

PLAINFIELD TOWN COUNCIL

RESOLUTION NO. 2007-12

RESOLUTION APPROVING THE INTERLOCAL AGREEMENT RELATED TO THE DEVELOPMENT OF THE PEPSICO FACILITY AND RELATED INFRASTRUCTURE CONSTRUCTION AND IMPROVEMENT

WHEREAS, Indiana Code § 36-1-7 permits interlocal agreements by and between governmental entities;

WHEREAS, the Town Council of the Town of Plainfield, Indiana, (a governmental entity) has been working with the Consolidated City of Indianapolis, Marion County, Indiana, (a governmental entity) for the development of the PepsiCo facility and related infrastructure construction and improvement;

WHEREAS, the parties have prepared a proposed written Interlocal Agreement to be approved by the Town of Plainfield and the Consolidated City of Indianapolis, Marion County, Indiana;

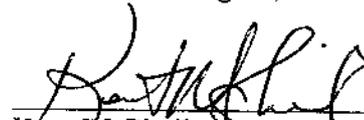
WHEREAS, the Town of Plainfield, Indiana, believes it is in its best interests to approve the proposed Intergovernmental Agreement;

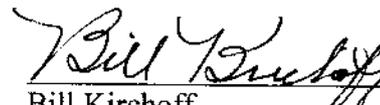
NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Plainfield, Indiana, hereby approves the INTERLOCAL AGREEMENT RELATED TO THE DEVELOPMENT OF THE PEPSICO FACILITY AND RELATED INFRASTRUCTURE CONSTRUCTION AND IMPROVEMENT IN MARION COUNTY AND THE TOWN OF PLAINFIELD, INDIANA, attached hereto and made a part hereof, and identified as Exhibit A.

PASSED AND APPROVED by the Town Council of the Town of Plainfield, Indiana,
this 14th day of May, 2007.

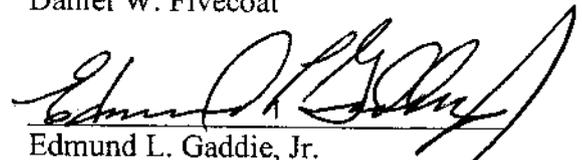
TOWN COUNCIL, TOWN OF
PLAINFIELD, HENDRICKS
COUNTY, INDIANA


Robin G. Brandgard, President


Kent McPhail


Bill Kirchoff

Daniel W. Fivecoat


Edmund L. Gaddie, Jr.

ATTESTED BY:


Wesley R. Bennett, Clerk/Treasurer
Town of Plainfield, Indiana

INTERLOCAL AGREEMENT

An Interlocal Agreement by the Consolidated City of Indianapolis, Marion County, Indiana, ("Indianapolis/Marion County") and the Town of Plainfield ("Plainfield") related to the development of the PepsiCo Facility and related infrastructure construction and improvement ("Project") in Marion County and The Town of Plainfield, Indiana.

RECITALS

- A. I.C. §36-1-3-9(c) authorizes a municipality to exercise a power inside the corporate boundaries of another municipality only if both municipalities, by ordinance, enter into an agreement under I.C. §36-1-7-2.
- B. I.C. §8-17-1-45 permits the county executives of two adjoining counties to enter into an agreement concerning the Project.
- C. I.C. §36-1-7 permits interlocal agreements by and between governmental entities.
- D. Indianapolis and The Town of Plainfield are governmental entities.

AGREEMENT

NOW, THEREFORE, The Consolidated City of Indianapolis and the Town of Plainfield, Indiana in consideration of the foregoing premises and the following promises contained herein agree as follows:

1. Each party represents to the other parties that:
 - a. The party has all requisite power and authority to carry out the obligations set forth in this Agreement.
 - b. The party has the power, authority, and legal right to enter into and perform its obligations set forth in this Agreement.
 - c. This Agreement has been duly entered into and delivered and constitutes a legal, valid, and binding obligation of the parties and complies with I.C. §8-20-1-35, enforceable in accordance with its terms and the party is estopped from making claim based upon the unenforceability of this Agreement.

