terms;[4] and

[4] The Agreed Terms are ambiguous with regard to identity of the person(s) who may approve a structure that does not meet the requirements of b(i) or b(ii). Paragraph b(iii) of each of the deeds refers to approval of the "Director." *E.g.*, Ex. 1 at p. 3. Paragraph b(iii) of the grant agreement refers to approval of "the State and the Director of FEMA." Ex. 9 at 4 of 20.

d) Even if IDHS could prove the City breached the Agreed Terms (which the City did not do), IDHS would be made whole by legal damages and therefore is not entitled to specific performance.

45. This is an actual, justiciable controversy which is clearly defined and which affects the legal rights of the parties, who have adverse legal interests.

46. The City has a substantial present interest in the relief sought, and a question has arisen affecting its rights which ought to be decided to safeguard such rights.

WHEREFORE, Plaintiff the City of Kokomo respectfully requests that the Court enter a judgment in favor of the City and against Defendant David Kane, in his official capacity as the Executive Director for the Indiana Department of Homeland Security, declaring (1) the Redesign of each of the Parcels complies with the Agreed Terms for the reasons set forth above, and (2) IDHS has no right to prevent the City's immediate, continued construction of the stadium pursuant to and consistent with the Redesign, and (3) for all other just and proper relief.

COUNT II – REQUEST FOR INJUNCTIVE RELIEF

47. The City incorporates by reference the allegations set forth in paragraphs 1 through 46 of the Complaint as if fully stated herein.

48. IDHS has indicated that the City is violating the Agreed Terms by contemplating performance of the proposed construction on the Parcels.

49. IDHS has directed the City not to build the project on the Parcels based on its belief that the City is violating the Agreed Terms as described above.

50. IDHS's position is wrong as a matter of law.

51. The City has not violated and will not violate the Agreed Terms by constructing the facility pursuant to and consistent with the Redesign submitted to IDHS.

52. The City's available remedies at law are inadequate to protect the City's interests. The City will suffer irreparable harm pending resolution of the action as described above.

53. The City is reasonably likely to prevail on the merits of its claims. The Agreed Terms allow the construction proposed in the Redesign. Of the eight (8) Parcels that are the subject of this contract dispute, two (2) of the Parcels will be untouched by any construction, two (2) will be open space in the outfield of a ball field, and four (4) have structures that are raised up on pillars to be open on all sides of the parcels or are public restrooms or both. Further, on each Parcel on which a structure or improvement will be erected the structures will be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

54. The threatened injury to the City if an injunction is denied is extreme, substantial and imminent. If an injunction is not entered, the City would lose the baseball stadium or suffer delays in building the stadium that would irreparably harm the development of downtown Kokomo and its citizens. The City stands to lose other planned and pending development in its downtown area, depriving the City of future jobs and future tax base, again, without any available recourse at law or equity. The City also could default on contracts and bonds and be forced to pay significant funds without any recourse against IDHS. The threatened injuries to the City outweigh the prospective harm, if any, to IDHS if the injunction is granted.

55. As described above, the project serves the public interest for the citizens of Kokomo. If the City is wrongfully not allowed to proceed with construction, the public interest will be disserved without recourse unless injunctive relief is granted.

56. This Court can and should enjoin IDHS from:

(i) Preventing the City from constructing the portions of the stadium that rest on the Parcels pursuant to and consistent with Redesign;

(ii) Preventing the City from constructing the portions of the stadium that rest on the parcels of land that were not subject to the grant agreements; and

(iii) Imposing penalties or sanctions of any kind against the City for its efforts to construct the stadium pursuant to and consistent with the Redesign.

WHEREFORE, Plaintiff the City of Kokomo respectfully requests that the Court enter a permanent injunction in favor of the City and against Defendant David Kane, in his official capacity as the Executive Director for the Indiana Department of Homeland Security, and against Defendant the Indiana Department of Homeland Security, jointly and severally, enjoining Defendants from: (1) preventing the City from constructing the portions of the stadium that rest on the Parcels pursuant to and consistent with Redesign; (2) preventing the City from constructing the portions of the stadium that rest on the parcels of land that were not subject to the grant agreements; (3) imposing penalties or sanctions of any kind against the City for its efforts to construct the stadium pursuant to and consistent with the Redesign; and (4) all other and further relief as the Court may deem equitable and just.

Respectfully submitted,

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Timothy A. Haley (#26392-53)
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Attorneys for Plaintiff City of Kokomo

INDS02 1356043v1

Exhibit 1

6

(5)

HOWARD COUNTY RECORDER

0234017324

2002 JUL 26 A 11:23

MARILYN J. SHIRLEY

WARRANTY DEED

THIS INDENTURE WITNESSETH, That **Isabella L. Johnson**, (Grantor), an adult, of Howard County, in the State of Indiana, **CONVEYS AND WARRANTS** to **City of Kokomo, Indiana, in Howard County, Indiana, an Indiana Municipal Corporation**, (Grantee), of Howard County, in the State of Indiana, for the sum of One and no/100 Dollar ($1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Howard County, State of Indiana:

A part of Lot Number Eleven (11) in the Southeast Quarter of Section 36, Township 24 North, Range 3 East, and being in Float Section Six described as follows:

Commencing 4 feet West of the Southeast corner of Lot Number Seven (7) in J.B. Carter's First Addition to the City of Kokomo, Center Township, Howard County, Indiana; thence South 32 feet; thence West 131 feet; thence North 32 feet; thence East 131 feet to the place of beginning, in the City of Kokomo, Center Township, Howard County, Indiana.

Property Address: 327 S Union, Kokomo, Indiana 46901.

Grantor certifies that she is the owner in fee simple of the above-described real estate, that she and Ronald E. Johnson, now deceased, were husband and wife continuously, without divorce, from the date title was acquired until the death of Ronald E. Johnson on September 2, 1998.

Subject to the 2002 taxes and assessments due and payable in 2003 and all taxes and assessments due thereafter and subject to any and all easements, agreements and restrictions of record.

Transfer subject to the restrictive terms and conditions set out in Exhibit A attached hereto and made a part hereof by reference, said restrictions being made a covenant running with the lands herein conveyed.

Grantors shall clear title and hereby convey the title free and clear of all taxes, leases, licenses, mortgages, encumbrances, or other interests of any kind or character, both legal and equitable, in and under said real estate as conveyed. It is understood between the parties hereto, and their successors in title, and made a covenant herein which shall run with the land, that all lands described above (excepting any parcels specifically designated as easements or temporary rights of way) are conveyed in fee simple and not merely for right of way purposes, and that no reversionary rights whatsoever are intended to remain in the Grantor.

IN WITNESS WHEREOF, Grantor has executed this deed this 24th day of July, 2002.

(Notary on Next Page)

STATE OF INDIANA)
) SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me, a Notary Public in and for said County and State, this 24th day of July, 2002, personally appeared Isabella L. Johnson, an adult, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and official seal.

My Commission expires:

February 1, 2007

NOTARY PUBLIC, Judy L. Silvers
Resident of Cass County, IN

This instrument prepared by J. Conrad Maugans, Attorney at Law. sf
Tax Parcel No. 34-03-36-427-030.000-002
Send tax bills to 100 S. Union Kok IN 46901

Exhibit A

In reference to the Deed, dated July 24, 2002, between Isabella L. Johnson (property owners) participating in the FEMA acquisition project ("Grantor") and City of Kokomo, Indiana ("Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State of Indiana has made such application and has entered into a FEMA-State Agreement dated May 8, 1998, and herein incorporated by reference;

WHEREAS, the City of Kokomo, Indiana, acting by and through Board of Public Works and Safety, has entered into a cooperative grant agreement with the State of Indiana, dated January 6, 2000 ("Grant Agreement");

Whereas, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the real estate transferred by virtue of the above referenced deed is made subject to the following restrictive terms and conditions:

1. <u>Terms.</u> Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

   a. <u>Compatible uses</u>. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

   b. <u>Structures</u>. No new structures or improvements shall be erected on the property other than:

      i. A public facility that is open on all sides and functionally related to the open space use;

      ii. A public rest room; or

      iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

   Any structures built on the property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

REVIEWED
JUL 26 2002
By: Martha J. Lake
AUDITOR HOWARD CO. IN

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including [State], shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, [State], and FEMA, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

DATED this 24th day of July, 2002

Isabelle L. Johnson
Grantor:

Grantor:

STATE OF INDIANA)
)SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Judy L. Silvers, who acknowledged the execution of the foregoing Exhibit A, and who, having been duly sworn, state the same to be their free and voluntary act.

WITNESS my hand and Notarial Seal this 24TH day of July, 2002.

Judy L Silvers
NOTARY PUBLIC

My Commission Expires: 2/1/2007
A Resident of Cass County, Indiana.

Friday, Jan 23, 2015 03:41 PM

Exhibit 2

2

0234017406

HOWARD COUNTY RECORDER
2002 JUL 29 A 10 30
MARILYN J. SHIRLEY

WARRANTY DEED

THIS INDENTURE WITNESSETH, That ~~Isabel~~ Isabella Johnson, (Grantor), an adult, of Howard County, in the State of Indiana, CONVEYS AND WARRANTS to City of Kokomo, Indiana, in Howard County, Indiana, an Indiana Municipal Corporation, (Grantee), of Howard County, in the State of Indiana, for the sum of One and no/100 Dollar ($1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Howard County, State of Indiana:

> Fifty-five (55) feet off the entire South side of Lot Two (2) in Carter and Stewart's Addition to the City of Kokomo, Center Township, Howard County, Indiana, as shown in Recorder's Plat Book 2, page 25. EXCEPTING THEREFROM: Forty-four (44) feet off the entire East side thereof.
>
> Property Address: 328 S Union, Kokomo, Indiana 46901.
>
> Grantor certifies that she is the owner in fee simple of the above-described real estate, that she and Ronald Johnson, now deceased, were husband and wife continuously, without divorce, from the date title was acquired until the death of Ronald Johnson on September 2, 1998.
>
> Subject to the portion of 2001 taxes and assessments due and payable in NOV 2002, and all taxes and assessments due thereafter and subject to any and all easements, agreements and restrictions of record.

Transfer subject to the restrictive terms and conditions set out in Exhibit A attached hereto and made a part hereof by reference, said restrictions being made a covenant running with the lands herein conveyed.

Grantors shall clear title and hereby convey the title free and clear of all taxes, leases, licenses, mortgages, encumbrances, or other interests of any kind or character, both legal and equitable, in and under said real estate as conveyed. It is understood between the parties hereto, and their successors in title, and made a covenant herein which shall run with the land, that all lands described above (excepting any parcels specifically designated as easements or temporary rights of way) are conveyed in fee simple and not merely for right of way purposes, and that no reversionary rights whatsoever are intended to remain in the Grantor.

IN WITNESS WHEREOF, Grantor has executed this deed this 24th day of July, 2002.

Signature Isabella L Johnson
ILS ~~ISABEL~~ JOHNSON
ISABELLA L.

34-03-36-428-002.000-002
2-55-2B
KS

DULY ENTERED FOR TAXATION
JUL 29 2002
Martha J Lake
AUDITOR HOWARD CO. IN

(Notary on Next Page)

STATE OF INDIANA)
) SS: **ACKNOWLEDGMENT**
COUNTY OF HOWARD)

Before me, a Notary Public in and for said County and State, this 24th day of July, 2002, personally appeared Isabel Johnson, an adult, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and official seal.

My Commission expires:
February 1, 2007

NOTARY PUBLIC, Judy L. Silvers
Resident of Cass County, IN

This instrument prepared by J. Conrad Maugans, Attorney at Law. sf
Tax Parcel No. 34-03-36-428-002.000-002
Send tax bills to 100 S Union KOK IN 46901

(3)

HOWARD COUNTY RECORDER

0234017407 2002 JUL 29 A 10:30

MARILYN J. SHIRLEY

Exhibit A

In reference to the Deed, dated July 24, 2002, between Isabella L. Johnson (property owners) participating in the FEMA acquisition project ("Grantor") and City of Kokomo, Indiana ("Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State of Indiana has made such application and has entered into a FEMA-State Agreement dated May 8, 1998, and herein incorporated by reference;

WHEREAS, the City of Kokomo, Indiana, acting by and through Board of Public Works and Safety, has entered into a cooperative grant agreement with the State of Indiana, dated January 6, 2000 ("Grant Agreement");

Whereas, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the real estate transferred by virtue of the above referenced deed is made subject to the following restrictive terms and conditions:

1. <u>Terms</u>. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

   a. <u>Compatible uses</u>. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

   b. <u>Structures</u>. No new structures or improvements shall be erected on the property other than:

      i. A public facility that is open on all sides and functionally related to the open space use;

      ii. A public rest room; or

      iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

   Any structures built on the property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

REVIEWED
JUL 29 2002
By: [signature]
AUDITOR HOWARD CO. IN

Page 1 of 3

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including [State], shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, [State], and FEMA, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

DATED this 24th day of July, 2002

Isabella L. Johnson
Grantor:

Grantor:

STATE OF INDIANA)
) SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Judy L. Silvers, who acknowledged the execution of the foregoing Exhibit A, and who, having been duly sworn, state the same to be their free and voluntary act.

WITNESS my hand and Notarial Seal this 24th day of July, 2002.

NOTARY PUBLIC

My Commission Expires: 3/1/2007

A Resident of Cass County, Indiana.

Page 3 of 3

Exhibit 3

6

0034019376

HOWARD COUNTY RECORDER
00 NOV 21 AM 11:21
MARILYN J. SHIRLEY

5

WARRANTY DEED

THIS INDENTURE WITNESSETH, That **Leo J. Franklin and Ruth E. Franklin, husband and wife**, (Grantors), of Howard County, in the State of Indiana, **CONVEY AND WARRANT** to the **City of Kokomo, Indiana, in Howard County, Indiana, an Indiana Municipal Corporation**, (Grantee), for the sum of One and no/100 Dollars ($1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Howard County, State of Indiana, to-wit:

Twenty Four (24) feet off the entire East side of Lot Number Twenty Six (26) in Carter and Stewart's Addition to the City of Kokomo, Center Township, Howard County, Indiana, as shown in Recorder's Plat Book 2, page 25.

ALSO

Part of the Southeast Quarter of Section 36, Township 24 North, Range 3 East, City of Kokomo, Center Township, Howard County, Indiana, described as follows, to-wit:

Beginning at the Northeast corner of Lot 26 aforesaid; thence East 17 feet; thence South 132 feet; thence West 17 feet to the Southeast corner of said Lot 26; thence North 132 feet to the place of beginning.

Property Address: 311 E. Carter Street, Kokomo, Indiana 46901.

Transfer subject to the restrictive terms and conditions set out in Exhibit A attached hereto and made a part hereof by reference, said restrictions being made a covenant running with the lands herein conveyed.

Grantors shall clear title and hereby convey the title free and clear of all taxes, leases, licenses, mortgages, encumbrances, or other interests of any kind or character, both legal and equitable, in and under said real estate as conveyed. It is understood between the parties hereto, and their successors in title, and made a covenant herein which shall run with the land, that all lands described above (excepting any parcels specifically designated as easements or temporary rights of way) are conveyed in fee simple and not merely for right of way purposes, and that no reversionary rights whatsoever are intended to remain in the Grantor.

