

**MEMORANDUM OF UNDERSTANDING
BY AND AMONG
THE CITY OF INDIANAPOLIS
DEPARTMENT OF PUBLIC WORKS,
THE TOWN OF ROCKY RIPPLE
AND
BUTLER UNIVERSITY**

This Memorandum of Understanding ("MOU") is entered into by and among the Consolidated City of Indianapolis and Marion County ("City"), by and through its Department of Public Works ("DPW"), the Town of Rocky Ripple ("Town") and Butler University ("University") effective as of the last date written below.

WITNESSETH:

WHEREAS, the City, the Town and the University each wish to coordinate and perform activities which promote shared goals of water quality protection, flood protection, erosion control and storm water management; and

WHEREAS, the Town and the University are located within the Marion County Storm Water Management District established pursuant to Ind. Code 8-1.5-5 ("District"), and therefore the University and owners of property in the Town are subject to storm water fees assessed by the District, all pursuant to those specific provisions and limitations provided by, *inter alia*, Ind. Code 8-1-1.5, *et seq.*, applicable ordinances, and applicable law; and

WHEREAS, DPW administers and carries out the activities of the District, including capital project planning/studies, construction, operations and maintenance of storm water management systems within the District; and

WHEREAS, DPW is committed to the expenditure of a minimum amount of funds collected through the District's assessments to address storm water management and flood control issues for the benefit of the Town and the University; and

WHEREAS, each of the parties wish to coordinate and perform activities which promote shared goals of water quality protection, flood protection, erosion control and storm water management, and, therefore, the parties enter into this MOU for the purpose of memorializing their intentions with regard to such activities.

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions contained herein, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

- 1.01 The "MOU" shall mean this MOU entered into and executed by and among the City, the Town and the University, and shall include the terms and conditions hereof and the Attachments described in Sections 2 and 3 hereof.
- 1.02 This MOU constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, by, between and among the City, the Town and the University pertaining to activities defined herein, including in particular that Memorandum of Agreement

between the City and the Town dated September 7, 2016. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of this MOU have been made by any of the parties which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This MOU may be amended and modified only in writing signed by the City, the Town and the University.

SECTION II. OBLIGATIONS OF THE PARTIES

- 2.01 The City's obligations under this MOU are set forth in Attachment A, attached hereto and incorporated herein by reference.
- 2.02 The Town's obligations under this MOU are set forth in Attachment B, attached hereto and incorporated herein by reference.
- 2.03 The University's obligations under this MOU are set forth in Attachment C, attached hereto and incorporated herein by reference.

SECTION III. AREAS OF APPLICABILITY

- 3.01 The Town's boundaries are illustrated in Attachment D, attached and incorporated herein by reference.
- 3.02 The University's campus boundaries as the same exist at the time of the execution of this MOU are illustrated in Attachment E, attached and incorporated herein by reference.

SECTION IV. TERM

- 4.01 This MOU shall commence on the date of the last signature by any party hereto, and shall terminate on July 1, 2021, unless earlier terminated in accordance with the terms hereof.
- 4.02 The term of this MOU may be extended by written amendment signed by each of the parties prior to the date of termination.

SECTION V. DISPUTE RESOLUTION AND TERMINATION

- 5.01 Any and all disputes that may arise among the parties related to the terms and conditions of this MOU (a "Dispute") shall be handled in a reasonable and respectful manner. The complaining party shall reduce its position relating to a Dispute to writing delivered to the other parties. The parties shall meet to discuss a joint resolution of the Dispute within ten (10) business days after notice of the Dispute is given. Should the parties fail to reach an agreement regarding the Dispute within five (5) business days from the conclusion of their initial meeting, then any of the parties may request mediation of the Dispute, in writing to the other parties. The mediation request shall identify the Dispute at issue and designate an executive officer who will represent the party at the mediation. Within ten (10) business days after the request for mediation is given, the other parties shall designate in writing an executive officer who will represent the party at the mediation. The designated officials of each party shall be an appropriate official with authority to settle the Dispute. Within thirty (30) days from the date of the above designations, the parties' designated officials and/or their attorneys shall meet to discuss and determine (i) settlement of the Dispute; (ii) a date by which the mediation will be held; and (iii) the selection, employment and payment of a neutral mediator. If any party shall fail or refuse to participate in the mediation process outlined above, then any other party may terminate this MOU by given written notice to the other parties.

