

Town of Georgetown, Indiana

Ordinance # G-09- 13

ORDINANCE PER 36-1-10.5-5 AUTHORIZING PURCHASE OF YOUTSEY TRACTS FOR WASTE WATER TREATMENT PLANT AND APPURTENANCES.

BE IT ORDAINED BY THE TOWN COUNCEL OF THE TOWN OF GEORGETOWN,
INDIANA ("GEORGETOWN"), THAT:

WHEREAS, by Resolutions R-09-06, R-09-10, and R-09-18, the Georgetown Town Council ("Town Council") passed resolutions indicating its interest, pursuant to IC 36-1-10.5.5, in purchasing certain real estate owned by Timothy D. Youtsey, together with utility and access easements on property owned by Timothy D. Youtsey and Youtsey Property, LLC, an Indiana limited liability company (hereinafter the "Property").

WHEREAS, after the performance of surveys, the Property has been more particularly defined and is described more particularly in Exhibit "A," attached hereto and made a part hereof.

WHEREAS, by Resolutions R-09-15 and R-09-19, the Town Council established just compensation for the Property, according to 49 CFR 24, based upon an appraisal and a review appraisal. The appraisal was performed by James K. Biggs of Government Appraisal Services and valued the Property at (i) \$4,099.85 per acre for fee acquisitions (ii) \$27,075.00 for utility and access easements from Youtsey Property, LLC, and (iii) \$16,475.00 for easements from Timothy D. Youtsey. The appraisal was performed by Government Appraisal Services.

WHEREAS, the review appraisal, for purposes of 49 CFR 24 is a methodological review; however, IC 36-1-10.5-5 requires two (2) appraisals; accordingly Richard Sceifers of Sceifers & Associates was appointed to provide a second appraisal.

WHEREAS, the appraisal performed by Richard Sceifers of Sceifers & Associates valued the Property at (i) \$4,100.00 per acre for fee acquisitions (ii) \$26,392.00 for utility and access easements from Youtsey Property, LLC, and (iii) \$17,370 for easements from Timothy D. Youtsey.

WHEREAS, the average price per the appraisals is (i) \$4,099.93 per acre for fee acquisitions (ii) \$26,733.50 for utility and access easements from Youtsey Property, LLC, and (iii) \$16,922.50 for easements from Timothy D. Youtsey.

WHEREAS, the Town Council has adopted Resolution R-09-19 Amending and Restating a Resolution Establishing Just Compensation Under 49 CFR 24, authorizing and directing the execution of purchase agreements consistent with such resolution.

WHEREAS, by Real Estate Sale and Purchase Agreement dated the 2nd day of October 2009 between the Town, as Buyer, and (i) Timothy D. Youtsey and (ii) Youtsey Property, LLC, as Sellers ("Youtsey Purchase Agreement"), the Town has agreed to purchase the Property for \$4,099,85 per acre for fee acquisitions (ii) \$27,075.00 for utility and access easements from Youtsey Property, LLC, and (iii) \$16,475.00 for easements from Timothy D. Youtsey, together with administrative settlement expenses as allowed under 49 CFR 24.

WHEREAS, the Town has deposited with the Escrow Agent under the Real Estate Sale and Purchase Agreement, the sum of \$2,500.00 to be applied toward the purchase of the Property.

WHEREAS, the final settlement statement for the closing of the Property is not available, however, the additional estimated closing and acquisition costs are \$366,000.00.

WHEREAS, the Town and Floyd County, Indiana, are renegotiating and amending their interlocal agreement concerning the WWTP because financing has been secured though means other than as contemplated in such interlocal agreement; furthermore, as a part of its contribution toward the WWTP Floyd County is considering the purchase of the original O'Brien WWTP site per IC 36-1-11-8. This amount will offset expenses associated with the acquisition of the Property for the new WWTP site.

WHEREAS, the acquisition of the Property, and the associated, are not expenses that may be paid from Indiana State Revolving Loan Funds that have been authorized for the construction of a Waste Water Treatment Plant ("WWTP") and appurtenances to be constructed on the Property; moreover, the Property must be purchased and titled in the name of the Town as a prerequisite to closing and obtaining financing for the WWTP.

WHEREAS, the Town must fund the acquisition of the Property on a short term basis, until such time as the sale of the O'Brien site to Floyd County is completed.

NOW THEREFORE BE IT ORDAINED:

That the Town Council President is hereby authorized to amend the Youtsey Purchase Agreement to provide for purchase prices for the Property not exceeding (i) \$4,099.93 per acre for fee acquisitions, (ii) 26,733.50 for utility and access easements from Youtsey Property, LLC, and (iii) \$16,922.50 for easements from Timothy D. Youtsey, together with administrative settlement expenses as allowed under 49 CFR 24 and as previously authorized by Town resolution, as required by IC 36-1-10.5-6.

That the amount of \$366,000.00 should be transferred to the escrow agent under the Youtsey Purchase Agreement to facilitate the simultaneous closing of the Property acquisition with the State Revolving Loan funding for the construction of the WWTP at such time as all contingencies for closing are met or waived.

That the following amounts shall be transferred to the Wastewater Operating (606) account from the following designated accounts to provide funding for the Property acquisition: (i) \$110,000.00 from Bond & Interest (607) account, (ii) \$220,000.00 from Water Construction (602) account, and (iii) \$36,000.00 from Wastewater Improvement (630) account. The transfers from the Water Construction (602) account and from the Wastewater Improvement (630) account shall be loans.