IN WITNESS WHEREOF, Grantors have executed this deed this 16th day of November, 2000.

Signature Leo J. Franklin
LEO J. FRANKLIN

Signature Ruth E. Franklin
RUTH E. FRANKLIN

2-58-26B
10-110-B
•CK-488-1706

DULY ENTERED FOR TAXATION
NOV 21 2000
Martha J Lake
Auditor, Howard County, Indiana

LKB

STATE OF INDIANA)
) SS: **ACKNOWLEDGMENT**
COUNTY OF HOWARD)

Before me, a Notary Public in and for said County and State, this 16th day of November, 2000, personally appeared Leo J. Franklin and Ruth E. Franklin, husband and wife, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and official seal.

My Commission expires:

February 1, 2007

NOTARY PUBLIC, Judy L. Silvers
Resident of Cass County, IN

This instrument prepared by J. Conrad Maugans, Attorney at Law. sf
Tax Code No. 2-58-26B & 10-110-B
Send tax bills to 100 S. Union St. Kokomo, IN 46901
Attn. Debra Cook

Exhibit A

In reference to the Deed, dated November 17, 2000, between Leo J. Franklin and Ruth E. Franklin (property owner(s)) participating in the FEMA acquisition project ("Grantor") and City of Kokomo, Indiana ("Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State of Indiana has made such application and has entered into a FEMA-State Agreement dated May 8, 1998, and herein incorporated by reference;

WHEREAS, the City of Kokomo, Indiana, acting by and through Board of Public Works and Safety, has entered into a cooperative grant agreement with the State of Indiana, dated January 6, 2000 ("Grant Agreement");

Whereas, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the real estate transferred by virtue of the above referenced deed is made subject to the following restrictive terms and conditions:

1. <u>Terms.</u> Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

    a. <u>Compatible uses</u>. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

    b. <u>Structures</u>. No new structures or improvements shall be erected on the property other than:

        i. A public facility that is open on all sides and functionally related to the open space use;

        ii. A public rest room; or

        iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

    Any structures built on the property according to this paragraph shall be floodproofed or

elevated to the Base Flood Elevation plus one foot of freeboard.

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including [State], shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, [State], and FEMA, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the

State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

DATED this 17thday of November, 2000

Leo Franklin
Grantor:

Ruth E. Franklin
Grantor:

STATE OF INDIANA)
)SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Leo Franklin and Ruth E. Franklin, who acknowledged the execution of the foregoing Exhibit A, and who, having been duly sworn, state the same to be their free and voluntary act.

WITNESS my hand and Notarial Seal this 16 day of November, 2000.

Thelma D. Kruger
NOTARY PUBLIC Trelma D. Kruger

My Commission Expires: 8/9/07
A Resident of Howard County, Indiana.

Exhibit 4

0034019750

HOWARD COUNTY RECORDER
00 NOV 29 AM 11:41
MARILYN J. SHIRLEY

WARRANTY DEED

THIS INDENTURE WITNESSETH, That Monica Faye Kasey, (Grantor), an adult, of Howard County, in the State of Indiana, CONVEYS AND WARRANTS to the City of Kokomo, Indiana, in Howard County, Indiana, an Indiana Municipal Corporation, (Grantee), for the sum of One and no/100 Dollars ($1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Howard County, State of Indiana, to-wit:

Lot Number Thirty Nine (39) in Carter and Stewart's Addition to the City of Kokomo, Indiana, as shown in Plat Book 2, page 170.

Property Address: 321 E. Carter Street, Kokomo, Indiana 46901.

Subject to the 2000 taxes and assessments due and payable in 2001, and all taxes and assessments due thereafter and subject to any and all easements, agreements and restrictions of record.

Transfer subject to the restrictive terms and conditions set out in Exhibit A attached hereto and made a part hereof by reference, said restrictions being made a covenant running with the lands herein conveyed.

Grantor shall clear title and hereby convey the title free and clear of all taxes, leases, licenses, mortgages, encumbrances, or other interests of any kind or character, both legal and equitable, in and under said real estate as conveyed. It is understood between the parties hereto, and their successors in title, and made a covenant herein which shall run with the land, that all lands described above (excepting any parcels specifically designated as easements or temporary rights of way) are conveyed in fee simple and not merely for right of way purposes, and that no reversionary rights whatsoever are intended to remain in the Grantor.

IN WITNESS WHEREOF, Grantor has executed this deed this 28th day of November, 2000.

Signature Monica Faye Kasey
MONICA FAYE KASEY

STATE OF INDIANA)
) SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me, a Notary Public in and for said County and State, this 28th day of November, 2000, personally appeared Monica Faye Kasey, an adult, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and official seal.

My Commission expires:

August 26, 2001

NOTARY PUBLIC, Deborah K. Hobbs
Resident of Howard County, IN

MOORE TITLE AND ESCROW NOTARY SEAL PUBLIC STATE OF INDIANA

This instrument prepared by J. Conrad Maugans, Attorney at Law. sf
Tax Code No. 2-60-39
Send tax bills to: Grantee, City Hall, 100 S. Union St., Kokomo, IN 46901

053-141-039
CK-148D-1708

Exhibit A

In reference to the Deed, dated 11/28/00, between Monica Faye Kasey (property owner) participating in the FEMA acquisition project ("Grantor") and City of Kokomo, Indiana ("Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State of Indiana has made such application and has entered into a FEMA-State Agreement dated May 8, 1998, and herein incorporated by reference;

WHEREAS, the City of Kokomo, Indiana, acting by and through Board of Public Works and Safety, has entered into a cooperative grant agreement with the State of Indiana, dated January 6, 2000 ("Grant Agreement");

Whereas, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the real estate transferred by virtue of the above referenced deed is made subject to the following restrictive terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

   a. Compatible uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

   b. Structures. No new structures or improvements shall be erected on the property other than:

      i. A public facility that is open on all sides and functionally related to the open space use;

      ii. A public rest room; or

      iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

   Any structures built on the property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including [State], shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, [State], and FEMA, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

DATED this 28 day of November, 2000

Monica Faye Kasey
Grantor: Monica Faye Kasey

Grantor:

STATE OF INDIANA
COUNTY OF HOWARD } SS: ACKNOWLEDGMENT

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Monica Faye Kasey, who acknowledged the execution of the foregoing Exhibit A, and who, having been duly sworn, state the same to be their free and voluntary act.

WITNESS my hand and Notarial Seal this 28 day of November, 2000.

NOTARY PUBLIC Deborah K. Hobbs

My Commission Expires: 8/26/01
A Resident of Howard County, Indiana.

MOORE TITLE AND ESCROW NOTARY SEAL PUBLIC STATE OF INDIANA

Page 3 of 3

Exhibit 5

$15.00

0534007275

LINDA J. KOONTZ
HOWARD COUNTY RECORDER
RECORDED IN INDIANA
05/20/2005 01:13:47PM

REC FEE: 023.00
PAGES: 5 TRANS# 12261
MOORE

WARRANTY DEED

THIS INDENTURE WITNESSETH, That Arnold L. Cockrell and Cora A. Cockrell, husband and wife, (Grantors), of Howard County, in the State of Indiana, CONVEY AND WARRANT to City of Kokomo, Indiana, in Howard County, Indiana, an Indiana Municipal Corporation (Grantee), for the sum of One and no/100 Dollars ($1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Howard County, State of Indiana:

A part of Lot Number Ten (10) in the Southeast Quarter of Section 36, Township 24 North, Range 3 East to the City of Kokomo, Center Township, Howard County, Indiana, described as follows, to-wit:

Commencing 308.6 feet West and 134.5 feet North of the intersection of the North line of Vaile Avenue with the center line of Meridian Street; thence North 3-1/2 degrees West 132 feet; thence East 46 feet; thence South parallel with the West line 132 feet; thence West 46 feet to the place of beginning, containing 14/100 acre, more or less.

ALSO

Nine (9) feet off the entire East side of Lot Number Sixteen (16) in Carter and Stewart's Addition to the City of Kokomo, Center Township, Howard County, Indiana, as shown in Recorder's Plat Book 2, page 25.

ALSO

A strip of ground lying on the East side of said Lot Number 16, being 16 feet wide and running the full length of said Lot.

Property Address: 315 E. Murden Street, Kokomo, Indiana 46901.

Subject to the portion of 2005 taxes and assessments due and payable in May 2006, and all taxes and assessments due thereafter and subject to any and all easements, agreements and restrictions of record.

IN WITNESS WHEREOF, Grantors have executed this deed this 18th day of May, 2005.

Signature Arnold L. Cockrell
Arnold L. Cockrell

Signature Cora A. Cockrell
Cora A. Cockrell

(Notary on Next Page) 34-03-36-430-013
430-014, 400-002

DULY ENTERED FOR TAXATION

MAY 20 2005

Ann Wells
AUDITOR HOWARD CO. IN

STATE OF INDIANA }SS: ACKNOWLEDGMENT
COUNTY OF HOWARD

Before me, a Notary Public in and for said County and State, this 18th day of May, 2005, personally appeared Arnold L. Cockrell and Cora A. Cockrell, husband and wife, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and official seal.

My commission expires: Charisse R. Goodnight

January 3, 2011 NOTARY PUBLIC, Charisse R. Goodnight
Resident of Howard County, Indiana.

This instrument prepared by J. Conrad Maugans, Attorney at Law. sf
Tax Parcel Nos. 34-03-36-430-014.000-002 and 34-03-36-430-013.000-002
Send tax bills to 100 S. Union Street, Kokomo, Indiana 46901.

City of KOKOMO

Exhibit A

In reference to the Deed between Arnold L. and Cora A. Cockrell participating in the FEMA acquisition project ("the Grantor") and the City of Kokomo, ("the Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State of Indiana has made such application and has entered into a FEMA-State Agreement dated September 9, 2003 and herein incorporated by reference;

WHEREAS, the City of Kokomo, acting by and through the Kokomo Board of Public Works and Safety, has entered into a cooperative grant agreement with the State of Indiana dated February 18, 2005 ("Grant Agreement");

WHEREAS, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the grant is made subject to the following terms and conditions:

1. <u>Terms</u>. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

   a. <u>Compatible uses</u>. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

   b. <u>Structures</u>. No new structures or improvements shall be erected on the property other than:

      i. A public facility that is open on all sides and functionally related to the open space use;

      ii. A public rest room; or

iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

Any structures built on the property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including State of Indiana shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every two (2) years on September 1, the Grantee, through the State of Indiana, shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, State of Indiana, and FEMA, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

Arnold L Cockrell — 5 18 05
Grantor's Signature — Date
ARNOLD L COCKRELL

Cora A Cockrell — 5-18-05
Grantor's Signature — Date

CORA A. COCKRELL
Name (printed or typed)

Debra Cook — 5-18-05
Grantee's Signature — Date

Debra Cook — Community Specialist
Grantee's Name — Grantee's Title

STATE OF INDIANA)
)SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared DEBRA COOK , CORRA A. COCKRELL, AND ARNOLD L. COCKRELL ,who acknowledged the execution of the foregoing Exhibit A, and who, having been duly sworn, state the same to be their free and voluntary act.

WITNESS my hand and Notarial Seal this 18 day of MAY , 2005 .

Charise R. Goodnight

NOTARY PUBLIC, CHARISE R. GOODNIGHT

My Commission Expires: 1/13/13

A Resident of HOWARD County, Indiana.

Exhibit 6

Parcels 5 and 6 share the same deed.

See Exhibit 5.

Exhibit 7

1

2

0234017649

HOWARD COUNTY RECORDER
2002 JUL 31 A 11: 14
MARILYN J. SHIRLEY

WARRANTY DEED

THIS INDENTURE WITNESSETH, That **Steven C. Amos and Nancy J. Amos, husband and wife**, (Grantors), of Howard County, in the State of Indiana, **CONVEY AND WARRANT to City of Kokomo, Indiana, in Howard County, Indiana, an Indiana Municipal Corporation**, (Grantee), of Howard County, in the State of Indiana, for the sum of One and no/100 Dollar ($1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Howard County, State of Indiana:

> Twenty Two (22) feet off of the East side of Lot Number Twenty Nine (29) and 21 feet off the West side of Lot Number Twenty Eight (28) and 12 feet of a vacated alley located between Lots Twenty Eight (28) and Twenty Nine (29) in Carter and Stewart's Addition to the City of Kokomo, Center Township, Howard County, Indiana, as recorded in Recorder's Plat Book 2, page 25.
>
> Property Address: 225 E. Carter Street, Kokomo, Indiana 46901.
>
> Subject to the 2002 taxes and assessments due and payable in 2003, and all taxes and assessments due thereafter and subject to any and all easements, agreements and restrictions of record.

Transfer subject to the restrictive terms and conditions set out in Exhibit A attached hereto and made a part hereof by reference, said restrictions being made a covenant running with the lands herein conveyed.

Grantors shall clear title and hereby convey the title free and clear of all taxes, leases, licenses, mortgages, encumbrances, or other interests of any kind or character, both legal and equitable, in and under said real estate as conveyed. It is understood between the parties hereto, and their successors in title, and made a covenant herein which shall run with the land, that all lands described above (excepting any parcels specifically designated as easements or temporary rights of way) are conveyed *in fee simple and not merely for right of way purposes*, and that no reversionary rights whatsoever are intended to remain in the Grantor.

IN WITNESS WHEREOF, Grantors have executed this deed this 30th day of July, 2002.

Signature Steven C. Amos
STEVEN C. AMOS

Signature Nancy J. Amos
NANCY J. AMOS

2-59-28A+29B
34-03-34-429-007.000-002 (Notary on Next Page)

DULY ENTERED FOR TAXATION
JUL 31 2002
Martha J. Lake
AUDITOR HOWARD CO. IN

STATE OF INDIANA)
) SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me, a Notary Public in and for said County and State, this 30th day of July, 2002, personally appeared Steven C. Amos and Nancy J. Amos, husband and wife, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and official seal.

My Commission Expires:
February 1, 2007

NOTARY PUBLIC, Judy L. Silvers
Resident of Cass County, IN

This instrument prepared by J. Conrad Maugans, Attorney at Law. sf
Tax Parcel No. 34-03-36-429-008.000-002
Send tax bills to ~~225 E. Carter Street~~, Kokomo, Indiana 46901.
180 S Union St.

(3)

HOWARD COUNTY RECORDER

0234017650 2002 JUL 31 A 11: 14

Exhibit A

MARILYN J. SHIRLEY

In reference to the Deed, dated July 30, 2002, between Steven C. Amos and Nancy J. Amos, husband and wife (property owners) participating in the FEMA acquisition project ("Grantor") and City of Kokomo, Indiana ("Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State of Indiana has made such application and has entered into a FEMA-State Agreement dated May 8, 1998, and herein incorporated by reference;

WHEREAS, the City of Kokomo, Indiana, acting by and through Board of Public Works and Safety, has entered into a cooperative grant agreement with the State of Indiana, dated January 6, 2000 ("Grant Agreement");

Whereas, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the real estate transferred by virtue of the above referenced deed is made subject to the following restrictive terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

   a. Compatible uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

   b. Structures. No new structures or improvements shall be erected on the property other than:

      i. A public facility that is open on all sides and functionally related to the open space use;

      ii. A public rest room; or

      iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

REVIEWED

Any structures built on the property according to this paragraph shall be floodproofed or

JUL 31 2002

By: [signature]
AUDITOR HOWARD CO. IN

elevated to the Base Flood Elevation plus one foot of freeboard.