- 5.02 Notwithstanding any other provision of this Agreement, if funds for the City's financial commitment under this MOU are at any time not forthcoming through failure of the City's fiscal body to appropriate funds, then the City shall have the right to terminate this MOU without penalty by giving written notice documenting the lack of funding to the other parties, in which instance this MOU shall terminate and become null and void on the last day of the fiscal period for which appropriations were received, and the mediation process outlined above shall not be applicable. The City agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term of this MOU sufficient funds to meet its obligations hereunder in full.

SECTION VI. GENERAL PROVISIONS

- 6.01 Notice. Any notice required to be sent under this MOU shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other parties):

To the City/DPW:

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

To the Town:

Town Board President
Town of Rocky Ripple
930 West 54th Street
Rocky Ripple, IN 46208


To the University:

Vice President for Finance and Administration
Butler University
4600 Sunset Avenue
Indianapolis, IN 46208

- 6.02 Applicable Laws. This MOU shall be construed in accordance with the laws of the State of Indiana.
- 6.03 Severability. If any provision of this MOU is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this MOU which can operate independently of such stricken provisions shall continue in full force and effect.
- 6.04 Authority to Bind. Each party represents to the other parties that the signatory for the party is duly authorized to execute agreements on behalf of the party and has obtained all necessary approvals to execute this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the dates subscribed below.

**CONSOLIDATED CITY OF INDIANAPOLIS AND MARION COUNTY,
DEPARTMENT OF PUBLIC WORKS**

By: 
Lori B. Miser
Director

Date: 3.7.17

Approved as to Form and Legality:

By: 
Robert M. Frye
Assistant Corporation Counsel

Approved for Availability of Funding:

By: _____
Fady Qaddoura
City Controller

TOWN OF ROCKY RIPPLE

By: _____
Carla Gaff-Clark
Town Board President

Date: _____

BUTLER UNIVERSITY

By: _____
Bruce E. Arick
Vice President of Finance
and Administration

Date: _____

ATTACHMENT A
The City's Obligations

The City agrees to:

- 1) Name a representative of DPW to serve as point of contact to carry out necessary and appropriate coordination with the Town and the University for the purpose of implementing the terms and conditions of this MOU.
- 2) Schedule and hold meetings with the Town and the University as deemed necessary to coordinate and accomplish the activities contemplated by this MOU.
- 3) Assist the Town and the University with public meetings deemed necessary to inform the residents of the Town and the University's campus regarding the activities contemplated by this MOU.
- 4) Coordinate with the Town and the University to identify planning and study opportunities for improvements to water quality, flood protection, erosion control and storm water management in the Town and on the University's campus.
- 5) Coordinate with the Town and the University and assist with the completion of District activities and services in the Town and on the University's campus, related to flood damage reduction and flood protection infrastructure improvements deemed reasonably necessary to the Parties to: (i) provide flood damage protection to properties and improvements located thereon in the Town and on the University's Campus at or below the Base Flood Elevation, as defined and regulated by the Federal Emergency Management Agency (FEMA), and (ii) otherwise remove such properties and improvements from Special Flood Hazard Areas designated on applicable Flood Insurance Rate Maps from being defined as at risk from flooding from the 1 percent annual chance flood (also known as the 100-Year Frequency Flood or Base Flood) (collectively hereinafter referred to as the "Activities").
- 6) Assist the Town and the University as necessary to obtain needed easements and rights of entry for implementation and completion of the Activities in the Town and on the University's campus.
- 7) Assist the Town and the University to obtain all permits required for the implementation and completion of the Activities in the Town and on the University's campus.
- 8) Implement Ind. Code 8.1.5-5-7 as needed for the purpose of exercising reasonable discretion in development and recommendation of different schedules of fees or making classifications in schedules of fees based on variations in the costs, including capital expenditures, for furnishing the Activities in the Town and on the University's Campus.
- 9) Assist the Town and the University in the coordination, development and recommendation of federal and/or state legislation to enhance funding opportunities for furnishing the Activities in the Town and on the University's Campus.
- 10) Program up to Ten Million Dollars (\$10,000,000) in District funding over the term of this MOU for the Activities, including for the purpose of studies, planning, design and construction, rehabilitation and/or reconstruction of flood damage reduction facilities in the Town and on the University's campus along the West Fork of the White River.
- 11) Provide the Town and the University accounting for the District's expenditure of funds derived from the assessment of properties in the Town and University-owned property.

- 12) Review the implementation of this MOU with the Town and University from time-to-time and make recommendations on the application and performance of the Activities.
- 13) Coordinate with the Town and the University to identify and complete modifications and/or supplements to this MOU as determined and needed.