That the amount of \$366,000.00 shall then be paid from the Wastewater Operating (606) account to the Escrow Agent under the Youtsey Purchase Agreement.

That such Escrow Agent shall hold such funds until (i) all the conditions under the Youtsey Purchase Agreement have been met or waived and (ii) the Town Council President authorizes the release of the escrow funds to the Property sellers in writing. Moreover, the Town Council President is directed to execute such documents as are necessary for the transfer of the Property and deposit those documents into escrow with appropriate instructions to the Escrow Agent.

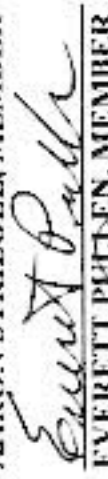
That upon the sale of the O'Brien site to Floyd County, the proceeds shall be deposited to the Wastewater Operating (606) account and that the above referenced loans between accounts shall be promptly repaid without further authorization from the Town Council.

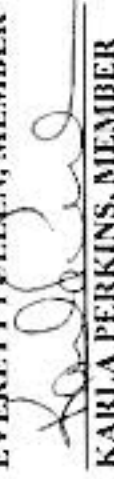
Dec. 2009. Adopted by the Town Council of the Town of Georgetown, Indiana, this 14 day of


BILLY STEWART, PRESIDENT


MIKE MILLS, MEMBER


AARON STRIEGEL, MEMBER


EVERETT PUGHEN, MEMBER


KARLA PERKINS, MEMBER

ATTEST:

Douglas Cook

DOUGLAS COOK, CLERK/TREASURER

EXHIBIT "A"

(72.261 acre – "Property Description" and Easement Diagram)

Part of the Northwest Quarter and the Southwest Quarter of Section 32, T-2-S, R-5-E, Floyd County, Indiana, and being more particularly described as follows:

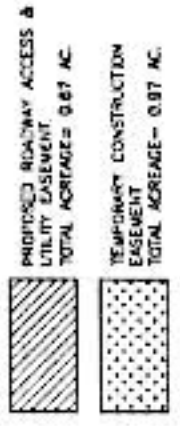
Commencing at a railroad spike marking the west quarter corner of said Section 32; thence along the west line of said Southwest Quarter, South $00^{\circ}23'58''$ West, 164.89 feet; thence South $89^{\circ}56'30''$ East, 346.56 feet to a stone; thence South $00^{\circ}23'58''$ West, 246.07 feet to a MAG nail with disk on the northerly right-of-way of the Norfolk Southern Railroad (formerly known as the "Southern Railway"), and being the TRUE POINT OF BEGINNING;

Thence along said right-of-way, 316.24 feet along the arc of a curve to the right having a radius of 2889.49 feet, and a chord which bears North $57^{\circ}34'29''$ East, 316.08 feet to a steel pin with cap at a point of compound curvature; thence continuing along said right-of-way and extending into said Northwest Quarter, 1394.78 feet along the arc of a curve to the right, having a radius of 3895.32 feet, and a chord which bears North $70^{\circ}58'04''$ East, 1387.34 feet to a steel pin with cap; thence along a line extending across said railroad right-of-way, South $11^{\circ}54'23''$ West, passing a steel pin with cap on the southerly right-of-way of said railroad at 70.63 feet, a total distance of 223.74 feet to a steel pin with cap on the quarter section line dividing said Northwest Quarter and said Southwest Quarter; thence along said quarter section line, South $89^{\circ}44'43''$ East, 388.54 feet to a stone; thence South $00^{\circ}02'44''$ West, 1305.65 feet to a steel pin with cap; thence South $78^{\circ}08'36''$ West, 10.00 feet to a steel pin with cap; thence South $78^{\circ}00'34''$ West, 224.40 feet to a steel pin with cap; thence South $43^{\circ}08'36''$ West, 158.40 feet to railroad tie fence corner post; thence South $88^{\circ}45'42''$ West, 485.54 feet to a stone; thence South $21^{\circ}55'54''$ West, passing a steel pin with "Witness Corner" cap at 82.78, a total distance of 87.78 feet; thence South $69^{\circ}57'36''$ West, passing a steel pin with "Witness Corner" cap at 5.00 feet, a total distance of 891.00 feet to a stone; thence South $01^{\circ}05'52''$ West, 67.04 feet to a stone; thence South $89^{\circ}55'04''$ West, 236.42 feet to a stone; thence North $00^{\circ}23'58''$ East, passing a steel pin with cap on the southerly right-of-way of the aforesaid railroad at 1492.51 feet, a total distance of 1574.56 feet to the TRUE POINT OF BEGINNING.

Containing 72.261 acres and being subject to the right-of-way of the Norfolk Southern Railroad.

Together with rights of ingress to State Road 64 over the road way extending northeasterly from the existing private railroad crossing and along the east boundaries of the property conveyed to (i) Youtsey Property, LLC, an Indiana limited liability company, by quitclaim deed dated March 15, 2006, and recorded as Instrument 200603192 and (ii) to Timothy D. Youtsey by Personal Representative's Deed dated June 20, 2005, and recorded as Instrument 200508595, both of record in the office of the Recorder of Floyd County, Indiana. And also, together with rights of ingress and egress over that 60' right of way reserved by deed dated March 1, 1990, and recorded in Deed Drawer 17 Instrument 1789, in the office of the Recorder of Floyd County, Indiana.

YOUTSEY (16.651 AC.)



RICHLAND HILLS SEC. 1
PLAT NO. 810
24.882 AC.