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including [State], shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, [State], and FEMA, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the

State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

DATED this 30th day of July, 2002

Steven C. Amos
Grantor:

Nancy J. Amos
Grantor:

STATE OF INDIANA)
)SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared STEVEN C. AMOS AND NANCY J. AMOS, who acknowledged the execution of the foregoing Exhibit A, and who, having been duly sworn, state the same to be their free and voluntary act.

WITNESS my hand and Notarial Seal this 30 day of July, 2002.

TYLER O. MOORE
NOTARY PUBLIC

My Commission Expires: 06/21/09

A Resident of HOWARD County, Indiana.

Exhibit 8

(2)

0234017404

HOWARD COUNTY RECORDER
2002 JUL 29 A 10:30
MARILYN J. SHIRLEY

WARRANTY DEED

THIS INDENTURE WITNESSETH, That John C. Daugherty, (Grantor), an adult, of Howard County, in the State of Indiana, **CONVEYS AND WARRANTS** to **City of Kokomo, Indiana, in Howard County, Indiana, an Indiana Municipal Corporation**, (Grantee), of Howard County, in the State of Indiana, for the sum of One and no/100 Dollar ($1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Howard County, State of Indiana:

Lot Number 3 in Sheridan Cox Subdivision of Lots 21 and 22 and West half of vacated alley in Carter and Stewart's Addition to the City of Kokomo, Center Township, Howard County, Indiana, as shown in Recorder's Plat Book 2, page 214.

Property Address: 222 E Murden, Kokomo, Indiana 46901.

Subject to the portion of 2002 taxes and assessments due and payable in May, 2003, and all taxes and assessments due thereafter and subject to any and all easements, agreements and restrictions of record.

Transfer subject to the restrictive terms and conditions set out in Exhibit A attached hereto and made a part hereof by reference, said restrictions being made a covenant running with the lands herein conveyed.

Grantors shall clear title and hereby convey the title free and clear of all taxes, leases, licenses, mortgages, encumbrances, or other interests of any kind or character, both legal and equitable, in and under said real estate as conveyed. It is understood between the parties hereto, and their successors in title, and made a covenant herein which shall run with the land, that all lands described above (excepting any parcels specifically designated as easements or temporary rights of way) are conveyed in fee simple and not merely for right of way purposes, and that no reversionary rights whatsoever are intended to remain in the Grantor.

IN WITNESS WHEREOF, Grantor has executed this deed this 25th day of July, 2002.

Signature John C. Daugherty
JOHN C. DAUGHERTY

2-120-3
34-03-36-429-023.000-002

(Notary Section on Next Page)

DULY ENTERED FOR TAXATION
JUL 29 2002 PSM
Martha J Lake
AUDITOR HOWARD CO. IN

STATE OF INDIANA)
) SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me, a Notary Public in and for said County and State, this 25th day of July, 2002, personally appeared John C. Daugherty, an adult, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and official seal.

My Commission expires:
February 1, 2007

NOTARY PUBLIC, Judy L. Silvers
Resident of Cass County, IN

This instrument prepared by J. Conrad Maugans, Attorney at Law. cjm
Tax Parcel No. 34-03-36-429-023.000-002
Send tax bills to 100 S Union Kok IN 46901

HOWARD COUNTY RECORDER

0234017405 2002 JUL 29 A 10:30 (3)

MARILYN J. SHIRLEY

Exhibit A

In reference to the Deed, dated July 22, 2002, between John C. Daugherty (property owner) participating in the FEMA acquisition project ("Grantor") and City of Kokomo, Indiana ("Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State of Indiana has made such application and has entered into a FEMA-State Agreement dated May 8, 1998, and herein incorporated by reference;

WHEREAS, the City of Kokomo, Indiana, acting by and through Board of Public Works and Safety, has entered into a cooperative grant agreement with the State of Indiana, dated January 6, 2000 ("Grant Agreement");

Whereas, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the real estate transferred by virtue of the above referenced deed is made subject to the following restrictive terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

   a. Compatible uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

   b. Structures. No new structures or improvements shall be erected on the property other than:

      i. A public facility that is open on all sides and functionally related to the open space use;

      ii. A public rest room; or

      iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

   Any structures built on the property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

REVIEWED

JUL 29 2002

By: Martha Walker
AUDITOR HOWARD CO. IN

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including [State], shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, [State], and FEMA, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

DATED this 22nd day of July, 2002

John C. Daugherty
Grantor:

Grantor:

STATE OF INDIANA)
)SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared John C. Daugherty, who acknowledged the execution of the foregoing Exhibit A, and who, having been duly sworn, state the same to be their free and voluntary act.

WITNESS my hand and Notarial Seal this 25th day of July, 2002.

NOTARY PUBLIC Judy L Silvers

My Commission Expires: 2/1/2007

A Resident of Cass County, Indiana.

Page 3 of 3

Exhibit 9

CITY OF KOKOMO
STATE-LOCAL AGREEMENT
HAZARD MITIGATION GRANT PROGRAM
CFDA 97.039 (Formerly 83.548)
FEMA-1487-DR-IN
DECLARED September 5, 2003

Whereas: Pursuant to the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.* ("Stafford Act") as amended, the Federal Emergency Management Agency ("FEMA") has been authorized by Congress to make grants to states to mitigate natural disasters.

Whereas: The Indiana State Emergency Management Agency has been designated by FEMA as the Grantee to receive, administer, and disburse FEMA mitigation funds for local government mitigation projects in areas of Indiana and to provide technical assistance with the Hazard Mitigation Grant Program (HMGP). The HMGP is authorized by Section 404 of the Stafford Act (42 USC 5170c).

Whereas: The Indiana State Emergency Management Agency has entered into a FEMA-State Agreement dated September 9, 2003.

Whereas: The Indiana State Emergency Management Agency is required by the FEMA-State Agreement to monitor and evaluate the implementation of mitigation projects and control the disbursement of HMGP funds from FEMA.

Whereas: The Sub-grantee has submitted an application to the State setting forth a list of mitigation activities (herein referred to as "Project"). The State and FEMA have approved the Project along with any exceptions that have been made prior to signing of this Agreement.

Therefore: This Agreement ("Agreement"), entered into by and between the State Emergency Management Agency (hereinafter referred to as the "State") and the City of Kokomo (hereinafter referred to as the "Sub-grantee"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of Agreement

The purpose of this Agreement is to enable the State to make a sub-grant from the FEMA HMGP Grant of $430,688.00 to the Sub-grantee for the eligible costs of the approved Project to acquire properties and demolish the existing structures which have been substantially damaged by storms and flooding, as described in more detail in Exhibits A and B of this Agreement, attached hereto and incorporated fully herein. This sub-grant amount represents the total Federal share of the cost of the Project plus an administrative allowance as described below.

A. Total estimated cost of the mitigation Project is $574,250.00
   Total HMGP contribution is: $430,688.00
   Local cost-share contribution: $143,562.00

B. Total administrative allowance is $12,485.00. This figure is based on the total HMGP funds provided for the Project. Administrative funds are to be used to offset extraordinary costs of administering the mitigation Project (e.g., travel, telephone supplies, etc.). <u>At close-out the administrative expense will be adjusted to reflect the</u>

actual amount of funds expended.

C. Sub-grantee agrees to provide the necessary local cost share as required by 44 CFR Part 13.24. Documentation of the use of the local cost share is required.

2. Term

This agreement will be in effect for the period beginning on the date it has been executed by all signatories and ending on the date that the Sub-grantee no longer possesses an interest in the real property purchased with the funds provided under this Agreement.

3. Notice To Parties

Whenever any notice, statement or other communication shall be sent to the State or Sub-grantee it shall be sent to the following address, unless otherwise specifically advised in writing.

A. Notices to the State shall be sent to: Jan Crider, State Hazard Mitigation Officer, State Emergency Management Agency, 402 West Washington Street, Rm. 046, Indianapolis, Indiana 46204.

B. Notices/Payments to the Sub-grantee shall be sent to:
Debra Cook, Planner
City of Kokomo
100 S. Union Street
Kokomo, Indiana 46901

4. **Payment of Sub-grant Funds by the State**

The payment of this sub-grant by the State to the Sub-grantee shall be made in accordance with and subject to the following schedule and conditions:

A. This Agreement must have been executed by all signatories.

B. Payments of federal funds to the Sub-grantee shall only be made in compliance with the terms and conditions of the FEMA-State Agreement and the guidance, regulations, and laws applicable to these funds. No payment of federal funds shall be made to the Sub-grantee until the funds are actually needed for disbursement by the Sub-grantee. The Sub-grantee must maintain and comply with procedures for minimizing the time between the payment of federal funds from the State and disbursement by the Sub-grantee.

C. All payments are subject to the State's determination that the Sub-grantee's performance conforms to the terms and conditions of this Agreement.

5. **Implementation of Project**

A. Sub-grantee shall complete the Project that is the subject of this Agreement as well as pay for all expenditures under this Agreement by December 23, 2006.

B. The Sub-grantee shall be solely responsible for the proper implementation of the approved Project. Although not expressly attached to this Agreement, the Sub-grantee agrees to complete said Project in accordance with the provisions contained in its application. Modification of its application shall require prior written approval of the State.

C. Within fifteen (15) days of the date that the Sub-grantee pays for an expenditure acquired in whole or in part with funds provided under this Agreement, Sub-grantee shall submit to the State a copy of receipt or other proof that payment was made.

D. Until completion and acceptance of the Fiscal Year Close-out Audit required by Paragraph 9 of this Agreement, Sub-grantee shall submit to the State quarterly progress reports (QPR), due the 15th day of the month following the end of the quarter on the following schedule

January – March	Due April 15
April – June	Due July 15
July – September	Due October 15
October – December	Due January 15

Failure to provide the required reports will result in the suspension of funds until the required reports are provided and approved by the State.

E. Sub-grantee shall use the HMGP funds solely for the approved Project. Only those costs, which are allowable as defined in 44 CFR Part 13, Part 206 and OMB Circular A-87, will be paid.

F. Sub-grantee shall return to State any HMGP funds, which are not supported by audit or other federal or state review of documentation maintained by the Sub-grantee.

G. Sub-grantee agrees to maintain good standing with the National Flood Insurance Program (NFIP) and comply with local regulations pertaining to the NFIP; and agrees to bring into NFIP compliance all structures identified through Community Assistance Visits (CAV's) to the maximum extent possible. Failure to enforce NFIP requirements for all development in identified flood hazard areas will result in the Sub-grantee repaying the HMGP funds related to the Project.

H. The Project budget is set forth as Exhibit A of this Agreement, attached hereto, made a part hereof and incorporated herein by reference as part of this Agreement. The Sub-grantee shall not spend more than the amount for each line item, as described in Exhibit A, without the prior written consent of a duly authorized representative of the State, nor shall the Project costs funded by the sub-grant through this Agreement and those funded by the local share be amended without the prior written consent of the State.

I. Sub-grantee shall comply with 44 CFR Part 13.36 in all procurements of property and services under this sub-grant, including the contract provisions required by 44 CFR 13.36(i).

J. Failure to complete the Project and expend federal, state, local and/or private funds in accordance with this Agreement may be considered a material breach of the agreement and shall entitle the State to impose sanctions against the Sub-grantee including, but not limited to, suspension of all payments, and/or suspension of the Sub-grantee's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction. Sanctions may also include repayment of all Federal and State funds expended for activities which are not in the scope of this Project as set forth in Exhibit B of this Agreement.

6. Property Acquisition

If the Project involves the acquisition of real property, the conditions in this Section are applicable to this Project. These conditions are in addition to, and not in lieu of, all other provisions of this Agreement.

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State has made such application and has entered into a FEMA-State Agreement referenced above;

WHEREAS, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Sub-grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the sub-grant is made subject to the following terms and conditions:

1. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in Exhibit B of this Agreement and acquired by the Sub-grantee pursuant to the Stafford Act § 404 acquisition program:

   A. Compatible uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

   B. Structures. No new structures or improvements shall be erected on the property other than:

      i. A public facility that is open on all sides and functionally related to the open space use;
      ii. A public rest room; or
      iii. A structure that is compatible with the uses described in Paragraph 1.A., above, and approved by both the State and the Director of FEMA in writing prior to the commencement of the construction of the structure.

   Any structure built on the property according to this paragraph shall be floodproofed or elevated to the 100-year Base Flood Elevation plus at least one (1) foot of freeboard and in addition shall comply with all state of Indiana requirements applicable to the construction of the structure.

   C. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided.

   D. Transfer.

i. Any interest in the property can only be conveyed after receiving prior written approval from both the State and the Regional Director of FEMA, Region V, and any interest in the property can only be conveyed to one or more of the following:
   a. Another public entity. (As used in this subitem, "public entity" means the federal government, the State of Indiana, or a political subdivision of the State of Indiana.)
   b. An organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended and applicable regulations promulgated thereunder that will use the property for a conservation purpose, as that term is defined under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder.

ii. If title to the property is transferred it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this Section of the Agreement (Section 6. Property Acquisition), including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:
   a. The Sub-grantee shall convey, in accordance with item i, above, a conservation easement to someone other than the title holder, or
   b. At the time of title transfer, the Sub-grantee shall retain such conservation easement, and record it with the deed.

2. The conditions and restrictions required by Paragraph 1, above, must be attached to the deed and recorded with the deed. Within thirty (30) days after closing on the property, the Sub-grantee and any subsequent owner in interest shall provide the State with a copy of the deed, as recorded, containing the conditions and restrictions required by Paragraph 1, above.

3. Inspection. FEMA, its representatives, and assigns, and the State, its representatives, and assigns shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the Agreement.

4. Monitoring and Reporting. Every two (2) years on, or before, September 30, the Sub-grantee, shall submit to the State a report certifying that the Sub-grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the Agreement. The State shall submit this report to the FEMA Regional Director.

5. Enforcement. If the subject property is not maintained according to the terms of the Agreement, the Sub-grantee, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

   A. The State will notify the Sub-grantee in writing and advise the Sub-grantee that it has sixty (60) days to correct the violation.

   B. If the Sub-grantee fails to demonstrate a good faith effort to come into compliance with the terms of the Agreement within the sixty (60) day period, the State shall enforce the terms of the Agreement by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

   C. FEMA, its representatives and assigns may enforce the terms of the Agreement by taking any measures it deems appropriate, including but not limited to the following:

i. Requiring transfer of title in accordance with Paragraph 1.D. The Sub-grantee shall bear the costs of bringing the property back into compliance with the terms of the Agreement; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the Sub-grantee.

7. **Environmental Compliance**

A. Sub-grantee will comply with 44 CFR 10 Environmental Considerations and other federal and state environmental laws and regulations in the implementation of the Project. The State will provide the Sub-grantee with a signed copy of the Record of Environmental Review (RER) and supporting letters and documentation as soon as FEMA approves the Project. The RER will identify any special conditions placed on the Project that may impact demolition activities, the elevation of any structures, underground storage tanks, cutting of trees or removal of fences or vegetation and disposal of any materials in approved dump sites and so on.

