

ORDINANCE NO. 12-32

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY
OF WESTFIELD, INDIANA, PROVIDING FOR THE
DISPOSITION OF THE WATERWORKS UTILITY AND
WASTEWATER UTILITY OF THE CITY**

WHEREAS, the City of Westfield, Indiana (the “City”), has heretofore established and currently owns and operates (i) a sewage works for the collection and treatment of sewage and other waste (the “Wastewater Utility”) pursuant to the provisions of IND. CODE § 36-9-23, as amended, and (ii) a waterworks furnishing the public water supply to the City and its inhabitants (the “Waterworks Utility” and collectively with the Wastewater Utility, the “Utilities”), pursuant to the provisions of IND. CODE § 8-1.5, as amended;

WHEREAS, the City has been exploring the possible disposition of the Utilities in order to pay for necessary upgrades to the City’s basic utilities infrastructure, while maintaining the City’s competitive cost structure relative to its peer cities in central Indiana and mitigating future utility rate increases for the City’s utility customers;

WHEREAS, the City issued a Request for Proposals (“RFP”) relating to the sale and disposition of the Utilities for the purpose of providing for the combined operation of the Utilities to achieve operating efficiencies, to keep customer rates as low as possible and to raise capital for City infrastructure projects;

WHEREAS, Citizens Energy Group (“Citizens”) responded to the City’s RFP indicating its desire to acquire the Utilities and entered into extensive discussions with the City which has resulted in the preparation of an Asset Purchase Agreement relating to the Water Utility (the “Water Utility Purchase Agreement” and an Asset Purchase Agreement relating to the Wastewater Utility (the “Wastewater Utility Purchase Agreement” and with the Water Utility Purchase Agreement, the “Agreements”);

WHEREAS, IND. CODE § 8-1.5-2 generally provides for a process that a municipality must adhere to when undertaking the sale of any non-surplus utility property, including the property of the Water Utility;

WHEREAS, the Wastewater Utility, an operational utility of the City, constitutes more than real property or personal property and as such provisions relating solely to the disposition of real property and provisions relating solely to the disposition of personal property do not adequately serve to address the disposition of the Wastewater Utility;

WHEREAS, studies have shown that (i) issues related to urban water supply and demand should not be considered independently of issues related to wastewater disposal and water reuse; and (ii) water management strategies and opportunities for water reuse can only be properly evaluated in the context of their interactions with the overall waterworks system;

WHEREAS, the EPA has recognized that ensuring a sustainable water supply and infrastructure is a top national priority and has led collaborative efforts to integrate the management systems for water and wastewater operations, such as establishment of the Sustainable Water Infrastructure Initiative designed to ensure that all components of our nation's water infrastructure are capable of meeting future needs;

WHEREAS, to provide for a uniform and formal process for the disposition of both the Water Utility and the Wastewater Utility, the Common Council of the City (the "Common Council") adopted Ordinance No. 12-18 on June 25, 2012, pursuant to which the Common Council determined to exercise the powers available to it under IND. CODE § 8-1.5-2 with respect to the disposition of the Wastewater Utility, all as authorized by IND. CODE §36-1-3;

WHEREAS, IND. CODE § 8-1.5-2-4 provides that whenever a municipal legislative body determines to sell or otherwise dispose of non-surplus municipally owned utility property, it must appoint three disinterested persons to serve as appraisers for the purpose of appraising the value of the assets of the utility or utilities to be disposed by the City;

WHEREAS, the Common Council adopted Resolution No. 12-110 on September 10, 2012, setting forth its desire to initiate the proceedings to provide for the disposition of the Utilities and appointing Burgess & Niple, Inc, Integra Realty Resources, and SAIC Energy, Environmental and Infrastructure, LLC (collectively, the "Appraisers") as appraisers to provide an appraisal of the assets of the Utilities as required by IND. CODE § 8-1.5-2-4;

WHEREAS, the Appraisers completed their appraisal of the City's Utilities and determined that the value of the Waterworks Utility is \$16,605,000 and the value for the Wastewater Utility is \$57,819,000, as more fully set forth in the Appraisal Report previously presented to the Common Council (the "Appraisal");

WHEREAS, this Common Council adopted Resolution No.12-111 on September 24, 2012, determining to proceed with the disposition of the Utilities and conduct a public hearing for the purpose of (i) reviewing and explaining the Appraisal; (ii) receiving public comments on the proposed disposition of the Utilities; and (iii) considering adoption of an ordinance providing for the sale or disposition of the Utilities;

WHEREAS, the Common Council conducted a public hearing on October 29, 2012 pursuant to the notice published in accordance with IND. CODE § 5-3-1;

WHEREAS, the Common Council desires to approve of and authorize the execution of the Water Utility Purchase Agreement which is attached hereto as Exhibit A and the

Wastewater Utility Purchase Agreement attached hereto as Exhibit B and the disposition of the assets of the Utilities to Citizens;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Common Council of the City of Westfield, Indiana, as follows:

Section 1. This Common Council hereby approves of the substantially final forms of the Water Utility Purchase Agreement attached hereto as Exhibit A and the Wastewater Utility Purchase Agreement attached hereto at Exhibit B providing for the sale of the Utilities to Citizens.

Section 2. This Common Council hereby authorizes the Mayor and the Clerk of the City to execute and deliver the Agreements in substantially the forms attached hereto at Exhibit A and Exhibit B with such changes to such Agreements and the schedules attached thereto as may be necessary or appropriate upon the approval of counsel.

Section 3. Upon the execution of the Agreements, this Common Council authorizes the officers of the City to take such action as may be necessary to consummate the sale and disposition of the Utilities to Citizens.

Section 4. Upon the conclusion of the Closing (as such term is defined in the Agreements), those ordinances of the City which are inconsistent with the operation and ownership of the Utilities by Citizens or otherwise inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistencies.

Section 5. Should any provision of this Ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions hereof shall remain unaffected to the extent that such remaining provisions can, without the invalid provision or provisions, be given the effect intended by this Common Council in adopting this Ordinance.

Section 6. This Ordinance shall be in full force and effect from and upon compliance with the procedures required by law.

* * * * *

ALL OF WHICH IS ORDAINED THIS _____ DAY OF _____, 2012.

WESTFIELD COMMON COUNCIL

Voting For

Voting Against

Abstain

Jim Ake

Jim Ake

Jim Ake

John Dippel

John Dippel

John Dippel

Steven Hoover

Steven Hoover

Steven Hoover

Robert L. Horkay

Robert L. Horkay

Robert L. Horkay

Robert J. Smith

Robert J. Smith

Robert J. Smith

Cindy Spoljaric

Cindy Spoljaric

Cindy Spoljaric

Robert W. Stokes

Robert W. Stokes

Robert W. Stokes

ATTEST:

Cindy J. Gossard, Clerk Treasurer

I hereby certify that ORDINANCE NO. 12-32 was delivered to the Mayor of Westfield on the _____ day of _____, 2012, at _____ . m.

Cindy J. Gossard, Clerk Treasurer

I hereby APPROVE Ordinance No. 12-32
this _____ day of _____, 2012.

J. Andrew Cook, Mayor

I hereby VETO Ordinance No. 12-32
this _____ day of _____, 2012.

J. Andrew Cook, Mayor

ATTEST:

Cindy J. Gossard, Clerk Treasurer