ATTACHMENT B
The Town's Obligations

The Town agrees to:

- 1) Name a representative of the Town to serve as point of contact to carry out necessary and appropriate coordination with the City and the University for the purpose of implementing the terms and conditions of this MOU.
- 2) Attend meetings with the City and the University from time-to-time as deemed necessary to coordinate and accomplish the Activities.
- 3) Plan and hold public meetings deemed necessary to inform the residents of the Town regarding the Activities.
- 4) Coordinate with the City and the University to identify planning and study opportunities for the Activities, including improvements to water quality, flood protection, erosion control and storm water management in the Town and on the University's campus.
- 5) Obtain all needed easements and rights of entry for implementation and completion of the Activities in the Town.
- 6) Obtain all permits required for the implementation and completion of the Activities in the Town.
- 7) Publicly maintain support for the need for and the payment of the District's storm water fees assessed on properties in the Town.
- 8) Assist the City in implementing Ind. Code 8.1.5-5-7 as needed for the purpose of exercising reasonable discretion in development and recommendation of different schedules of fees or making classifications in schedules of fees based on variations in the costs, including capital expenditures, for furnishing the Activities in the Town and on the University's Campus.
- 9) Assist the City in the coordination, development and recommendation of federal and/or state and legislation to enhance funding opportunities for furnishing the Activities in the Town and on the University's Campus.
- 10) Review the implementation of this MOU with the City and the University from time-to-time and make recommendations on the application and performance of the Activities.
- 11) Coordinate with the City and the University to identify and complete modifications and/or supplements to this MOU as determined and needed.

ATTACHMENT C
The University's Obligations

The University agrees to:

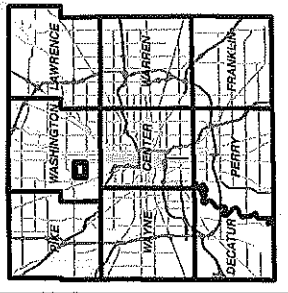
- 1) Name a representative of the University to serve as point of contact to carry out necessary and appropriate coordination with the City and the Town for the purpose of implementing the terms and conditions of this MOU.
- 2) Attend meetings with the City and the Town from time-to-time as deemed necessary to coordinate and accomplish the Activities.
- 3) Plan and hold public meetings deemed necessary to inform the University's constituents regarding the Activities.
- 4) Coordinate with the City and the Town to identify planning and study opportunities for the Activities, including improvements to water quality, flood protection, erosion control and storm water management in the Town and on the University's campus.
- 5) Obtain all needed easements and rights of entry for implementation and completion of the Activities on the University's campus, subject to the University obtaining approval of the then-existing University Board of Trustees (or the approval of such other University governing body or official as determined by the University) for any and all action deemed necessary to obtain any such easements or rights of entry.
- 6) Obtain all permits required for the implementation and completion of the Activities on the University's campus, subject to the University obtaining approval of the then-existing University Board of Trustees (or the approval of such other University governing body or official as determined by the University) for any and all action deemed necessary to obtain any such permits.
- 7) Publicly maintain support for the need for and the payment of the District's storm water fees assessed on University-owned properties.
- 8) Assist the City in implementing Ind. Code 8.1.5-5-7 as needed for the purpose of exercising reasonable discretion in development and recommendation of different schedules of fees or making classifications in schedules of fees based on variations in the costs, including capital expenditures, for furnishing the Activities in the Town and on the University's Campus that are otherwise approved by the Town and the University in scope, design and location, subject to the University obtaining approval of the then-existing University Board of Trustees (or the approval of such other University governing body or official as determined by the University) for any and all action deemed necessary to provide the requested assistance with such implementation.
- 9) Assist the City and the Town in the coordination, development and recommendation of federal and/or state and legislation to enhance funding opportunities for furnishing the Activities in the Town and on the University's Campus.
- 10) Commit to programing significant funding over the term of this MOU in support and furtherance of the Activities, including for the purpose of studies, planning, design and construction, rehabilitation and/or reconstruction of flood damage reduction facilities in the Town and on the University's campus along the West Fork of the White River, subject to the University obtaining approval of the then-existing University Board of Trustees (or the approval of such other University governing body or official as determined by the University) for any and all action deemed necessary to commit and/or dedicate

University funds to and for the purposes outlined in this MOU.

- 11) Review the implementation of this MOU with the City and the Town from time-to-time and make recommendations on the application and performance of the Activities.
- 12) Coordinate with the City and the Town to identify and complete modifications and/or supplements to this MOU as determined and needed.