B. Failure to comply with any environmental condition or requirement will result in the Sub-grantee reimbursing to the Grantee any federal or state funds expended on a property where environmental non-compliance has occurred.

8. **Project Close-out**

A. Sub-grantee will notify the State as soon as the Project has been completed, and will provide a Final Progress Report and financial report within thirty (30) days following Project completion. State will conduct a final site visit within forty-five (45) days of receiving the final progress report and financial report, and provide the Sub-grantee with its findings within thirty (30) days of the visit. The findings will outline the results of the site visit and in particular any upward or downward adjustment to allowable costs.

B. Sub-grantee will immediately refund any balance of unspent funds.

C. The close-out of the grant does not affect the right of the State to disallow costs and recover funds on the basis of a later audit or other review, the obligation to return any funds due as a result of later refunds, corrections, or other transactions, records retention as required in Part 13.42, Property management requirements in Parts 13.31 and 13.32, and audit requirements in Part 13.26.

D. Any funds not returned within a reasonable period of time after request, may result in an administrative offset against other requests for assistance, withholding advance payments otherwise due, and other action permitted by law.

9. **Fiscal Year Close-out Audit**

A. Following the completion of this Project or upon termination of this Agreement, Sub-grantee shall arrange for a financial and compliance audit of funds provided by State pursuant to this Agreement.

B. This audit is to be conducted by an independent public or certified public accountant (or as applicable, the State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Guidelines for Financial Examination of

Entities Receiving Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations).

C. Sub-grantee is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Agreement. Audits conducted pursuant to this paragraph must be submitted no later than six (6) months following the close of the Sub-grantee's fiscal year.

D. Sub-grantee agrees to provide the Indiana State Board of Accounts and the State, an original of all financial and compliance audits.

E. The audit shall include a statement from the Auditor that the Auditor has reviewed this Agreement and that the Sub-grantee is not out of compliance with the financial aspects of this Agreement.

10. Order of Precedence

Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) Agreement; (2) attachments prepared by the State, (3) Application; and (4) attachments prepared by the Sub-grantee.

11. Monitoring By The State

The State may conduct a monitoring review and evaluation of activities as deemed appropriate by the State. The Sub-grantee will effectively ensure the cooperation of the Sub-grantee's employees in such monitoring and evaluation efforts. The Sub-grantee will take all actions necessary to correct or cure any findings identified by the State during its monitoring and evaluation.

12. Audits

Sub-grantee acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq., audit guidelines specified by the State, the applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).

13. Recordkeeping and Access To Records

The Sub-grantee shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Project in a central location. Records of different federal fiscal periods shall be separately identified and maintained so that information desired can be readily located. For as long as the records are required to kept under this paragraph, the Sub-grantee shall make such materials available at all reasonable times for inspection by any authorized representative of the State, the federal granting agency, or the United States Comptroller General. Copies thereof shall be furnished at no cost to the State or the United States government representative if requested. The Sub-grantee shall maintain these records for the longer of the following periods:

A. The period required under 44 CFR 13.42; or

B. A period of three (3) years, beginning on the later of the following:

   i. The date the Sub-grantee submits it last report, deliverable or claim voucher to the

State; or

ii. The termination date of this Agreement.

14. Compliance with Laws

A. The Sub-grantee agrees to 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 of any state or federal statute or the promulgation of regulations thereunder after execution of this contract shall be reviewed by the State and the Sub-grantee to determine whether the provisions of the contract require formal modification.

B. The Sub-grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 <u>et</u> <u>seq.</u>, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Sub-grantee is not familiar with these ethical requirements, the Sub-grantee 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 Sub-grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to the Sub-grantee. In addition, the Sub-grantee may be subject to penalties under Indiana Code § 4-2-6-12.

C. The Sub-grantee certifies by entering into this Agreement, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Sub-grantee agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Sub-grantee. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Sub-grantee is current in its payments and has submitted proof of such payment to the State.

D. The Sub-grantee warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Sub-grantee agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Agreement.

E. If a valid dispute exists as to the Sub-grantee's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Sub-grantee, the Sub-grantee may request that it be allowed to continue, or receive work, without delay. The Sub-grantee 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.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

G. The Sub-grantee warrants that the Sub-grantee and its contractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach of the contract and grounds for immediate termination of the Agreement and denial of further work with the State.

H. The Sub-grantee hereby affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

I. Sub-grantee agrees that the State may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that State may bar Sub-grantee from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liability to the State and has submitted proof of such payment to the State.

15. Statutory Authority of Sub-grantee

Sub-grantee expressly warrants to the State that it is statutorily eligible to receive HMGP funds and it expressly agrees to repay all monies paid to it under this Agreement should a legal determination of its ineligibility be made by any court of competent jurisdiction. Notwithstanding anything in this Agreement to the contrary, the signatory for the Grantee represents and warrants that he/she has been duly authorized to execute this Agreement on behalf of Sub-grantee.

16. 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.

17. Survival

Any termination of this Agreement shall not affect the ongoing provisions of this Agreement that will survive the termination in accordance with their terms.

18. Waiver of Rights

No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

19. 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 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 is final and conclusive.

20. Failure to Comply

A. If the Sub-grantee fails to comply with a term of this Agreement, including, but not limited to, the reporting and recordkeeping requirements, whether stated in a federal statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, the State may take one or more of the following actions, as appropriate in the circumstances:

   i. Temporarily withhold cash payments pending correction of the deficiency.

ii. Disallow all of part of the cost of the activity or action not in compliance.
iii. Wholly or partly suspend or terminate the current award for the program.
iv. Withhold further awards for the program.
v. Terminate this Agreement
vi. Take other remedies that may be legally available.

B. This Agreement may be terminated if the FEMA-State Agreement is terminated by either FEMA or the State. The termination of this Agreement under this provision will be effective on the date that the termination of the FEMA-State Agreement becomes effective.

C. Costs resulting from obligations incurred by the Sub-grantee during a suspension or after termination of an award are not allowable unless the State expressly authorizes them in the notice of suspension or termination. Other costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
  i. The costs result from obligations which were properly incurred before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are not cancelable, and,
  ii The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes place.

21. Conflict of Interest

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this Sub-Grant;
2. An individual who has an interest of three percent (3%) or more of Sub-grantee, if Sub-grantee is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

B. The Department may cancel this Agreement without recourse by Sub-grantee if any interested party is an employee of the State of Indiana.

C. The Department will not exercise its right of cancellation under section B above if the Sub-grantee gives the Department an opinion by the Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Agreement consistent with an opinion of the Commission obtained under this section.

D. Sub-grantee has an affirmative obligation under this Agreement to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Sub-grantee knows or reasonably could know.

22. Drug-Free Workplace Certification

The Sub-grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Sub-grantee will give written notice to the State within ten (10) days after receiving actual notice that the Sub-grantee, or an employee of the Sub-grantee has been convicted of a criminal drug violation occurring in Sub-grantee's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Sub-grant payments, termination of the Agreement and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Agreement is in excess of $25,000.00, Sub-grantee hereby further agrees that this 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. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all Sub-Grants with and Sub-Grants from the State of Indiana in excess of $25,000.00. No award of a shall be made, and no Sub-Grant, 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 Sub-grantee and made a part of the or agreement as part of the documents.

The Sub-grantee certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Sub-grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) the Sub-grantee'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 Sub-grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying in writing the State 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) take appropriate personnel action against the employee, up to and including termination; or (2) require 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.

23. Lobbying Certification

A. The Sub-grantee acknowledges that federal funds are the source of payments under this Agreement and the Sub-grantee certifies that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Sub-grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (see 44 CFR Part 18, Appendix A for a copy of this form).

(3) The Sub-grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

24. Debarment and Suspension Certification

A. Sub-grantee certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Sub-grantee.

B. Federal Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

1. By signing and submitting this Agreement, the Sub-grantee is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the

Sub-grantee knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The Sub-grantee shall provide immediate written notice to the State if at any time the Sub-grantee learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The Sub-grantee agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The Sub-grantee further agrees that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Agreement.

25. Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Sub-grantee and its Sub-grantees shall not discriminate against any employee or applicant for employment in the performance of this Sub-Grant. The Sub-grantee shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Sub-grantee understands that the State is a recipient of federal funds. Pursuant to that understanding, the Sub-grantee agrees that it will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Sub-grantee shall comply with Section 202 or 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 this Agreement.

26. Federal Emergency Management Agency Certifications

The Sub-grantee acknowledges that federal funds are the source of payments under this Agreement and as the duly authorized representative of the Sub-grantee, the person signing this Agreement as or on behalf of the Sub-grantee certifies that the Sub-grantee:

1. Has the legal authority to apply for federal assistance, and has the institutional, managerial and financial capability to ensure proper planning, management and completion of this sub-grant.

2. Will give the awarding federal agency, the Comptroller General of the United States, and, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or federal awarding agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain for themselves or others, particularly those with whom they have family, business or other ties.

4. Will initiate and complete the work within the applicable time frame established in the Agreement.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S C. Sections 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all federal statues relating to nondiscrimination. These include but are not limited to:
   a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, which prohibits discrimination on the basis of race, color or national origin;
   b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex;
   c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps;
   d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age;
   e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) as amended, relating to nondiscrimination on the basis of drug abuse;
   f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
   g. §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
   h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
   i. Title 28, Code of Federal Regulations, Part 42, Subparts C, D, E and G;
   j. Title 28, CFR, Part 35;
   k. Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made, and
   l. The requirements on any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs. These requirements apply to all interested in real property acquired for Project purposes regardless of federal participation in purchases.

8. Will comply with provisions of the Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. Section 276a to 276a-7), the Copeland Act (40 U.S.C. Section 276c and 18 U.S.C. Sections 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-333), regarding labor standards for federally assisted construction sub-

agreements.

10. Will comply, if applicable, with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following:
    a. institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
    b. notification of violating facilities pursuant to EO 11738;
    c. protection of wetlands pursuant to EO 11990;
    d. evaluation of flood hazards in floodplains in accordance with EO 11988;
    e. assurance of Project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
    f. conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.);
    g. protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and
    h. protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et.seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding federal agency and the State in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply, if applicable, with the Laboratory Animal Welfare Act of 1966 (P. L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply, if applicable, with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance

with the Single Audit Act Amendments of 1996.

18. Will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this program.

19. Will comply with the minimum wage and maximum hour provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.

27. Non-Collusion and Acceptance

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

In Witness Whereof, Sub-grantee and the State of Indiana have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the foregoing terms of the Agreement do by their respective signatures dated below hereby agree to the terms thereof.

Sub-grantee: City of Kokomo

By: Matt McKillip

Matt McKillip
Mayor

Date: 2-11-05

State Emergency Management Agency:

By:

Director

Date: 2-16-05

Department of Administration

Andrew Jr. Gould FOR

Earl A. Goode
Commissioner

Date: 2-16-05

State Budget Agency

Terry R. Talker

Charles E. Schalliol
Director

Date: 2/18/05

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

Tracy J. Richardson for

Stephen Carter
Attorney General

Date: 03/29/05

EXHIBIT A
PROJECT BUDGET

The following is the budget for this Project:

Kokomo Acquisition Budget

Item Description	Cost /unit	Total Cost
Title Search	$250.00	$3,250.00
Appraisal	$500.00	$6,500.00
Property Purchase		$468,700.00
Closing Costs	$165.00	$2,145.00
Demolition	$6,500.00	$84,500.00
Taxes	$700.00	$9,100.00
Extra Title fee		$55.00
Grand Total		$574,250.00

EXHIBIT B
DESCRIPTION OF PROJECT

The Sub-grantee will complete the following activities under this Project. The Assessor's Record for each such property is attached and included as part of this Exhibit.

The Sub-grantee will acquire thirteen (13) residential properties and demolish the existing structures on these properties

The Sub-grantee has identified five (5) alternate properties that are eligible for acquisition under this sub-grant and should funding be available, Sub-grantee may purchase one or more of these additional properties and demolish any existing structures on the properties.

The homes on all eighteen (18) of these properties have sustained substantial flood damage and cannot be repaired.

The Assessor's Record is attached and incorporated into this Agreement for each of the below listed properties:

Properties to be acquired - Primary			
#	Owner Name(s)	Property Address, City	Parcel #
1	Lige William Coleman, Melton Thomas & Russell Lee Coleman	216 South Cooper St, Kokomo	34-04-31-278-006.000-002
2	Patricia & Leonard Woods	301 South Calumet St., Kokomo	34-04-31-256-007.000-002
3	Arnold L. & Cora A Cockrell	315 East Murden St., Kokomo	34-03-36-430-014.000-002
4	Judith B. and Amanda K. Martin	406 South Armstrong St., Kokomo	34-03-36-403-001.000-002
5	Constance M. Bunn, and Charles A. Rider	504 West Park Ave., Kokomo	34-03-36-327-009.000-002
6	Jason M. Kahn	711 West Park Ave., Kokomo	34-03-36-329-003.000-002
7	Patrick S. Lucas	515 South Wabash Ave., Kokomo	34-03-36-328-025.000-002
8	Kacey J. Gibson	717 West Park Ave., Kokomo	34-03-36-329-001.000-002
9	Robert Earl Crull Jr. & Melissa Dawn Crull	901 West ParkAve., Kokomo	34-03-36-306-020.000-002
10	Timothy L. & Christina L. Douglas	617 South Brandon St., Kokomo	34-03-36-305-014.000-002
11	Jackson Shane Fawbush	1023 West Park Ave., Kokomo	34-03-36-305-002.000-002
12	Robert E & Mary V. Grammer	611 South Brandon St., Kokomo	34-03-36-305-012.000-002
13	Millie E. Bellamy	303 South Calumet St., Kokomo	34-04-31-256-008.000-002

Properties to be acquired - Alternates			
#	Owner Name(s)	Property Address, City	Parcel #
A-1	Marjory A. Williams	326 East Carter St., Kokomo	34-03-36-428-013.000-002
A-2	Jeffery L & Mary Ann Woodruff	316 South Courtland Ave., Kokomo	34-03-36-327-002.000-002
A-3	Jack E. & H. Maxine Groves	429 South Main St., Kokomo	34-03-36-426-017.000-002
A-4	Lawrence B. Watson	715 West Park Ave., Kokomo	34-03-36-329-002.000-002
A-5	Bennett E. Lewis III & Sherrie G. Allen	531 East Sycamore St., Kokomo	34-04-31-153-007.000-002

RUSH RUSH

EXECUTIVE DOCUMENT SUMMARY
State Form 41221 (R6 / 8-03)

Instructions for completing the EDS and the Contract process.
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.

