

**AGREEMENT
BETWEEN
THE INDIANA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF WESTFIELD
CONCERNING
COORDINATION AND REVISIONS TO THE U.S. 31 PROJECT**

EDS No. _____

This Agreement (“Agreement”) is made and entered into by and between the Indiana Department of Transportation (“INDOT”) and the City of Westfield, Indiana (“Westfield” or the “CITY”), and is effective on and after the date on which it is last signed by a party hereto (the “Effective Date”).

RECITALS

WHEREAS, INDOT is planning major construction projects to improve vehicular traffic flow on U.S. 31 between 96th Street and 216th Street in Hamilton County (“U.S. 31 Project”), and may close certain intersections in Westfield as part of the U.S. 31 Project; and

WHEREAS, under the current accelerated project schedule, U.S. 31 within Westfield is anticipated to be open to traffic by December 31, 2014, four years ahead of the original schedule for the U.S. 31 Project; and

WHEREAS, Westfield has requested that INDOT include certain enhancements at various locations along the U.S. 31 corridor, including additional lighting, pedestrian accommodations, roundabout intersections, irrigation conduit, and other upgrades (the “Enhancements”, more particularly described in Section 1.3(D) of this Agreement); and

WHEREAS, Westfield requested that INDOT add the Enhancements to plans for the U.S. 31 Project, and INDOT agreed to add the Enhancements to plans for the U.S. 31 Project; and

WHEREAS, INDOT’s plans for the U.S. 31 Project did not originally call for any architectural enhancements at the bridge carrying S.R. 32 over U.S. 31; and

WHEREAS, Westfield wishes to construct certain architectural enhancements at U.S. 31 and S.R. 32 in an effort to alert and attract visitors to the City (the “Towers”) in the future; and

WHEREAS, Westfield requested that INDOT add the construction of foundations for the Towers to plans for the U.S. 31 Project and agreed to pay INDOT for additional costs of construction associated with the foundations for the Towers; and

WHEREAS, INDOT has agreed to add the construction of foundations for the Towers to plans for the U.S. 31 Project; and

WHEREAS, Westfield has undertaken all preliminary engineering and design work necessary for the foundations for the Towers (in accordance with applicable state and federal requirements and INDOT specifications), and will construct the Towers at its expense and in coordination with INDOT at a later date; and

WHEREAS, Westfield currently exercises maintenance jurisdiction over 156th Street at its intersection with U.S. 31 within Westfield's corporate boundaries, and incurs all expenses of improvement, repair, upkeep, regulation and maintenance of 156th Street; and

WHEREAS, INDOT's plans for the U.S. 31 Project originally called for U.S. 31 to bisect 156th Street cutting off access, and did not include construction of a bridge to carry U.S. 31 traffic across 156th Street (the "156th Street Bridge"); and

WHEREAS, Westfield requested that INDOT add the Bridge to plans for the U.S. 31 Project, and has agreed to pay INDOT for additional costs of construction associated with the Bridge; and

WHEREAS, INDOT added the Bridge to plans for the U.S. 31 Project, and has completed design, environmental and engineering work for the Bridge; and

WHEREAS, many of the enhancements requested by the CITY also create some benefits in terms of access, safety and mobility to the U.S. 31 Project; and

WHEREAS, to build the U.S. 31 Project at the best value for Indiana taxpayers, INDOT and the CITY desire to cooperate in funding and accelerating construction of certain enhancements to local roads;

NOW THEREFORE, in consideration of the premises and the mutually dependent covenants herein contained, the Parties hereto agree as follows:

1.1. Interpretation. The Preamble and Recitals recorded above are incorporated by reference into this Agreement. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Agreement.