Town of Rocky Ripple
Attachment D

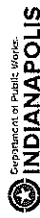
Marion County Indianapolis, IN



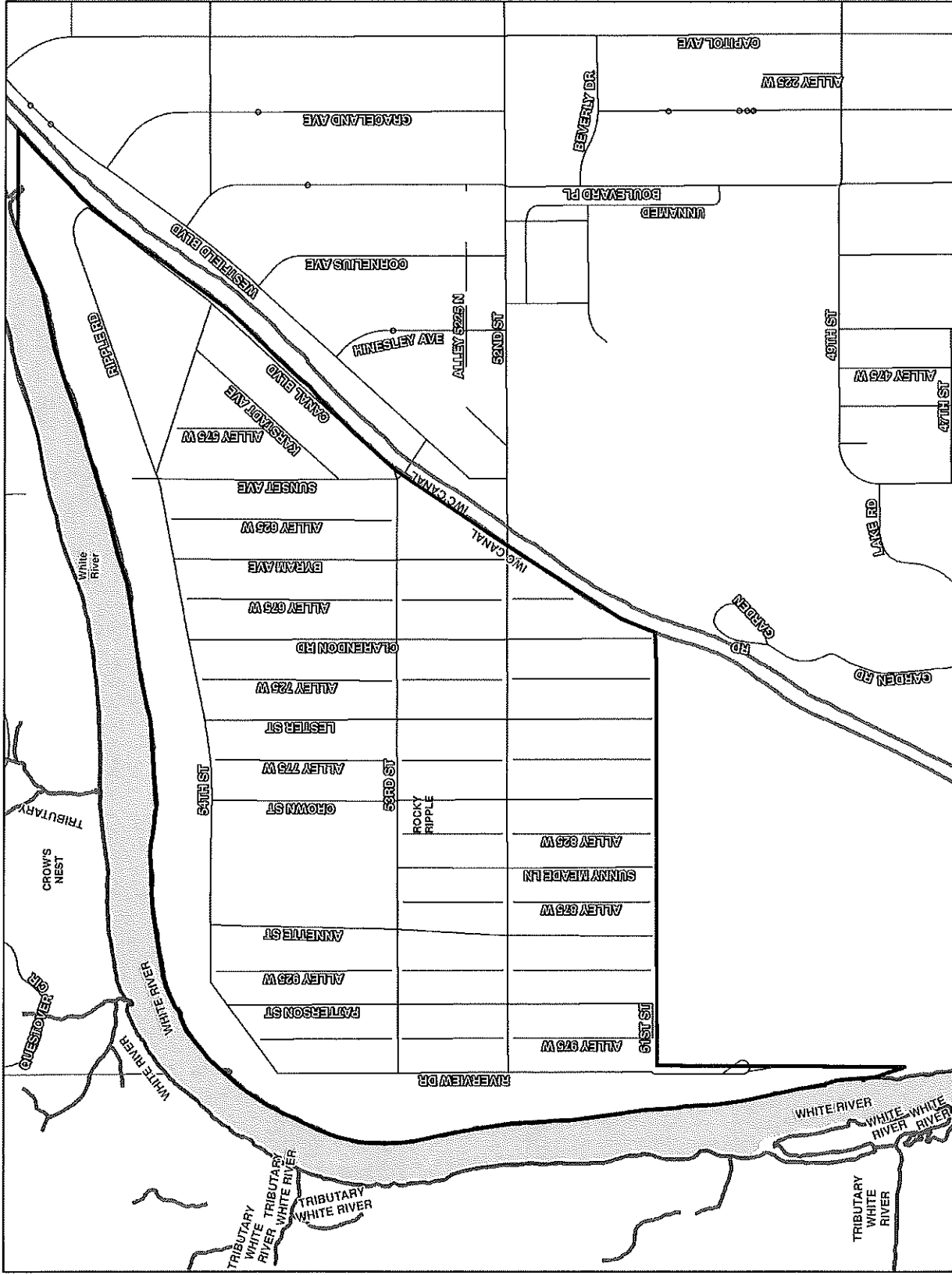
Location Map

Legend

- Rivers
- Streams
- Street
- One Way
- One Way
- Towns
- Town of Rocky Ripple

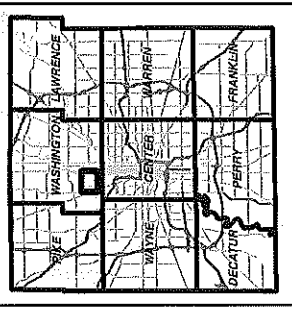


Department of Public Works
INDIANAPOLIS



Butler University Properties
Attachment E

Marion County Indianapolis, IN



Location Map

- Legend**
- Rivers
 - Streams
 - Street
 - One Way
 - One Way
 - Towns
 - Butler University Properties



Department of Public Works
INDIANAPOLIS
City of Indianapolis
Public Works Department
317-438-2200
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