TR 4/8

1. EDS #:C44P-5-022	2. Date prepared: February 8, 2005

3. CONTRACTS & LEASES

__ Professional/Personal Services
_x_ Grant
__ Lease
__ Attorney
__ MOU
__ Contract for Procured Services
__ Maintenance
__ License Agreement
__ Amendment # ______
__ Renewal # ______
__ Other ______

FISCAL INFORMATION

4. Account Number: 6000/108200	5. Account Name: HMGP
6. Total amount this action: $430,688.00	7. New contract total:
8. Revenue generated this action:	9. Revenue generated total contract:

10. New total amount for each fiscal year:

Year ____ $ ______ Year ____ $ ______
Year ____ $ ______ Year ____ $ ______

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year):Upon Final Signature	12. To (month, day, year): 4 years after signature

13. Method of source selection: ___ Negotiated
___ Bid/Quotation ______Emergency______ Special Procurement
___ RFP # ____ __x_ Other (specify) Grant

AGENCY INFORMATION

14. Name of agency: State Emergency Management Agency	15. Requisition Number:

16. Address:302 W. Washington St., Rm E208, IGCS, Indianapolis, Indiana 46204

AGENCY CONTACT INFORMATION

17. Name: Brad Gavin	18. Telephone #:3-4928

19. E-mail address: bgavin@sema.in.gov

COURIER INFORMATION

20. Name: Donna Wisthoff	21. Telephone #:2-3835

22. E-mail address: dwisthoff@sema.in.gov

VENDOR INFORMATION

23. Taxpayer Identification Number: 356001076

24. Name: City of Kokomo	25. Telephone #:

26. Address: 100 S. Union Street, Kokomo, Indiana 46901; attn: Debra Cook, Planner

27. E-mail address:

28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) __ Yes __ No

29. Primary Vendor: M/WBE Minority: __ Yes __ No Women: __ Yes __ No	30. If yes, list the %: Minority: ____ % Women: ____ %
31. Sub Vendor: M/WBE Minority: __ Yes __ No Women: __ Yes __ No	32. If yes, list the %: Minority: ____ % Women: ____ %
33. Is there Renewal Language in the document? ___ Yes ___ No	34. Is there a "Termination for Convenience" clause in the document? ___ Yes ___ No

35. Will the attached document involve data processing or telecommunications systems(s)? ____ Yes: ITOC or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes): IC 10-14-3

37. Description of work & justification for spending money. (Please give a brief description of the scope of work included in this agreement.) To enable the State to make a FEMA HMGP Grant.

38. Justification of vendor selection and determination of price reasonableness: Administrative funds are to be used to offset cost of administering the mitigation project (e.g., Travel, telephone, supplies, etc.)

RECEIVED
FEB 23 2005
OAG CONTRACTS

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

SIGNATURES

40. Agency fiscal officer or representative approval Nancy Stevens	41. Date Approved 2/9/05	42. Budget agency approval	43. Date Approved 2/ /05
44. Attorney General's Office approval	45. Date Approved 3/29/05	46. Agency representative receiving from AG	47. Date Approved

Received FEB 16 2005

IDOA Contracts

Exhibit 10

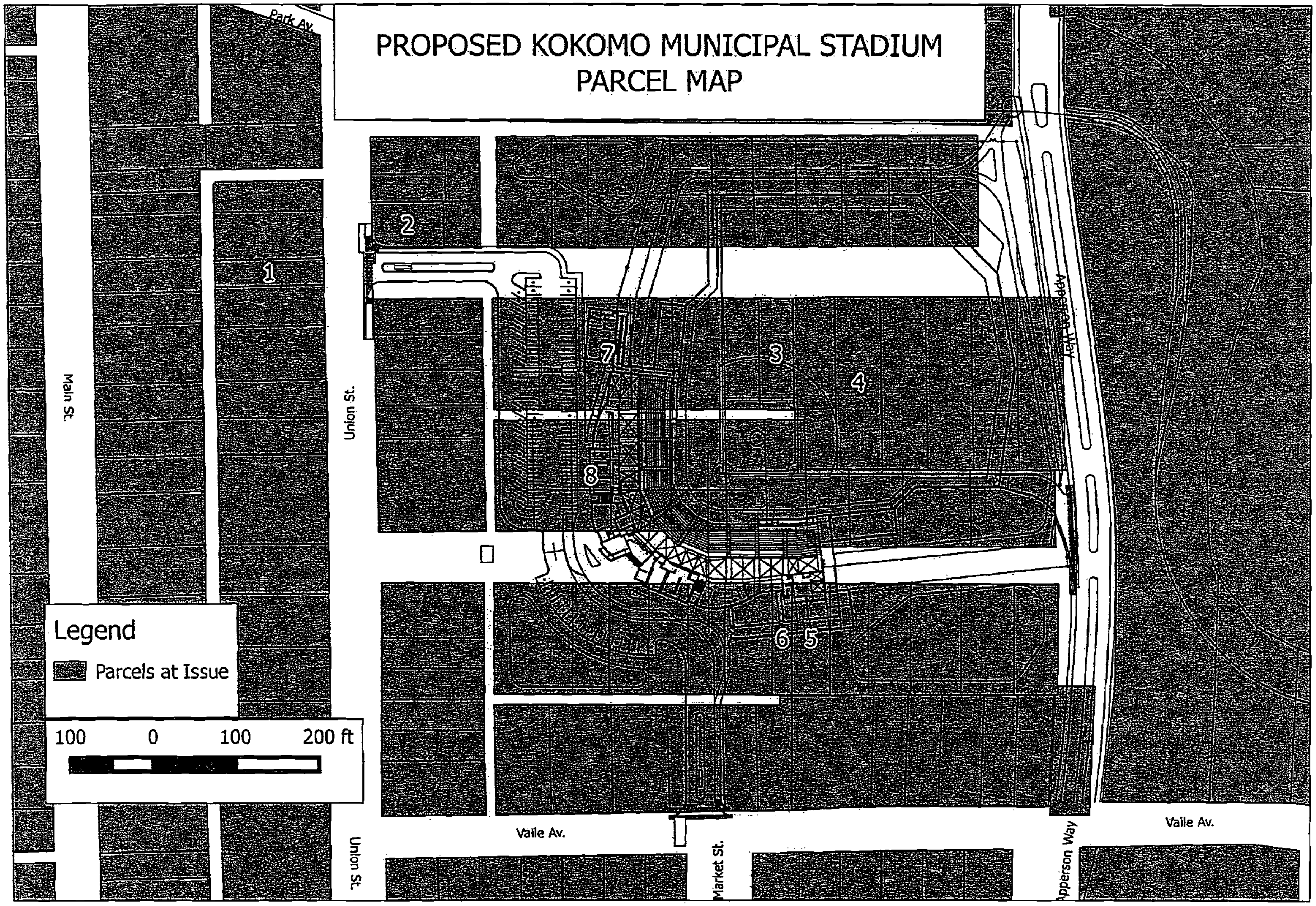
PROPOSED KOKOMO MUNICIPAL STADIUM
PARCEL MAP
Park Av.
Main St.
Union St.
Apperson Way
Valle Av.
Market St.
1
2
3
4
5
6
7
8
Legend
Parcels at Issue
100
0
100
200 ft

Exhibit 11

Kokomo Municipal Stadium

Proposed Redesign

December 29, 2014

The purpose of this document is to explain proposed changes to portions of the Kokomo Municipal Stadium in response to the Environment Restrictive Covenants (ERCs) on certain properties. An example Environmental Restrictive Covenant is located in Attachment A. A map of the parcels at issue is located in Attachment B.

Background

All of the parcels in question contain similar ERCs that limit the uses. These limits were not known during design. Therefore, design changes are being proposed to meet these limits. While this document is not intended to be a legal interpretation, in order to understand just what standard to place on the design, some legal assumptions must be made. The ERC references, "Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and in the future..." This statement indicates that the restrictions of the ERC may not be the only restrictions in force, and a review of 44 C.F.R. 206.434 is required. Indeed, a review of Section e of this Code indicates that property acquisitions and relocation projects for open space proposed for funding pursuant to a major disaster declared on or after December 3, 2007 must be implemented in accordance with part 80 of the chapter. For major disasters declared before December 3, 2007, a project involving property acquisition or the relocation of structure and individuals is eligible for assistance only if the applicant enters into an agreement with the FEMA Regional Administrator that provides certain assurances in a restrictive covenant. Because each of these parcels was acquired prior to December 3, 2007, it can be assumed that the only requirements are those located within the ERC. Therefore, the ERC was used as the standard in the redesign.

The ERC does not provide a particular amount of detail pertaining to reuse. In essence, the ERC allows for three different structures:

1. A public facility that is open on all sides and functionally related to the open space use.
2. A public restroom
3. A structure compatible with the uses described in Paragraph 1(a). those uses include:
    a. Open space
    b. Recreational practices
    c. Wetlands management practices
    d. In general, parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. 206.434 now or in the future. (It does not appear that any additional uses are available in 44 C.F.R. 206.434)

Any structures constructed in accordance with item 3 above require approval from the "Director", which could be assumed to be the FEMA region 5 Director, though that is not certain.

Redesign

It is beneficial to explain the redesign as it pertains to each of the parcels. The parcels are numbered in Exhibit B and are shown in detail below as needed. These parcels are noted in a DHS letter to the city as the parcels in question.

Parcel 1

Parcel 1 is not located on the site and is therefore not addressed.

Parcel 2

Parcel 2 was originally proposed to be utilized as the main driveway from Union Street. It is shown as such on Exhibit B and in Figure 1. However, due to other conflicts, the driveway is being redesigned to be relocated south to align with the existing Carter Street. Parcel 2 may eventually become a parking lot, which in Paragraph 1(a) of the ERC is allowed so long as the parking lot is an "unimproved pervious parking lot". The parking lot, if constructed, will be built with asphalt grindings or pervious asphalt and will comply with the ERC.

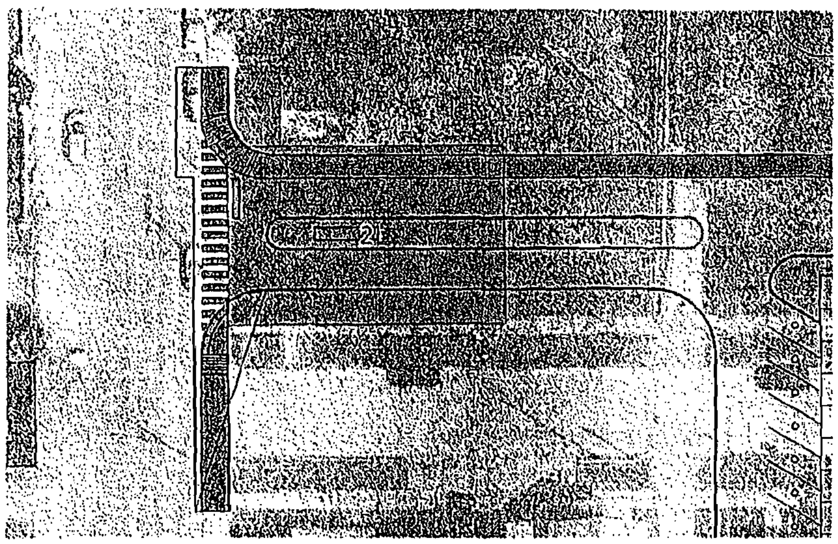

Figure 1

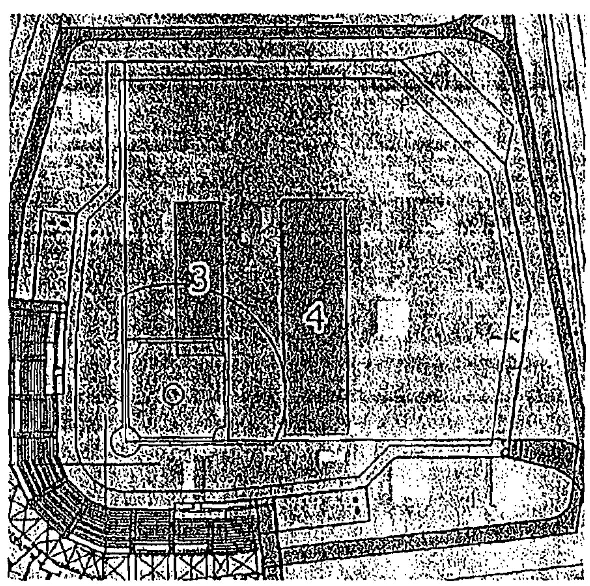

Figure 2

Parcel 3 and Parcel 4

Parcels 3 and 4 have identical characteristics and will be addressed together. Both lots parcels are located in the field of play. The proposed use appears to meet Paragraph 1(a) of the ERC. The property will remain open space and will be used for outdoor recreation activities.

The current proposal is to utilize artificial turf on the field. FEMA has indicated a concern with artificial turf. This material provides a similar drainage characteristic to natural turf. Furthermore, FEMA has provided funding to at least one other stadium located in the flood plain that utilized artificial Turf. Wesley Barrow Stadium in New Orleans was reconstructed after Hurricane Katrina. More information about this stadium is located at: http://en.wikipedia.org/wiki/Wesley_Barrow_Stadium.

Parcels 5 and 6

Similar to parcels 3 and 4, parcels 5 and 6 are similar in characteristics and should be addressed as such. The originally proposed improvements include a restroom and a small portion of an outdoor picnic area. Therefore, the uses are clearly compliant with Section 1(a) as a compatible use, and Section 1(b)(ii) "Public Restroom".

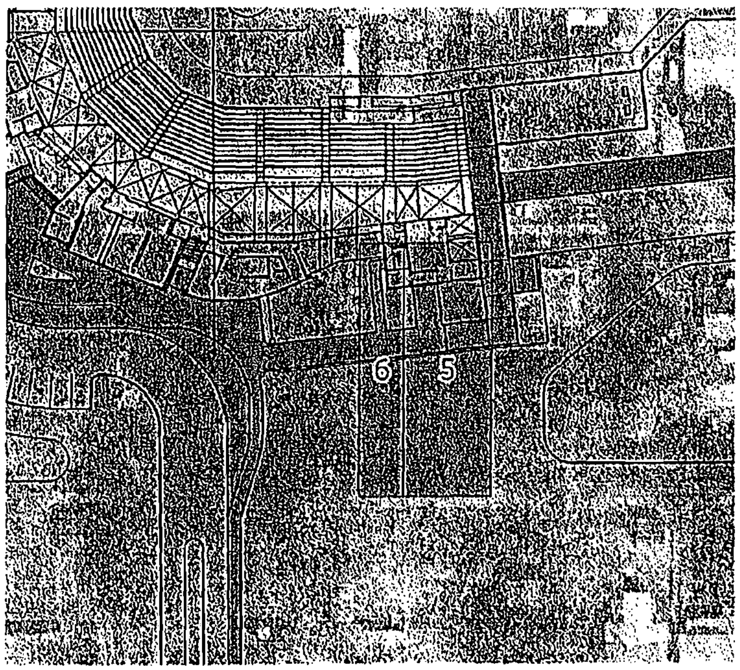

Figure 3 – Parcels 5 and 6 Existing

This structure is designed to be a slab on grade building whereby the finished floor is at the Flood Protection Grade of 803.00. The existing grade of the site is approximately 796.00. Ramps will be provided to the two entrances, as well as down to field elevation. Where grading is not required for the ramps or the building, the elevations will be similar to the existing elevations.