1.2. Minor Work on Local Roads. In consideration of the elements added to the U.S. 31 Project at the CITY's request in accordance with the terms of this Agreement, the CITY agrees that neither the CITY nor any of its agents, employees, contractors or officials shall perform or allow to be performed any construction, maintenance or other improvement work on any road under the CITY's jurisdiction that could interfere with the Traffic Management Plan for the U.S. 31 Project without prior approval from INDOT, particularly during closures of portions of U.S. 31 in Hamilton County. For purposes of clarity and to avoid misunderstanding, any action that impedes or adversely affects the flow of diverted traffic or decreases mobility on local roads shall be considered to be interference with the Traffic Management Plan. Minor projects, which may include shoulder widening or signal work, will not be considered to violate the requirements of this Section 1.2.

1.3. Changes Requested by the CITY on U.S. 31 Project. Because the changes provide some benefit to the U.S. 31 Project while also complementing the CITY's plans for future development, INDOT agrees to construct the elements described in this Section 1.3 to the U.S. 31 Project at its sole expense (except as otherwise provided herein). INDOT will allow the CITY to review INDOT's design revisions for these elements; however, the CITY understands and agrees that INDOT shall make all final decisions concerning project design, construction and specifications. INDOT will design (except as otherwise provided herein), let, manage, administer and supervise the U.S. 31 Project in accordance with applicable laws and INDOT policies, procedures and specifications. In the event that these elements are designed and constructed for less than the respective estimated costs, INDOT shall retain the benefit of such cost savings. Under no circumstances shall INDOT make any additional payment (notwithstanding refunds for overpayment described in Section 1.8 of this Agreement) or incur any other liability to the CITY.

- A. ***Interchange at U.S. 31 and S.R. 32.*** As requested by the CITY, INDOT revised the plans for the U.S. 31 Project to include a single-point interchange at U.S. 31 and S.R. 32 instead of a diamond interchange, allowing for the addition of a roundabout intersection nearby at S.R. 32 and Shamrock Way. An illustration of design of the interchange is attached as **Exhibit A** and herein incorporated by reference. INDOT will construct the single-point interchange as part of the U.S. 31 Project. INDOT estimates that the change to a single-point interchange will result in an additional cost of **\$500,000.00** to the U.S. 31 Project.
- B. ***Extension of Wheeler Road.*** As requested by the CITY, INDOT revised the current plans for the U.S. 31 Project to include the extension of Wheeler Road from its existing terminus to S.R. 32. INDOT will allow the CITY to review INDOT's design revisions for the extension; however, the CITY understands and agrees that INDOT shall make all final decisions concerning project design, construction and specifications. An illustration of design of the extension is attached as **Exhibit B** and herein incorporated by reference. INDOT will construct this extension of Wheeler Road as part of the U.S. 31 Project. INDOT estimates that the extension of Wheeler Road will result in an additional cost of **\$1,000,000.00** to the U.S. 31 Project. After construction is complete, the Parties agree that maintenance jurisdiction over Wheeler Road (as extended) shall revert back to the CITY.
- C. ***Union Street Bridges.*** As requested by the CITY, INDOT has revised the original plans for the U.S. 31 Project to include two bridges carrying U.S. 31 over Union Street, instead of bisecting Union Street and cutting off access at U.S. 31. An illustration of the design of the Union Street Bridges is attached as **Exhibit C** and herein incorporated by reference. INDOT estimates that the addition of the two Union Street bridges has resulted in an additional cost of **\$5,000,000.00** to the U.S. 31 Project.
- D. ***Poplar Street Improvements.*** As requested by the CITY, INDOT revised the plans for the U.S. 31 Project to include conversion of Poplar Street to a boulevard from just south of S.R. 32 to just north of Park Street. An illustration of the design of the Poplar Street improvements is attached as **Exhibit D** and herein incorporated by reference. INDOT

estimates that the addition of the improvements to Poplar Street has resulted in an additional cost of **\$500,000.00** to the U.S. 31 Project.