1. OBLIGATIONS OF THE CITY OF INDIANAPOLIS

The City of Indianapolis shall be the lead review agency on the Project and shall provide according to applicable legal requirements, the review, approval, permitting, inspection and enforcement of the following with the respect to the Project;

- a. Receive all fees for the review approval and inspection for the entire site and building.
- b. Sanitary Sewer Service to be constructed by the Developer from its service point to the project site to serve the initial building constructed on the Phase I real estate (76 acres) and also serve the proposed expansion or second building on the Phase II real estate to the west (approx. 31 acres). City of Indianapolis will accept the sanitary sewer flows from Phase I and II of this project (which phases may be developed as separate buildings). The required lift station to be constructed as part of Phase I of this project and generally located in the southeastern corner of the Phase I parcel shall be dedicated to the City of Indianapolis and following inspection and acceptance of such lift station, the City of Indianapolis shall assume future maintenance and repair of the lift station.
- c. Improvement location permit, building permit, structural permit and other construction related permits.
- d. Approve any amendments to the Improvement Location Plan.
- e. Inspections during construction to confirm compliance with permits and applicable building codes.
- f. Water service to be constructed by the Developer from its service point to the site (the initial 1,119,000 square feet on the Phase I real estate, plus the expansion space or separate building as developed on the Phase II real estate to the west (approx. 31 acres).
- g. The new road ("Stansted Road") shall be extended by the Developer from Ameriplex Parkway to the westerly right of way of the intersection with Orly Drive. The right of way for Stansted Road shall be eighty (80) feet. In addition to the improved portion of Stansted Road, the developer shall be required to dedicate as right of way the future extension of Stansted Road from Orly Road southwesterly to the southernmost limits of the real estate comprising Phase I and II of this project and to dedicate a minimum of 20' off of the northerly and westerly limit of the right of way for this future extension as a utility and drainage easement. It is understood by all parties that a drainage way/easement across the right of way for Stansted Road southwesterly of the intersection with Orly shall be

necessary to allow a drainage outlet (s) from the Phase I and/or Phase II parcels of this project to Flynn Creek and that such drainage improvement shall be allowed for and perpetuated following any future construction of the extension of Stansted Road southwesterly of Orly Drive.

- h. The Developer's extension of CR 600S as Orly Drive from its current intersection with CR 1075 E to the new intersection with Stansted Road. The improvement of Orly Drive shall meet the Indianapolis standard and requirements from the intersection at Stansted Road to the Marion/Hendricks County boundary, and then from that point west, Orly Drive shall meet the Plainfield standard and requirements for a local collector road (32' back of curb to back of curb). The extension of a sidewalk along Orly Drive shall allow the use of a 6' asphalt pathway.
- i. Upon acceptance of the portion of the Project in Indianapolis and compliance by Plainfield of all terms and conditions of the Agreement, assume jurisdiction and future maintenance of said portion of the Project located in the City of Indianapolis.
- j. Appoint the Private Development /Floodplain Manager, Division of Compliance, Department of Metropolitan Development City of Indianapolis, to act as liaison with Plainfield.
- k. Issue driveway permits within the City of Indianapolis.
- l. Invite the Town of Plainfield to all pre-construction conferences.
- m. Review and incorporate Town of Plainfield review comments into the City of Indianapolis review comments.
- n. Indianapolis will assign an address to this development.
- o. Receive from the developer Maintenance Bonds for that portion of the development in the City of Indianapolis.
- p. Require that all of the proceeding construction and development elements are included in all approved plans.
- q. The future widening of Stansted Road from the Town of Plainfield town limits to Ameriplex Parkway in order to accommodate the Town of Plainfield's proposed Thoroughfare Plan will be at the sole discretion of the City of Indianapolis, if the City of Indianapolis is to be a participant in the funding for such widening, and will be prioritized based upon transportation needs throughout the entire City of Indianapolis. If the City of Indianapolis is not being requested to fund such widening then the City of Indianapolis will agree to the work being done subject to their review and approval of the plans for the widening.

Notwithstanding any provision in this Agreement to the contrary, Indianapolis shall not be financially responsible for any cost associated with the Project.

Regarding the future extension of Stansted Road from Orly Road southwesterly to the southernmost limits of the real estate comprising Phase I and II of the Project, Indianapolis agrees that it will not object to any future plans for the construction or the construction of such extension by a developer and/or Plainfield, subject only to the right of Indianapolis to review and approve the plans and inspect the construction of the road segment in the City for said road.