Parcel 7

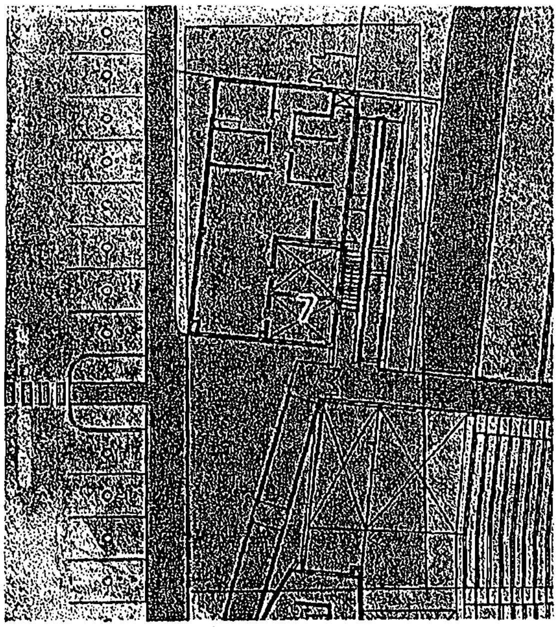

Figure 4 – Parcel 7 Existing

Parcels 7 and 8 are the most complicated portion of the redesign. Parcel 7 is predominately located on the restroom in left field, but also includes a portion of a picnic area. The restroom is proposed to be maintained in its current design. A retaining wall is proposed west of the restroom to allow the residual space to remain open at the existing grade. The ramp that was proposed to access the field elevation from the south has been relocated to the north to provide more open space.

In addition to these changes, the wall originally designed under the picnic area is proposed to be eliminated and replaced with steel or concrete columns as needed. This will open the space under the picnic area to allow flood waters to enter as needed.

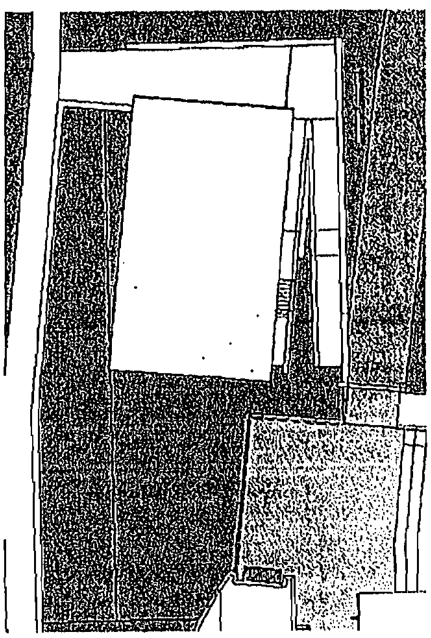

Figure 6 – Parcel 7 Proposed

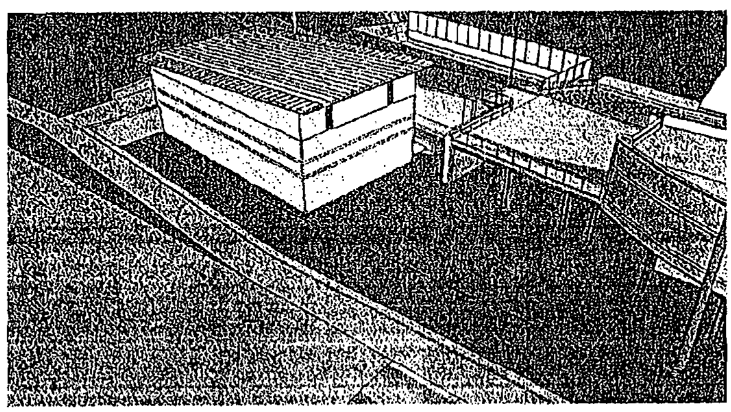

Figure 5 – Parcel 7 Perspective

Parcel 8

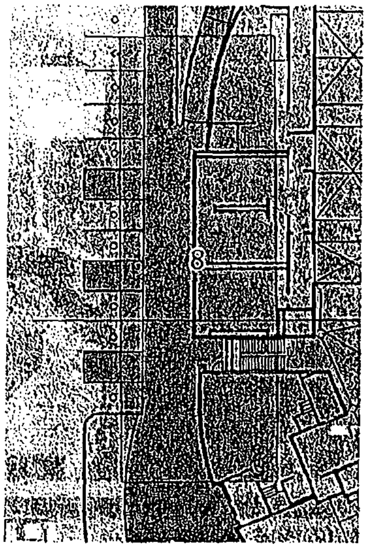

Figure 8 - Parcel 8 Existing

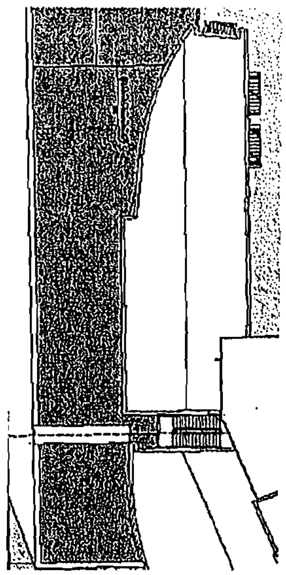

Figure 7 - Parcel 8 Proposed

The original improvements on parcel 8 include a sidewalk, ramp, a portion of a concession stand, restroom, stair, and maintenance space. All of the structures except the maintenance space were designed to be on an elevated slob supported by steel columns and beams.

The redesign includes removing the exterior wall below the slab and replacing it with steel columns. It also includes installing a retaining wall on the west side of the parcel that connects to the retaining wall on parcel 7. The retaining wall would continue on the entire south side of the lot. The sidewalk would be relocated to the west side of the retaining wall. An elevated slab would be required to connect from the west sidewalk to the maintenance area at the stair.

The uses of these structures are allowable pursuant to item 3 on page 1.

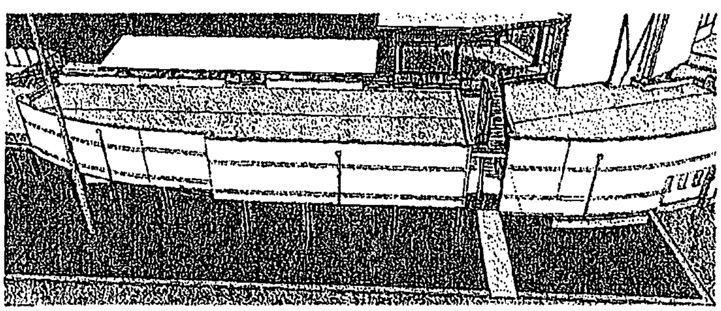

Figure 9 - Parcel 8 Perspective

Conclusion

All of the proposed uses support outdoor recreational activities, including picnicking, baseball, soccer, outdoor concerts, and other potential outdoor recreational uses of the stadium. These recreational uses would not be possible without utilizing this area for these uses. In order to meet the open space requirement, the space below the elevated slab is opened up to allow for stormwater storage. The impact of the project on these parcels is virtually eliminated, allowing the original intent of the ERCs to be met.

0034019376

00 NOV 21 AM 8:21

WARRANTY DEED

THIS INDENTURE WITNESSETH, That Leo J. Franklin and Ruth E. Franklin, husband and wife, (Grantors), of Howard County, in the State of Indiana, CONVEY AND WARRANT to the City of Kokomo, Indiana, in Howard County, Indiana, an Indiana Municipal Corporation, (Grantee), for the sum of One and no/100 Dollars ($1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Howard County, State of Indiana, to wit:

> Twenty Four (24) feet off the entire East side of Lot Number Twenty Six (26) in Carter and Stewart's Addition to the City of Kokomo, Center Township, Howard County, Indiana, as shown in Recorder's Plat Book 2, page 25.

ALSO

> Part of the Southeast Quarter of Section 36, Township 24 North, Range 3 East, City of Kokomo, Center Township, Howard County, Indiana, described as follows, to-wit:

> Beginning at the Northeast corner of Lot 26 aforesaid, thence East 17 feet; thence South 132 feet, thence West 17 feet to the Southeast corner of said Lot 26; thence North 132 feet to the place of beginning.

> **Property Address:** 311 E. Carter Street, Kokomo, Indiana 46901.

Transfer subject to the restrictive terms and conditions set out in Exhibit A attached hereto and made a part hereof by reference, said restrictions being made a covenant running with the lands herein conveyed.

Grantors shall clear title and hereby convey the title free and clear of all taxes, leases, licenses, mortgages, encumbrances, or other interests of any kind or character, both legal and equitable, in and under said real estate as conveyed. It is understood between the parties hereto, and their successors in title, and made a covenant herein which shall run with the land, that all lands described above (excepting any parcels specifically designated as easements or temporary rights of way) are conveyed in fee simple and not merely for right of way purposes, and that no reversionary rights whatsoever are intended to remain in the Grantors.

IN WITNESS WHEREOF, Grantors have executed this deed this 16th day of November, 2000.

Signature *Leo J. Franklin*
LEO J. FRANKLIN

Signature *Ruth E. Franklin*
RUTH E. FRANKLIN

2-58-26B
10-110-B
CK-48B-170P

DULY ENTERED FOR TAXATION

NOV 21 2000

Martha J. Lake
Auditor Howard County, Indiana

EXP

STATE OF INDIANA)
) SS: **ACKNOWLEDGMENT**
COUNTY OF HOWARD)

Before me, a Notary Public in and for said County and State, this 16th day of November, 2000, personally appeared Leo J. Franklin and Ruth E. Franklin, husband and wife, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and official seal.

My Commission expires: Judy L. Silvers

February 1, 2007

NOTARY PUBLIC, Judy L. Silvers
Resident of Cass County, IN

This instrument prepared by J. Conrad Maugans, Attorney at Law. sf
Tax Code No. 2-58-26B & 10-110-B
Send tax bills to 100 S. Union St. Kokomo, IN 46901
Attn. Debra Cost

In reference to the Deed, dated November 17, 2000, between Leo J. Franklin and Ruth E. Franklin (property owner(s)) participating in the FEMA acquisition project ("Grantor") and City of Kokomo, Indiana ("Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State of Indiana has made such application and has entered into a FEMA-State Agreement dated May 8, 1998, and herein incorporated by reference;

WHEREAS, the City of Kokomo, Indiana, acting by and through Board of Public Works and Safety, has entered into a cooperative grant agreement with the State of Indiana, dated January 6, 2000 ("Grant Agreement");

Whereas, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the real estate transferred by virtue of the above referenced deed is made subject to the following restrictive terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

    a. Compatible uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

    b. Structures. No new structures or improvements shall be erected on the property other than:

        i. A public facility that is open on all sides and functionally related to the open space use;

        ii. A public rest room; or

        iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

    Any structures built on the property according to this paragraph shall be floodproofed or

elevated to the Base Flood Elevation plus one foot of freeboard

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means.

i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including [State] shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, [State], and FEMA, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following

i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the

State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

DATED this 17thday of November, 2000

Leo Franklin
Grantor:

Ruth E. Franklin
Grantor:

STATE OF INDIANA)
)SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Leo Franklin and Ruth E. Franklin, who acknowledged the execution of the foregoing Exhibit A, and who, having been duly sworn, state the same to be their free and voluntary act.

WITNESS my hand and Notarial Seal this 16 day of November, 2000.

Thelma D. Kruger
NOTARY PUBLIC Trelma D. Kruger

My Commission Expires: 8/9/07
A Resident of Howard County, Indiana.

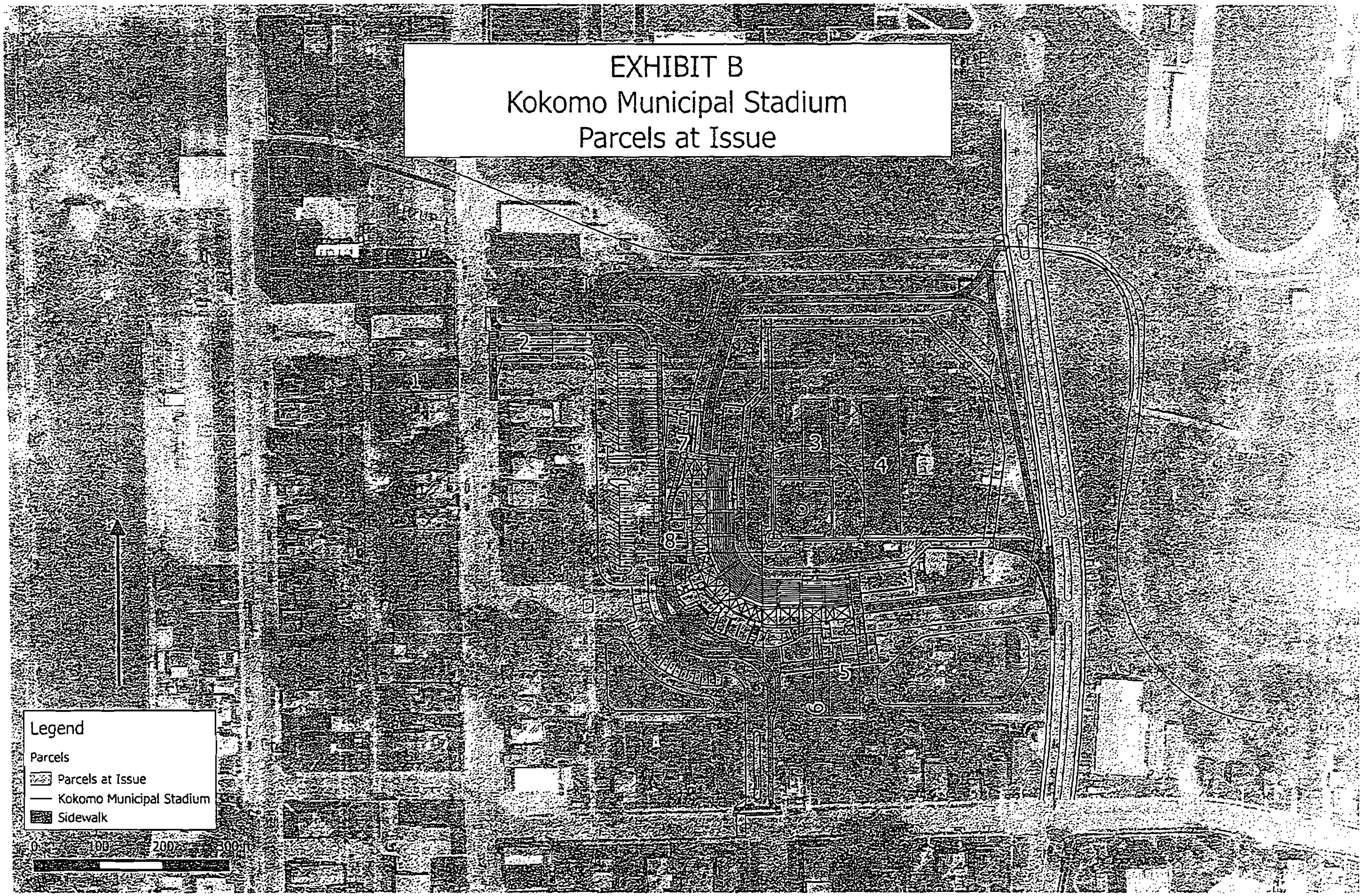
EXHIBIT B
Kokomo Municipal Stadium
Parcels at Issue
1
2
3
4
5
6
7
8
9
Legend
Parcels
Parcels at Issue
Kokomo Municipal Stadium
Sidewalk
0
100
200
300 ft

Exhibit 12

Kokomo Municipal Stadium

Proposed Redesign

Carey Stranahan, P.E., *City Engineer, City of Kokomo, IN*

January 7, 2015

The purpose of this document is to explain proposed changes to portions of the Kokomo Municipal Stadium in response to the Environment Restrictive Covenants (ERCs) on certain properties. An example Environmental Restrictive Covenant is located in Exhibit A. A map of the parcels at issue is located in Exhibit B.