- E. ***Intersection at 161st Street and Buena Vista.*** As requested by the CITY, INDOT revised the plans for the U.S. 31 Project to include a roundabout intersection at 161st Street and Buena Vista. INDOT will allow the CITY to review INDOT's design revisions for the intersection; however, the CITY understands and agrees that INDOT shall make all final decisions concerning project design, construction and specifications. An illustration of design of the intersection is attached as **Exhibit E** and herein incorporated by reference. INDOT will construct the intersection as part of the U.S. 31 Project. INDOT estimates that the change to a roundabout intersection will result in an additional cost of **\$350,000.00** to the U.S. 31 Project. After construction is complete, the Parties agree that maintenance jurisdiction over the roundabout intersection shall revert back to the CITY.
- F. ***Extension of Sun Park Road.*** As requested by the CITY, INDOT revised the current plans for the U.S. 31 Project to include the extension of Sun Park Road from its existing terminus (a cul-de-sac) to 181st Street. INDOT will allow the CITY to review INDOT's design revisions for the extension; however, the CITY understands and agrees that INDOT shall make all final decisions concerning project design, construction and specifications. An illustration of design of the extension is attached as **Exhibit F** and herein incorporated by reference. INDOT will construct this extension of Sun Park Road as part of the U.S. 31 Project. INDOT estimates that the extension of Sun Park Road will result in an additional cost of **\$200,000.00** to the U.S. 31 Project. After construction is complete, the Parties agree that maintenance jurisdiction over Sun Park Road (as extended) shall revert back to the CITY.

1.4. **Additional Work on Foundations for Towers.** The CITY wishes to construct certain architectural enhancements at U.S. 31 and S.R. 32, known as the Towers, in an effort to alert and attract visitors to the CITY, and has requested that INDOT add the construction of foundations for the Towers to plans for the U.S. 31 Project. Further, the CITY has agreed to pay INDOT for additional costs of construction associated with the foundations for the Towers in accordance with Section 1.8 of this Agreement.

- A. ***Towers Foundations.*** INDOT has added the construction of foundations for the Towers to plans for the U.S. 31 Project. INDOT will let and construct foundations for two (2) "ornamental structural towers" in accordance with the plans and specifications produced by the CITY (attached as **Exhibit G** to this Agreement and herein incorporated by reference). As shown in **Exhibit H** to this Agreement (attached and herein incorporated by reference), the Parties estimate that the total cost of construction of the foundations (including costs of inspection) is approximately **\$308,000.00**. The CITY shall remit eligible funds in the amount of **\$308,000.00** to INDOT in accordance with Section 1.8 of this Agreement no later than 5:00 PM on November 15, 2012. If the CITY fails for any reason to provide full payment for the Towers foundations on or before 5:00 PM on November 15, 2012, INDOT may remove the Towers foundations from the U.S. 31 Project and shall have no further obligation to the CITY under this Section 1.4.

- B. ***Change Orders, Cost Increases or Other Additional Project Costs.*** INDOT will provide written notification and documentation of any change orders or cost increases associated with the Project, prior to approval, to obtain consent from the CITY before proceeding. The CITY shall provide written concurrence or rejection of any change orders or cost increases to INDOT within five (5) days of receiving notification from INDOT. If no response is received from the CITY within seven (7) days of receipt of notification, the change order or cost increase shall be deemed accepted and the CITY shall be responsible for payment to INDOT in accordance with Section 1.8 of this Agreement. In the event that the CITY rejects a change order or cost increase, INDOT shall be under no obligation to incur additional costs and in its sole discretion may direct the project contractor to deviate from the design plans presented by the CITY to complete the Project at a lower cost.