2. OBLIGATIONS OF THE TOWN OF PLAINFIELD INDIANA

The Town of Plainfield, Indiana shall provide the following authority and services;

- a. Provide to the City of Indianapolis comments to be included in the review of plans and specifications and issuance of the applicable permits.
- b. Upon acceptance of the portion of the Project in Indianapolis and compliance by Plainfield of all terms and conditions of the Agreement, assume jurisdiction and future maintenance of said portion of the Project located in the Town of Plainfield.
- c. Issue driveway permits within the Town of Plainfield.
- d. The Town of Plainfield's zoning approval will be a conditional approval subject to the City of Indianapolis's review and concurrence.
- e. Receive from the developer Maintenance Bonds for that portion of the development in the Town of Plainfield.
- f. Appoint the Transportation Director for the Town of Plainfield, to act as liaison with the City of Indianapolis.
- g. The Town acknowledges that the Phase II portion of this project (approx. 31 acres west of Phase I) shall be served by sanitary sewer service and water service from the City of Indianapolis.

3. JOINT OBLIGATIONS

The proposed Pepsico Development lies both within the Town of Plainfield and the City of Indianapolis. In order to ensure good Inter-Agency communication and review the Developer shall be required to "Masterplan" their development for the entire site including future expansion. The developer shall also be required to submit complete sets of infrastructure and zoning plans simultaneously to each agency prior to Improvement Location Permit review. Partial infrastructure and zoning plan reviews will not be allowed.

Building plans shall be submitted to both agencies simultaneously.

Indianapolis and Plainfield shall jointly agree upon a designated consultant to provide inspection services for all roads required by the Project in both Marion County and the Town of Plainfield.

Indianapolis and Plainfield shall jointly conduct final field inspection and agree to acceptance of all roads required by the Project in both Marion County and the Town of Plainfield.

Any future expansion of this site will require this agreement to be amended or replaced with a new Inter-Agency agreement.

Both review agencies will meet to develop one set of combined review comments to be sent to the developer.

4. JOINT BOARD

The project representatives appointed respectively by the parties shall constitute a joint board to administer the Project in accordance with the terms of this Agreement.

5. PROPERTY

There will be no jointly held property except as provided in I.C. § 8-20-1-35. However, in the event there is other jointly held property, it shall be distributed to The Town of Plainfield.

6. DISPUTE RESOLUTION

Disputes will be resolved by the respective executive officers, or their designees, of each party.

7. EFFECTIVE DATE

This Agreement shall be effective upon the latest date of: signing by the parties hereto, the passage of appropriate resolutions and ordinances, recordation of this Agreement with the Hendricks County Recorder and Marion County Recorder, filing of this Agreement with the Indiana State Board of Accounts, with the Auditor of Marion County, with the Auditor of Hendricks County, and, if appropriate, the approval of the Attorney General. The execution of this agreement shall constitute a joint session pursuant to I.C. §8-1-20-35.

8. TERM OF AGREEMENT

This Agreement shall be in effect until such time as the Project is completed. However, this Agreement shall terminate six (6) years after its

effective date if the Agreement has not otherwise terminated or been extended. This Agreement may otherwise be terminated, or may be extended, only by a written agreement signed by all the parties. If the Project is not finally completed within the above time period, the parties will cooperate to extend the Agreement.

9. RECORDING AND FILING

This Agreement shall be recorded in the Office of the Recorder of Marion County Indiana and the Recorder of Hendricks County, filed with the Indiana State Board of Accounts within sixty (60) days of its execution, and filed with the Marion County Auditor and the Hendricks County Auditor.

10. MUNICIPAL CONTRACT PROVISIONS

This Agreement incorporates by reference all provisions required to be included in municipal contracts under state law.

11. NOTICE

For the purpose of any notice or submittal specified by this Agreement, said notice or submittal shall be to the following:

The City of Indianapolis
Kumar Menon, Director, Department of Public Works
200 East Washington Street, Suite 2460
Indianapolis, Indiana 46204 and

The City of Indianapolis
Billie J. Breaux, Auditor of Marion County, Indiana
200 East Washington Street, Suite 801
Indianapolis, Indiana 46204

The Town of Plainfield
Tim Belcher, P.E.
Town Engineer
206 W. Main Street, P.O. Box 65
Plainfield, Indiana 46168

12. NON-DISCRIMINATION

Pursuant to I.C. §22-9-1-10 and the Civil Rights Act of 1964, the Town of Plainfield and its servants, employees, agents, contractors and their sub-contractors shall not discriminate against any employee or applicant for employment in the performance of the Interlocal Agreement. The Town of Plainfield shall not discriminate with respect to hire, tenure, terms,

conditions or privileges of employment or any other matter directly or indirectly related to employment because of race, religion, color, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Interlocal Agreement. Acceptance of this MOU 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.