Background

All of the parcels in question contain similar ERCs that limit the uses. These limits were not known during design. Therefore, design changes are being proposed to meet these limits. While this document is not intended to be a legal interpretation, in order to understand just what standard to place on the redesign, some legal assumptions must be made. The ERC references, "Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and in the future..." This statement indicates that the restrictions of the ERC may not be the only restrictions in force, and a review of 44 C.F.R. 206.434 is required. Indeed, a review of Section e of this Code indicates that property acquisitions and relocation projects for open space proposed for funding pursuant to a major disaster declared on or after December 3, 2007 must be implemented in accordance with part 80 of the chapter. For major disasters declared before December 3, 2007, a project involving property acquisition or the relocation of structure and individuals is eligible for assistance only if the applicant enters into an agreement with the FEMA Regional Administrator that provides certain assurances in a restrictive covenant. Because each of these parcels was acquired prior to December 3, 2007, it can be assumed that the only requirements are those located within the ERC. Therefore, the ERC was used as the standard in the redesign.

The ERC does not provide a particular amount of detail pertaining to reuse. In essence, the ERC allows for three different structures:

1. A public facility that is open on all sides and functionally related to the open space use.
2. A public restroom
3. A structure compatible with the uses described in Paragraph 1(a). those uses include:
    a. Open space
    b. Recreational practices
    c. Wetlands management practices

d. In general, parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. 206.434 now or in the future. (It does not appear that any additional uses are available in 44 C.F.R. 206.434)

Any structures constructed in accordance with item 3 above require approval from the "Director", which could be assumed to be the FEMA Region 5 Director, though that is not certain.

Redesign

It is beneficial to explain the redesign as it pertains to each of the parcels. The parcels are numbered in Exhibit B and are shown in detail below as needed. These parcels are noted in a DHS letter to the city as the parcels in question.

Parcel 1

Parcel 1 is not located on the site and is therefore not addressed.

Parcel 2

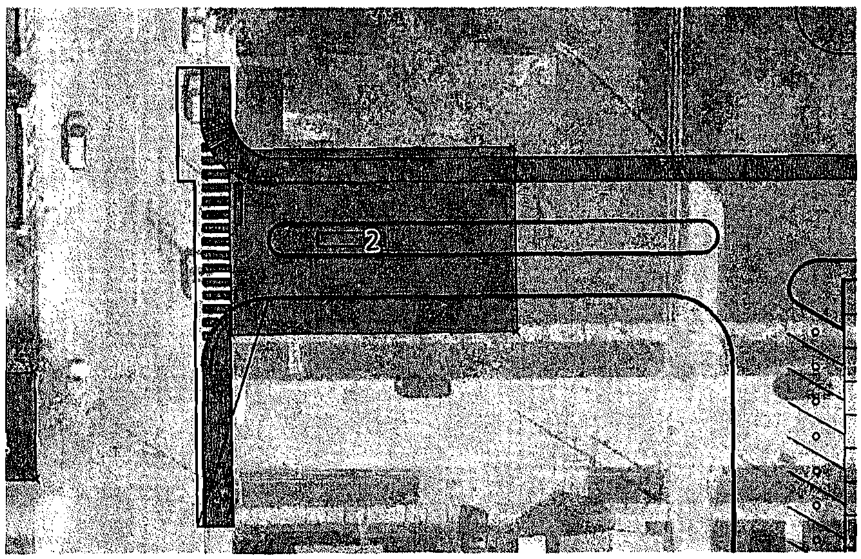

Figure 1 – Parcel 2 Original Design

Parcel 2 was originally proposed to be utilized as the main driveway from Union Street. It is shown as such in Exhibit B and Figure 1. However, due to other conflicts, the driveway is being redesigned to be relocated south to align with the existing Carter Street. Parcel 2 may eventually become a parking lot, which is allowed in Paragraph 1(a) of the ERC so long as the parking lot is an "unimproved pervious parking lot". The parking lot, if constructed, will be built with asphalt grindings or pervious asphalt and will comply with the ERC.

Parcel 3 and Parcel 4

Parcels 3 and 4 have identical characteristics and will be addressed together. Both parcels are located in the field of play. The proposed use appears to meet Paragraph 1(a) of the ERC. The property will remain open

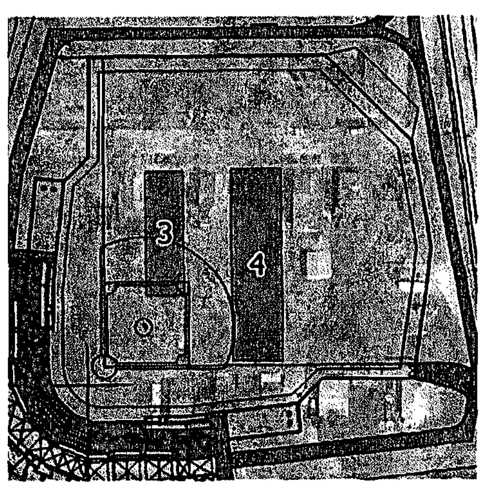

Figure 2 – Parcels 3 & 4 Original Design

space and will be used for outdoor recreation activities.

The current proposal is to utilize artificial turf on the field. FEMA has indicated a concern with artificial turf. This material provides a similar drainage characteristic to natural turf and is more resistant to damage from flooding. Furthermore, FEMA has provided funding to at least one other stadium located in the flood plain that utilized artificial turf. Wesley Barrow Stadium in New Orleans was reconstructed after Hurricane Katrina and utilized $2 million in FEMA funds. More information about this stadium is located at: http://en.wikipedia.org/wiki/Wesley_Barrow_Stadium.

Parcels 5 and 6

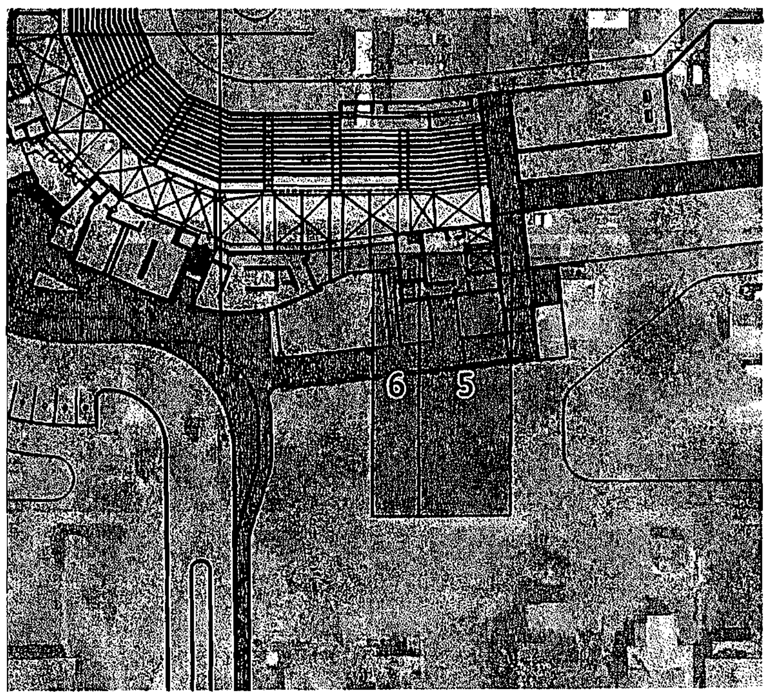

Figure 3 – Parcels 5 and 6 Existing

Similar to parcels 3 and 4, parcels 5 and 6 are identical in characteristics and should be addressed as such. The original design includes a restroom and a small portion of an outdoor picnic area. Therefore, the uses are compliant with Paragraph 1(a) as a compatible use, and Paragraph 1(b)(ii) "Public Restroom".

This structure has been redesigned to be a slab on steel deck building with steel columns and beams to support the floor. The finished floor is at the Flood Protection Grade of 803.00. The existing grade of the site is approximately 796.00. Ramps will be provided to the two entrances, as well as down to field elevation. The elevations will be similar to the existing elevations and remain as open space.

Parcel 7

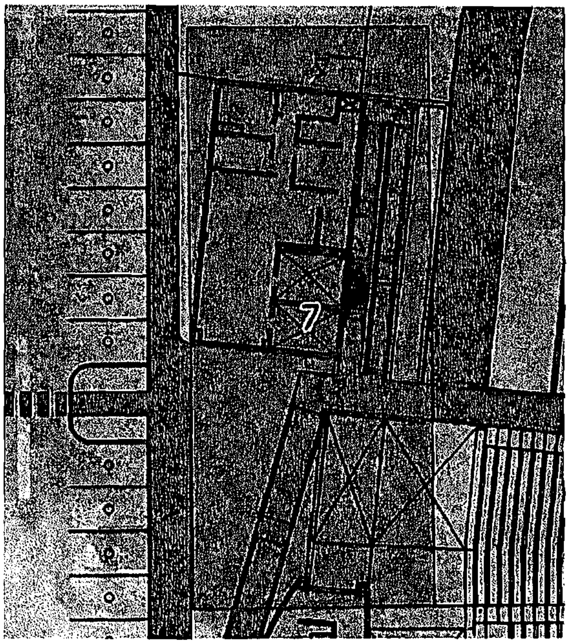

Figure 4 – Parcel 7 Existing

Parcels 7 and 8 are the most complicated portion of the redesign. Parcel 7 is predominately located on the restroom in left field, but also includes a portion of a picnic area. The restroom has been redesigned as a slab on steel deck with steel columns and beams to support the slab. The building has been shifted to the west to allow the west wall to remain. A retaining wall is proposed to extend south of the restroom to allow the residual space to remain open at the existing grade. The ramp that was proposed to access the field elevation from the south has been relocated to the north to provide more open space.

In addition to these changes, the wall originally designed under the picnic area is proposed to be eliminated and replaced with steel or concrete columns as needed. This will open the space under the picnic area to allow flood waters to enter as needed.

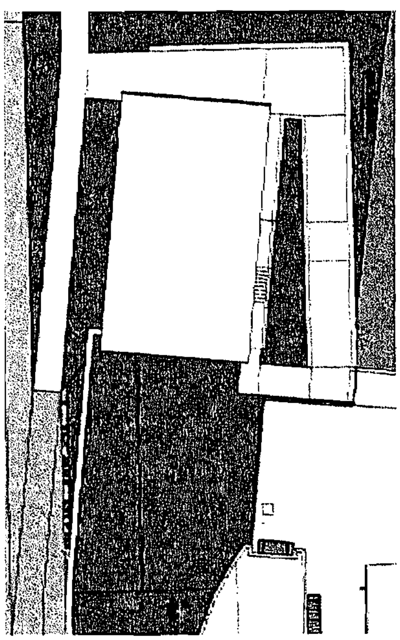
Figure 6 – Parcel 7 Proposed

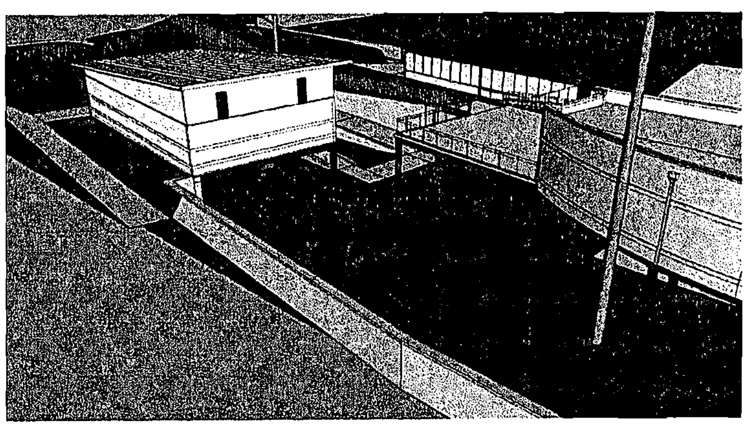
Figure 5 – Parcel 7 Perspective

Parcel 8

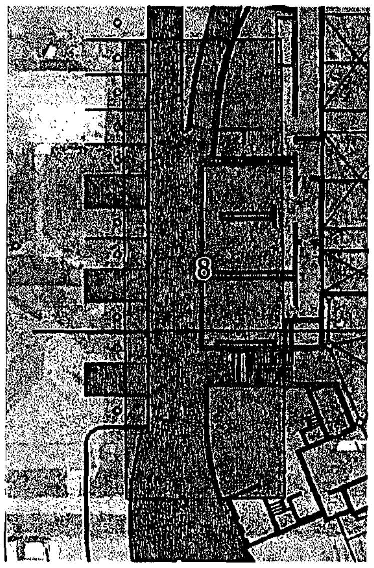

Figure 8 - Parcel 8 Existing

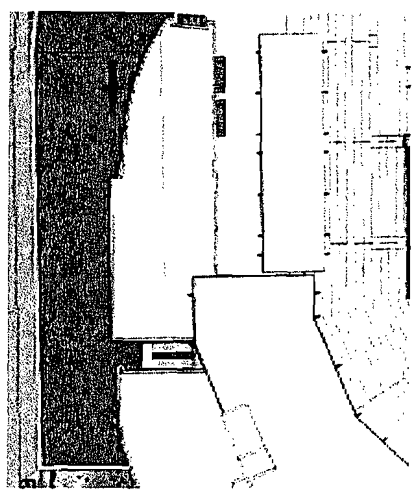

Figure 7 - Parcel 8 Proposed

The original improvements on parcel 8 include a sidewalk, a ramp, a portion of a concession stand, restroom, stair, and maintenance space. All of the structures except the maintenance space were designed to be on an elevated slab supported by steel columns and beams.

The redesign includes removing the exterior wall below the slab and replacing it with steel columns. It also includes installing a retaining wall on the west side of the parcel that connects to the retaining wall for parcel 7. The retaining wall will continue on the entire south side of the lot. The sidewalk would be relocated to the west side of the retaining wall. The access to the maintenance area has been relocated to the south side of the lot, and an elevated has been designed to connect from the south sidewalk.

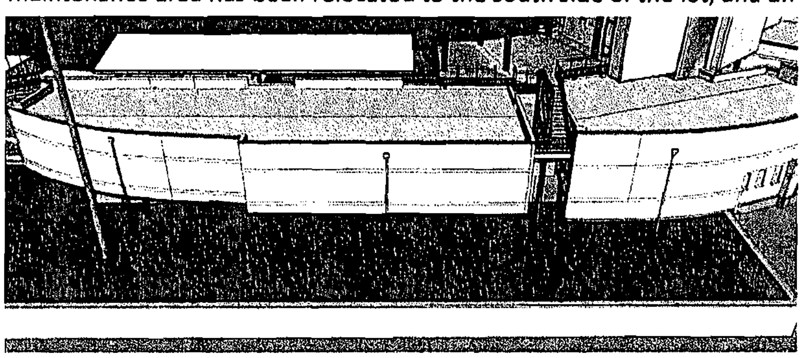

Figure 9 - Parcel 8 Perspective

The uses of these structures are allowable pursuant to item 3 on page 1.