1.5. Construction of Bridge at 156th Street.

- A. ***Project Elements.*** The 156th Street Bridge will be constructed in accordance with plans and specifications produced by INDOT, as shown in **Exhibit I** to this Agreement (attached and herein incorporated by reference). There will be no access to U.S. 31 from 156th Street at the site of the 156th Street Bridge. As shown in **Exhibit J** to this Agreement (attached and herein incorporated by reference), the Parties estimate that the total cost of construction of the 156th Street Bridge is approximately **\$4,264,000.00**. INDOT will let and construct the 156th Street Bridge as part of the contract(s) for the U.S. 31 Project.
- B. ***Funding of the Project.*** In accordance with Section 1.8 of this Agreement, the CITY shall pay INDOT for the cost of constructing the 156th Street Bridge in the amount of **\$4,264,000.00**. To assist the CITY in funding the construction of the 156th Street Bridge, INDOT has invited the CITY to apply for a loan in the amount of **\$4,264,000.00** from the State Infrastructure Bank (“SIB”). Westfield understands that it must meet all statutory requirements for an SIB loan under IC 4-10-19, and must execute a separate Loan Agreement (a draft of which is attached as **Exhibit K** and herein incorporated by reference) in order to secure an SIB loan for the 156th Street Bridge. In the event that Westfield fails to meet the statutory prerequisites or otherwise declines to enter into an SIB Loan Agreement that complies with all requirements of IC 4-10-19, Westfield understands and agrees that it shall be solely responsible to provide other funding to INDOT to finance construction of the 156th Street Bridge. If Westfield fails to secure funding by either obtaining an SIB Loan or providing other funds to INDOT sufficient to cover all costs of constructing the 156th Street Bridge no later than 5:00 PM on November 15, 2012, INDOT may: (1) eliminate the 156th Street Bridge from its U.S. 31 Project contracts and construct the U.S. 31 Project as originally planned (bisecting 156th Street), and shall have no further responsibility under this Agreement; or (2) proceed with construction of the Project as planned, but act in accordance with Section 2.16 of this agreement to recover all costs of constructing the 156th Street Bridge.
- C. ***Closure of 156th Street.*** The CITY understands and agrees that it will likely become necessary to close 156th Street while the Project is constructed. The CITY hereby grants

permission to INDOT and its contractors, employees, agents or assigns to close or otherwise restrict traffic on 156th Street during construction of the Project or other portions of the U.S. 31 Project as INDOT deems necessary in its sole discretion.

- D. ***Maintenance of 156th Street.*** Upon completion and final acceptance of the U.S. 31 Project, maintenance jurisdiction over 156th Street (including but not limited to responsibility for snow and ice removal, patching, resurfacing, etc.) shall permanently revert to Westfield. INDOT shall retain responsibility for maintenance and inspection of the Bridge structure.

1.6. Construction of Enhancements to U.S. 31 Project.

- A. ***Project Elements.*** INDOT will revise current plans for the U.S. 31 Project to include upgrades or enhancements to lighting, railings, and pedestrian facilities requested by the CITY as shown and described in **Exhibit L** to this Agreement (attached and herein incorporated by reference). As shown in **Exhibit M** to this Agreement (attached and herein incorporated by reference), the Parties estimate that construction of the Enhancements will result in an additional cost of approximately **\$1,058,000.00** to the U.S. 31 Project. The CITY shall remit eligible funds in the amount of **\$1,058,000.00** to INDOT in accordance with Section 1.8 of this Agreement no later than 5:00 PM on November 15, 2012. If the CITY fails for any reason to provide full payment for the Enhancements on or before 5:00 PM on November 15, 2012, INDOT may remove the Enhancements from the U.S. 31 Project and shall have no further obligation to the CITY under this Section 1.6.

- B. ***Maintenance of the Enhancements.*** After construction is complete, the Parties agree that responsibility for maintenance of the Enhancements shall revert to the CITY.

- C. ***Change Orders, Cost Increases or Other Additional Project Costs.*** INDOT will provide written notification and documentation of any change orders or cost increases associated with the Project, prior to approval, to obtain consent from the CITY before proceeding. The CITY shall provide written concurrence or rejection of any change orders or cost increases to INDOT within five (5) days of receiving notification from INDOT. If no response is received from the CITY within seven (7) days of receipt of notification, the change order or cost increase shall be deemed accepted and the CITY shall be responsible for payment to INDOT in accordance with Section 1.8 of this Agreement. In the event that the CITY rejects a change order or cost increase, INDOT shall be under no obligation to incur additional costs and in its sole discretion may direct the project contractor to deviate from the design plans presented by the CITY to complete the Project at a lower cost.

- 1.7. Project Coordination. INDOT and the CITY agree to communicate and (where possible) coordinate schedules pertaining to the work described in this Agreement or any other part of the U.S. 31 Project.