13. Parties to the Agreement, and their consultants and/or contractors shall not discriminate against any employee or applicant for employment, to be employed in performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his race, religion, color, sex, handicap, national origin or ancestry, disabled veteran status or Vietnam-era veteran status. Breach of this covenant may be regarded as a material breach of this Agreement.

14. INDEMNIFICATION

Each party hereto agrees to indemnify, defend, exculpate, and hold harmless the other parties hereto, and their respective officers and employees, from and against any and all claims, suits and liabilities of any kind or character, including reasonable attorneys fees, which result or arise from any negligent acts or omissions of said party, or those for whom said party is responsible, arising from or connected with the performance of any of the duties or responsibilities of said party under this Agreement. Notwithstanding the preceding provisions of this section, the obligation of each party to indemnify, defend, exculpate, and hold harmless, shall only arise if either party would also be liable under I.C. §34-13-3. Further, the liability of either party shall be limited by the provision of I.C. §34-13-3-4.

The Town of Plainfield agrees to include in any future contracts executed with Indianapolis that pertain to the Project, appropriate clauses to extend any Indemnification and hold harmless obligation, which runs in favor of Indianapolis as additional insured's to any commercial general liability policy certificate.

15. REMEDIES

All remedies are mutual, cumulative and shall survive termination of this Agreement.

16. INTEGRATION

This Agreement represents the entire understanding between and among the parties hereto. The signing of this Agreement by both parties constitutes their mutual recognition that no other contracts or agreements, oral or written, exist between them and that if such oral or written contracts do exist they shall be considered void. Each party hereby represents to the other that it will not rely upon any agreement, contract or understanding not otherwise iterated within this Agreement and executed or reduced to writing and incorporated by written amendments to this Agreement with the full knowledge and approval of both parties.

17. INTERPRETATION

This Agreement is the result of negotiations between the parties and their respective legal counsel, and no party shall be deemed to be the drafter of this Agreement. The language of all parts of this Agreement shall in all cases be construed as whole, according to its fair meaning, and not strictly for or against either party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates specified below.

CITY OF INDIANAPOLIS

Kumar Menon
Kumar Menon
Department of Public Works

Attest:

By: *Richard A. Carlucci*

Printed: Richard A. Carlucci

Title: Secretary

APPROVED TO AS LEGAL FORM

TOWN COUNCIL OF PLAINFIELD,
INDIANA

Jeffrey L. Simnick
Jeffrey L. Simnick
Assistant Corporation Counsel
Attorney for Indianapolis

Bill Kirchoff
Bill Kirchoff

BOARD OF PUBLIC WORKS

Kumar Menon
Kumar Menon

Daniel W. Fivecoat

Ed Gaddie
Ed Gaddie

As Authorized by the Board of
Public Works on 7/11, 2007

Kent McPhail
Kent McPhail

ATTEST:

Kimberly Frye
Kimberly Frye, Board Secretary

Robin G. Brandgard
Robin G. Brandgard

APPROVED BY

Robin G. Brandgard
President, Town Council of Plainfield

APPROVED BY

Ordinance of Indianapolis-Marion Co.
City-County Council Aug. 6, 2007

Date of Ordinance/Resolution

May 14th, 2007

CONCURRED BY

Sammy Bell
Town Engineer

APPROVED AS TO LEGAL FORM

Jeffrey L. Simnick
Attorney for Town of Plainfield

STATE OF INDIANA
COUNTY OF MARION

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) SS:
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Before me, the undersigned, Notary Public, in and for said County and State, personally appeared Kumar Menon as Director, Dept. of Public Works of Marion County, who acknowledged the execution of the foregoing Interlocal Agreement.

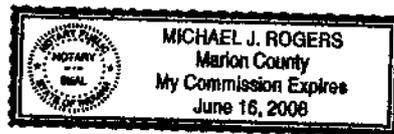
Witnesses my hand and Notarial Seal this 8th day of August, 2007.

6/16/2008
Commission Expiration Date

Michael J. Rogers
Notary Public Signature

MARION
County of Residence

Michael J. Rogers
Notary Public Signature



This document was prepared by the following: Jeffrey L. Simnick, Assistant Corporation Counsel, City of Indianapolis, and Melvin R. Daniel, Attorney for The Town of Plainfield, Indiana.