Conclusion

All of the proposed uses support outdoor recreational activities, including picnicking, baseball, soccer, outdoor concerts, and other potential outdoor recreational uses of the stadium. These recreational uses would not be possible without utilizing this area for these uses. In order to meet the open space requirement, the space below the elevated slab is opened up to allow for stormwater storage. The impact of the project on these parcels is virtually eliminated, allowing the original intent of the ERCs to be met.

Exhibit A

0034019376

HOWARD COUNTY RECORDER
00 NOV 21 AM 10:21
[illegible]

WARRANTY DEED

THIS INDENTURE WITNESSETH, That **Leo J. Franklin and Ruth E. Franklin, husband and wife,** (Grantors), of Howard County, in the State of Indiana, **CONVEY AND WARRANT** to the **City of Kokomo, Indiana, in Howard County, Indiana, an Indiana Municipal Corporation,** (Grantee), for the sum of One and no/100 Dollars ($1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Howard County, State of Indiana, to wit:

> *Twenty Four (24) feet off the entire East side of Lot Number Twenty Six (26) in* Carter and Stewart's Addition to the City of Kokomo, Center Township, Howard County, Indiana, as shown in Recorder's Plat Book 2, page 25.
>
> ALSO
>
> Part of the Southeast Quarter of Section 36, Township 24 North, Range 3 East, City of Kokomo, Center Township, Howard County, Indiana, described as follows, to-wit:
>
> Beginning at the Northeast corner of Lot 26 aforesaid, thence East 17 feet; thence South 132 feet, thence West 17 feet to the Southeast corner of said Lot 26, thence *North 132 feet to the place of beginning*
>
> **Property Address:** 311 E. Carter Street, Kokomo, Indiana 46901.

Transfer subject to the restrictive terms and conditions set out in *Exhibit A* attached hereto and made a part hereof by reference, said restrictions being made a covenant running with the lands herein conveyed.

Grantors shall clear title and hereby convey the title *free* and clear of all taxes, leases, licenses, mortgages, encumbrances, or other interests of any kind or character, both legal and equitable, in and under said real estate as conveyed. It is understood between the parties hereto, and their successors in title, and made a covenant herein which shall run with the land, that all lands described above (excepting any parcels specifically designated as easements or temporary rights of way) are conveyed in fee simple and not merely for right of way purposes, and that no reversionary rights whatsoever are intended to remain in the Grantor.

IN WITNESS WHEREOF, Grantors have executed this deed this 16th day of November, 2000.

Signature *Leo J. Franklin*
LEO J. FRANKLIN

Signature *Ruth E. Franklin*
RUTH E. FRANKLIN

2-58-26B
10-110-B
•CK-148B-1706

ENTERED FOR TAXATION

NOV 21 2000

Martha J. Lake
Auditor Howard County, Indiana

EKB

STATE OF INDIANA)
) **SS:** **ACKNOWLEDGMENT**
COUNTY OF HOWARD)

Before me, a Notary Public in and for said County and State, this 16th day of November, 2000, personally appeared Leo J. Franklin and Ruth E. Franklin, husband and wife, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and official seal.

My Commission expires:

February 1, 2007

NOTARY PUBLIC, Judy L. Silvers
Resident of Cass County, IN

This instrument prepared by J. Conrad Maugans, Attorney at Law. sf
Tax Code No. 2-58-26B & 10-110-B
Send tax bills to 100 S. Union St. Kokomo, IN 46901
Attn. DeBra Cook

In reference to the Deed, dated November 17, 2000, between Leo J. Franklin and Ruth E. Franklin (property owner(s)) participating in the FEMA acquisition project ("Grantor") and City of Kokomo, Indiana ("Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the State of Indiana has made such application and has entered into a FEMA-State Agreement dated May 8, 1998, and herein incorporated by reference; .

WHEREAS, the City of Kokomo, Indiana, acting by and through Board of Public Works and Safety, has entered into a cooperative grant agreement with the State of Indiana, dated January 6, 2000 ("Grant Agreement");

Whereas, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, the real estate transferred by virtue of the above referenced deed is made subject to the following restrictive terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

    a. Compatible uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

    b. Structures. No new structures or improvements shall be erected on the property other than:

        i. A public facility that is open on all sides and functionally related to the open space use;

        ii. A public rest room; or

        iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

    Any structures built on the property according to this paragraph shall be floodproofed or

elevated to the Base Flood Elevation plus one foot of freeboard

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means.

i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including [State] shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, [State], and FEMA its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

ii. Bringing an action at law or in equity in a court of competent jurisdiction against the

State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

DATED this 17thday of November, 2000

Leo Franklin
Grantor:

Ruth E. Franklin
Grantor:

STATE OF INDIANA)
)SS: ACKNOWLEDGMENT
COUNTY OF HOWARD)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Leo Franklin and Ruth E. Franklin, who acknowledged the execution of the foregoing Exhibit A, and who, having been duly sworn, state the same to be their free and voluntary act.

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NOTARY PUBLIC Trelma D. Kruger

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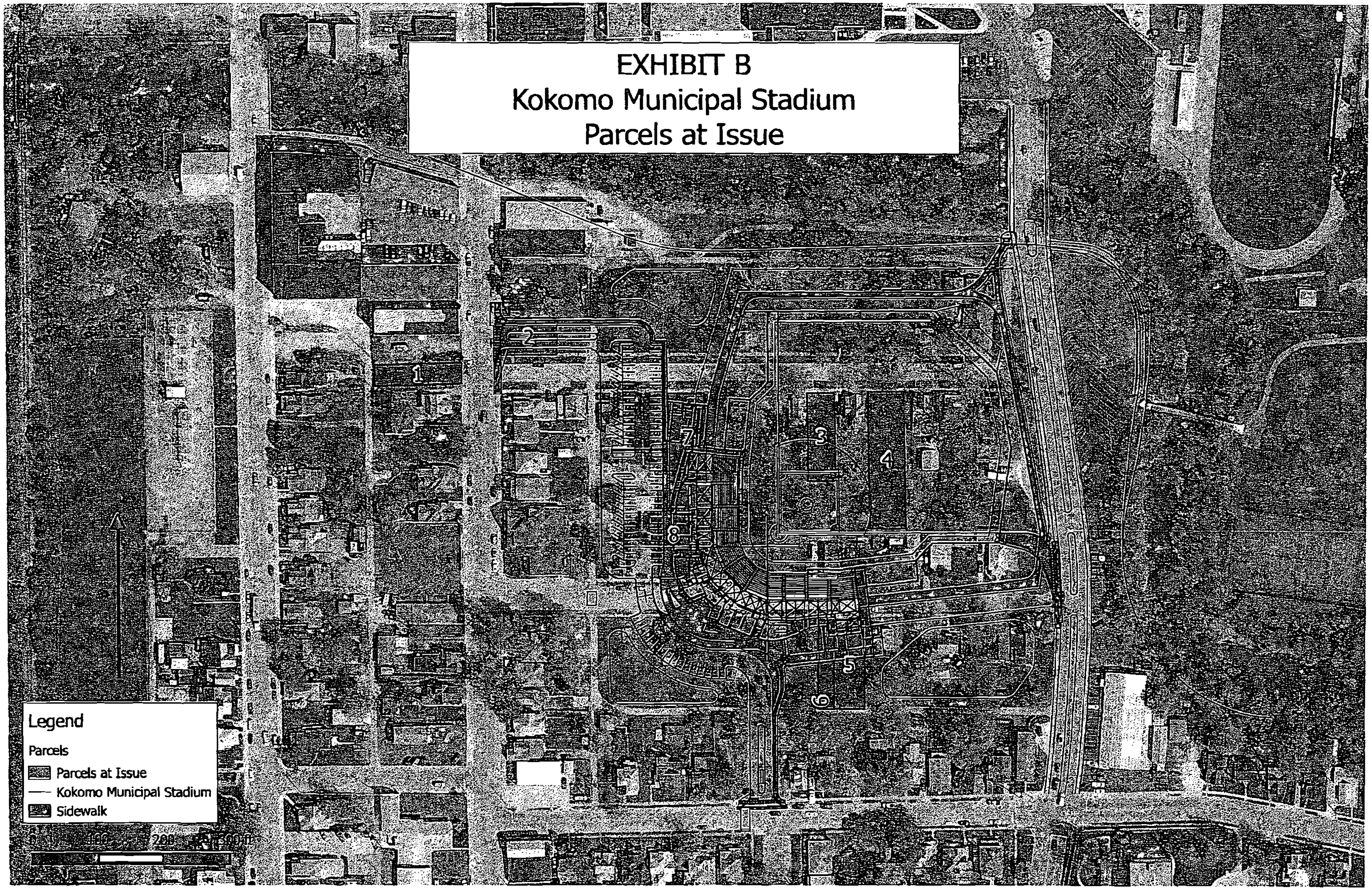
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Parcels
Parcels at Issue
Kokomo Municipal Stadium
Sidewalk

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION ENVIRONMENTAL COURT

CAUSE NO. 49F12 ________________

49D12 1 5 0 1 MI 0 0 2 3 3b

CITY OF KOKOMO,

Plaintiff,

v.

DAVID KANE, in his official capacity as Executive Director of the Indiana Department of Homeland Security f/k/a Indiana State Emergency Management Agency, INDIANA DEPARTMENT OF HOMELAND SECURITY

Defendant.

FILED
220 JAN 26 2015
Myla A. Eldridge
CLERK OF THE MARION CIRCUIT COURT

APPEARANCE BY ATTORNEY IN CIVIL CASE

Party Classification: Initiating __X__ Responding ________ Intervening ________

1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s):

Name of party: **Plaintiff, The City of Kokomo**

Address of party: **Plaintiff may be contacted through the undersigned counsel**

2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

Name: Timothy A. Haley | Atty. Number: 26392-53

Address: 11 South Meridian Street, Indianapolis, IN 46204 | Phone: (317) 236-1313

Fax: (317) 231-7433

Email: timothy.haley@btlaw.com

3. There are other party members: Yes ___ No __X__ (*If yes, list on continuation page.*)

4. If first initiating party filing this case, the Clerk is requested to assign this case the following Case type under administrative rule 8(b)(3): PL

5. I will accept service by FAX at the above noted number: Yes ___ No __X__

6. This case involved support issues. Yes ____ No __X__ (*If yes, supply social security numbers for all family members on continuation page.*)

7. There are related cases: Yes ____ No __X__ (*If yes, list on continuation page.*)

8. This form has been served on all other parties. Certificate of Service is attached: Yes __X__ No ___

9. Additional information required by local rule: ________________________________

____

Timothy A. Haley
Attorney information shown above

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document will be served on the Defendants and the Attorney General of Indiana via hand delivery on this 26th day of January, 2015 at the following:

David Kane
Executive Director of the Indiana Department of Homeland Security
Indiana Government Center South
302 W. Washington Street, Room E208
Indianapolis, Indiana 46204

Indiana Department of Homeland Security
Indiana Government Center South
302 W. Washington Street, Room E208
Indianapolis, Indiana 46204

Greg Zoeller
Indiana Attorney General
Indiana Government Center South
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46204

INDS02 1356110v1

STATE OF INDIANA) IN THE MARION ENVIRONMENTAL COURT
) SS:
COUNTY OF MARION) CAUSE NO. 49F12________________

CITY OF KOKOMO,) 49F12 1 5 0 1 MI 0 0 2 3 3 0

Plaintiff,

v.

DAVID KANE, in his official capacity as Executive Director of the Indiana Department of Homeland Security f/k/a Indiana State Emergency Management Agency, INDIANA DEPARTMENT OF HOMELAND SECURITY

Defendant.

FILED
(220) JAN 2 6 2015
Myla A. Eldridge
CLERK OF THE MARION CIRCUIT COURT

APPEARANCE BY ATTORNEY IN CIVIL CASE

Party Classification: Initiating ___X___ Responding _______ Intervening _______

1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s):

Name of party: **Plaintiff, The City of Kokomo**

Address of party: **Plaintiff may be contacted through the undersigned counsel**

2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

Name: Matthew B. Barr Atty. Number: 26252-53

Address: 11 South Meridian Street Phone: (317) 236-1313

Indianapolis, IN 46204 Fax: (317) 231-7433

Email: matthew.barr@btlaw.com

3. There are other party members: Yes ___ No _X_ (*If yes, list on continuation page.*)

4. If first initiating party filing this case, the Clerk is requested to assign this case the following Case type under administrative rule 8(b)(3): PL

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6. This case involved support issues. Yes ____ No _X_ (*If yes, supply social security numbers for all family members on continuation page.*)

7. There are related cases: Yes ____ No _X_ (*If yes, list on continuation page.*)

8. This form has been served on all other parties. Certificate of Service is attached: Yes _X_ No ___

9. Additional information required by local rule: ______________________________

____

Matthew B. Barr
Attorney information shown above

CERTIFICATE OF SERVICE

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Indiana Government Center South
302 W. Washington Street, Room E208
Indianapolis, Indiana 46204

Greg Zoeller
Indiana Attorney General
Indiana Government Center South
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46204

INDS02 1356113v1

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO.________________

CITY OF KOKOMO,

Plaintiff,

v.

DAVID KANE, in his official capacity as Executive Director of the Indiana Department of Homeland Security f/k/a Indiana State Emergency Management Agency, and INDIANA DEPARTMENT OF HOMELAND SECURITY f/k/a INDIANA STATE EMERGENCY MANAGEMENT AGENCY

Defendants.

49D12 1501 MI 002330

FILED

(220) JAN 26 2015

Myla A. Eldridge
CLERK OF THE MARION CIRCUIT COURT

APPEARANCE BY ATTORNEY IN CIVIL CASE

Party Classification: Initiating __X__ Responding ____ Intervening ____

1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s):

Name of party: **Plaintiff, The City of Kokomo**

Address of party: **Plaintiff may be contacted through the undersigned counsel**

2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

Name: Beth A. Garrison Atty. Number: 25581-49

Address: 100 South Union Street Phone: (765) 456-7440

Kokomo, IN 46901 Fax: (765) 456-7571

Email: bgarrison@cityofkokomo.com

3. There are other party members: Yes ___ No __X__ (*If yes, list on continuation page.*)

4. If first initiating party filing this case, the Clerk is requested to assign this case the following Case type under administrative rule 8(b)(3): __PL__

5. I will accept service by FAX at the above noted number: Yes ~~X~~ No X

6. This case involved support issues. Yes ____ No _X_ (*If yes, supply social security numbers for all family members on continuation page.*)

7. There are related cases: Yes ____ No _X_ (*If yes, list on continuation page.*)

8. This form has been served on all other parties. Certificate of Service is attached: Yes _X_ No ___

9. Additional information required by local rule: ______________________________

____

Respectfully submitted,

Beth A. Garrison

Beth A. Garrison, 25581-49
Corporation Counsel
City of Kokomo

CERTIFICATE OF SERVICE

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Beth A. Garrison, 25581-49
Corporation Counsel
City of Kokomo

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