1.8. Payments to INDOT.

- A. ***Payment for the Towers foundations.*** The CITY shall remit eligible funds in the amount of **\$308,000.00** to INDOT in accordance with Section 1.8 of this Agreement no later than 5:00 PM on November 15, 2012. If the CITY fails for any reason to provide full payment for the Towers foundations on or before 5:00 PM on November 15, 2012, INDOT may remove the Towers foundations from the U.S. 31 Project and shall have no further obligation to the CITY under Section 1.4 of this Agreement.
- B. ***Cost overruns.*** The CITY shall remit the full amount of any cost overruns associated with construction of the Towers foundations or the Enhancements to INDOT within thirty (30) days of the date the changes are accepted or deemed accepted in accordance with Sections 1.4(B) and 1.6(C) of this Agreement. Should the CITY fail to remit payment for cost overruns within thirty (30) days, INDOT may act in accordance with Section 2.16 of this agreement to recover all amounts due.
- C. ***Payment for the 156th Street Bridge.*** In accordance with Section 1.5(B) of this Agreement, the CITY shall provide eligible funds for construction of the 156th Street Bridge in the amount of **\$4,264,000.00** no later than 5:00 PM on November 15, 2012. If the CITY fails for any reason to provide full funding for the 156th Street Bridge on or before 5:00 PM on November 15, 2012, INDOT may: (1) eliminate the 156th Street Bridge from its U.S. 31 Project contracts and construct the U.S. 31 Project as originally planned (bisecting 156th Street), and shall have no further responsibility under this Agreement; or (2) proceed with construction of the Project as planned, but act in accordance with Section 2.16 of this agreement to recover all costs of constructing the 156th Street Bridge.
- D. ***Payment for the Enhancements to the U.S. 31 Project.*** The CITY shall remit eligible funds in the amount of **\$1,058,000.00** to INDOT in accordance with Section 1.8 of this Agreement no later than 5:00 PM on November 15, 2012. If the CITY fails for any reason to provide full payment for the Enhancements on or before 5:00 PM on November 15, 2012, INDOT may remove the Enhancements from the U.S. 31 Project and shall have no further obligation to the CITY under Section 1.6 of this Agreement.
- E. ***Refund in event of over-payment.*** If, after final audit of the U.S. 31 Project, it is determined that actual costs of the 156th Street Bridge are less than the amount paid by the CITY, INDOT shall refund the amount of overpayment by: (1) reducing the balance of the CITY's SIB loan by the amount of the overpayment; or (2) if the CITY provided funds other than proceeds of an SIB loan to INDOT, refunding the amount of the overpayment to the CITY in accordance with section 2.16 of this Agreement and applicable state law.

1.9. Funding of the U.S. 31 Project. Nothing in this Agreement shall be deemed to restrict INDOT's ability to manage available funding sources in providing funds for the U.S. 31 Project or portions thereof described in this Agreement.

1.10. Public Statements or Disclosures. The Parties shall consult with each other and must agree as to the timing, content, and form before issuing any press release or other public statements or disclosures related to the U.S. 31 Project or this Agreement. However, this Section does not prohibit either of the Parties from making a public statement or disclosure regarding this Agreement or the U.S. 31 Project if, in the opinion of its legal counsel, such a disclosure is required by law, including but not limited to Indiana's Access to Public Records Act (IC 5-14-3), legal process or directive of a regulatory authority having jurisdiction over either party.

II. GENERAL PROVISIONS

2.1. Access to Records. The CITY shall maintain any books, documents, papers, correspondence, accounting records and other evidence pertaining to this Agreement, and shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for ten (10) years from the date of final payment under the terms of this Agreement, for inspection or audit by INDOT, or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT. The CITY agrees that, upon request by any agency participating in federally-assisted programs with whom the CITY has agreed to or seeks to agree to, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CITY in connection with this Agreement, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2.2. Assignment; Successors. The CITY binds its successors and assignees to all the terms and conditions of this Agreement. The CITY shall not assign or subcontract the whole or any part of this Agreement without the State's prior written consent. The CITY may assign its right to receive payments to such third parties as the CITY may desire without the prior written consent of the State, provided that the CITY gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

2.3. Assignment of Antitrust Claims. As part of the consideration for the award of this Agreement, the CITY assigns to the State all right, title and interest in and to any claims the CITY now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Agreement.

2.4. Audits. The CITY 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.*, and audit guidelines specified by the State.

The State considers the CITY to be a "vendor" for purposes of this Agreement. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Agreement the CITY shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Agreement. Such audit is to be conducted by an independent public

or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial 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). The CITY 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 nine (9) months following the close of the CITY's fiscal year. The CITY agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the CITY, and not of a parent, member, or subsidiary corporation of the CITY, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Agreement and that the CITY is not out of compliance with the financial aspects of this Agreement.

2.5. Authority to Bind CITY. The signatory for the CITY warrants that he/she has the necessary authority to enter into this Agreement. The signatory for the CITY represents that he/she has been duly authorized to execute this Agreement on behalf of the CITY, and has obtained all necessary or applicable approval to make this Agreement fully binding upon the CITY when his/her signature is affixed to this Agreement.

2.6. Certification for Federal-Aid Contracts Lobbying Activities. The CITY certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the CITY has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, to any person for influencing or attempting to influence an officer or employee of any federal 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 agreements, 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 agreement, grant, loan, or cooperative agreement.

B. 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 federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with such federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The CITY also agrees by signing this Agreement that it shall require that the language of this certification be included in all contractor agreements including lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

2.7. Compliance with Laws.

A. The CITY shall 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 or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the State and the CITY to determine whether the provisions of this Agreement require formal modification.

B. The CITY 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 IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the CITY is not familiar with these ethical requirements, the CITY should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the CITY or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the CITY. In addition, the CITY may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

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

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

E. If a valid dispute exists as to the CITY's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the CITY, the CITY may request that it be allowed to continue, or receive work, without delay. The CITY 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. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The CITY warrants that the CITY and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work with the State.

G. The CITY affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

(1) The CITY and any principals of the CITY certify that:

a) the CITY, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(b) the CITY will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The CITY and any principals of the CITY certify that an affiliate or principal of the CITY and any agent acting on behalf of the CITY or on behalf of an affiliate or principal of the CITY, except for de minimis and nonsystematic violations,

(a) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(b) will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.

2.8. Drug-Free Workplace Certification. The CITY hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the Indiana Department of Transportation and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the CITY in the State of Indiana has been convicted of a criminal drug violation occurring in the CITY's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Agreement payments, termination of the Agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Agreement amount set forth in this Agreement is in excess of \$25,000.00, the CITY hereby further agrees that this Agreement 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 agreements with and grants from the State of Indiana in excess of \$25,000.00. No award of an agreement shall be made, and no 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 CITY and made a part of the agreement as part of the executed contract.

The CITY 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 CITY 's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- b. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CITY'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 CITY 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.

2.9. Employment Eligibility Verification.

- a. The CITY affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.
- b. The CITY shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The CITY is not required to participate should the E-Verify program cease to exist. Additionally, the CITY is not required to participate if the CITY is self-employed and does not employ any employees.
- c. The CITY shall not knowingly employ or contract with an unauthorized alien. The CITY shall not retain an employee or contract with a person that the CITY subsequently learns is an unauthorized alien.

- d. The CITY shall require his/her/its subcontractors, who perform work under this contract, to certify to the CITY that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The CITY agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- e. The State may terminate for default if the CITY fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

2.10. Force Majeure. In the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a Force Majeure Event), the Party who has been so affected shall immediately give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

2.11. Funding Cancellation Clause. When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Agreement, this Agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

2.12. Governing Laws. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

2.13. Indemnification. The CITY agrees to indemnify, exculpate, and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, or by whosoever caused, to the person or property of anyone arising out of, or resulting from the performance of this Agreement or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent of negligence of the CITY, including any claims arising out of the Worker's Compensation Act or any other law, ordinance, order or decree. INDOT shall **not** provide such indemnification to the CITY.

The CITY agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith in the event that the CITY shall default under the provisions of this Section.

2.14. Nondiscrimination.

A. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the CITY, shall not discriminate against any employee or applicant for employment, to be employed in the

performance of work under this Agreement, with respect to 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, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Agreement. Acceptance of this Agreement 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.

B The CITY understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the CITY agrees that if the CITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CITY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CITY shall comply with Section 202 of 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 Agreement.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, religion and disability.) The following are examples of where this policy shall be applied relative to the INDOT.

C. The CITY shall not discriminate in its selection and retention of contractors, including without limitation, those services retained for, or incidental to, construction, planning, research, engineering, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisitions of right-of-way.

D. The CITY shall not modify the Project in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, religion and disability).

E. The CITY shall not modify the Project in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, religion and disability.)

F. The CITY shall neither allow discrimination by contractors in their selection and retention of subcontractors, lessors and/or material suppliers, nor allow discrimination by their subcontractors in their selection of subcontractors, lessors or material suppliers, who participate in construction, right-of-way clearance and related projects.

G. INDOT shall Take appropriate actions to correct any deficiency determined by itself and/or the Federal Highway Administration ("FHWA") within a reasonable time period, not to

exceed ninety (90) days, in order to implement Title VI compliance in accordance with INDOT's assurances and guidelines.

2.15. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised:

- A. For INDOT: Greg Kicinski
Director of Project Management
Indiana Department of Transportation
100N. Senate Avenue
Indianapolis, Indiana 46204
(317)234-1534
gkicinski@indot.in.gov

- B. For CITY: Mayor Andy Cook
130 Penn Street
Westfield, IN 46074
(317) 804-3001
acook@westfield.in.gov

2.16. Payment. All payments shall be made according to the terms of this Agreement and in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the CITY in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20.

If the CITY has any outstanding balances on any Agreement with INDOT, and such outstanding balances due to INDOT are at least sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to invoke the powers of the Auditor of the State of Indiana to make a mandatory transfer of funds from the CITY's allocation of the Motor Vehicle Highway Account and the Local Roads and Streets Account to INDOT's account, or INDOT may withhold or garnish payments otherwise due to the CITY from INDOT under this or any other Agreement to partially or wholly satisfy such outstanding balances. In addition, to satisfy any outstanding balance owed, INDOT reserves the right to withhold any and all distributions of discretionary federal funds normally issued or allocated to the CITY.

2.17. Penalties, Interest and Attorney's Fees. INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC §5-17-5, IC §34-54-8, and IC §34-13-1.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

2.18. 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.

2.19. Status of Claims. The CITY shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the CITY resulting from services performed under this Agreement.

2.20. General. This Agreement represents the entire understanding between the Parties relating to the subject matter, and supersedes any and all prior oral and/or written communications, understandings or agreements relating to the subject matter. Any amendment or modification to this Agreement must be in writing and be signed by duly authorized representatives of the Parties. Failure of either Party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings are inserted for convenience only and do not constitute part of this Agreement.

[Remainder of Page Intentionally Left Blank]

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member or officer of the CITY. Further, to the undersigned's knowledge, neither the undersigned nor any other employee, representative, agent or officer of the CITY, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

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

CITY OF WESTFIELD

**STATE OF INDIANA
Department of Transportation**

Approved by:

Robert L. Horkay
President, City Council

James P. Stark, Deputy Commissioner
Indiana Department of Transportation

Date: _____

Executed by:

Andy Cook
Mayor

Date: _____

APPROVALS

STATE OF INDIANA
State Budget Agency

Adam M. Horst, Director

Date: _____

STATE OF INDIANA
Department of Administration

Robert D. Wynkoop, Commissioner

Date: _____

Approved as to Form and Legality:

_____(for)
Attorney General Gregory F. Zoeller

Date Approved: _____