

STATE INFRASTRUCTURE BANK LOAN AGREEMENT

LOAN NO. _____

EDS No. _____

This Agreement is made and entered into this _____ day of _____, 2012, by and between the State of Indiana, acting by and through the Indiana Department of Transportation ("INDOT"), and City of Westfield, Indiana (the "CITY").

WITNESSETH

Whereas, INDOT has a Cooperative Agreement (including one amendment) for a State of Infrastructure Bank program ("SIB") with the Federal Highway Administration and Federal Transit Administration (the "SIB Agreement", attached as **Exhibit A** and herein incorporated by reference); and

Whereas, under IC 4-10-19 and Section 350 of the National Highway System Designation Act of 1995 (Public Law 104-59, 23 U.S.C. §101 note), the SIB (also referred to as the Local Infrastructure Revolving Fund or "LIRF") was established for the purpose of providing funds to local governments for local infrastructure projects; and

Whereas, the CITY, as a local government entity, is a qualified recipient for a loan from the SIB, and has submitted an application for a such a loan (the "Loan", attached as **Exhibit B** and herein incorporated by reference) for the purpose of building an underpass to maintain connectivity of 156th Street across US 31 (the "Project"); and

Whereas, in accordance with IC 4-10-19-8(a)(4), the CITY has adopted a resolution (attached as **Exhibit C** and herein incorporated by reference) setting forth the CITY's commitment of revenues to the Project; and

Whereas, the location of the Project site is within the limits and jurisdiction of the CITY; and

Whereas, without the Project, access across US 31 at 156th Street would be severed by INDOT's project upgrading US 31 to freeway standards from I-465 to State Road 38 within Hamilton County (the "US 31 Project"); and

Whereas, with the Project, 156th Street will enhance traffic flow and connectivity within the CITY, and

Whereas, INDOT and the CITY have entered into a cooperative agreement for construction of the Project, which provides that INDOT will construct the project as part of the US 31 Project, and the CITY will be responsible to pay all additional costs associated with the addition of the Project to

construction contracts for the US 31 Project (the "Project Agreement", attached as **Exhibit D** and herein incorporated by reference); and

Whereas, INDOT has approved the CITY's loan application; and

Whereas, it is anticipated that the total cost of construction of the Project will be **\$4,264,000.00**, which sum is being contributed by the CITY using the proceeds of this Loan; and

Whereas, pursuant to the SIB Agreement and IC 8-23-2-6(a)(9), the CITY and INDOT hereby enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein parties hereto mutually covenant and agree as follows:

1.1. **Loan amount.** INDOT will provide the CITY with a Loan in the principal amount of **\$4,264,000.00** to fund construction of the Project.

1.2. **Bond issuance.**

(A.) The Loan shall be evidenced by bonds to be issued by CITY in accordance with Indiana law ("Bonds"). The Bonds evidencing the Loan shall be paid in full by the CITY to the SIB, acting by and through INDOT, in accordance with the terms of this Agreement and with the final terms of the Bonds, which shall be certified to INDOT by the CITY on the Closing Date (defined below) and constitute the plan for repayment of the Loan.

(B.) The further terms and conditions of the Bonds are provided in the resolution pursuant to which the Bonds will be issued by the CITY, as such resolution may be amended and supplemented from time to time with INDOT's written approval ("Bond Resolution"), and the security and sources of payment for the Bonds are also provided in the Bond Resolution.

(C.) The Bonds shall be registered to and in the name of "State of Indiana, acting by and through the Indiana Department of Transportation, for the State Infrastructure Bank Program."

(D.) The purchase price for the Bonds is one hundred (100) percent of the aggregate principal amount thereof, or **\$4,264,000.00**, and without accrued interest (the "Purchase Price").

(E.) Subject to the other provisions of this Agreement, as amended and supplemented, on the Closing Date, the Bonds shall be delivered to INDOT for the account and benefit of the State Infrastructure Bank Program; against payment of the Purchase Price, in immediately available funds, to Local Government for deposit in an account in the SIB Fund.

1.3. Interest Rate. The Bonds, evidencing the Loan, shall bear interest at a rate of two percent (2%). Capitalized interest will begin accruing effective on the date that Notice to Proceed is issued for the construction of the Project. INDOT expects that Notice to Proceed will be issued in November 2012.

1.4. Repayment.

- (A.) The Bonds evidencing the Loan shall be paid in full by the CITY to the SIB, acting by and through INDOT, not later than ten (10) years after the date that Notice to Proceed is issued for the construction of the Project, but in no event later than December 31, 2022 ("Maturity Date").
- (B.) The Loan shall be paid in accordance with the attached amortization schedule (attached as Exhibit E and herein incorporated by reference), which shall constitute the plan for repayment of the Loan.
- (C.) INDOT shall deposit into an account in the SIB fund established by the State of Indiana ("SIB Fund") all payments of principal of and interest on the Bonds received from the CITY.
- (D.) Payment of the Bonds evidencing the Loan shall begin not later than six months after the date that Notice to Proceed is issued, as provided in Exhibit E.
- (E.) In the event that, after final audit of the Project, it is determined that actual costs of construction of the Project are less than the amount paid by the CITY (using the proceeds of the Loan), INDOT shall refund the amount of overpayment by reducing the balance of the CITY's SIB loan (by the amount of the overpayment). After any such adjustments to the balance of the Loan are made, INDOT shall issue a revised amortization schedule.
- (F.) INDOT shall not charge any prepayment penalties should the CITY wish to repay the Loan ahead of the schedule provided in Exhibit E.

1.5. Withholding MVHA Funds; Other Remedies. In the event that the principal of and interest on the Bond, evidencing the Loan, is not paid by the CITY on or before the Maturity Date, to the extent permitted by law, INDOT may proceed in accordance with IC 8-14-1-9 to obtain a mandatory transfer of funds from the CITY's motor vehicle highway account to the SIB. The transfer shall continue until principal of and interest on the Bond evidencing the Loan, is paid. In the alternative, if the CITY fails to make regular payments in accordance with Exhibit E to this Agreement, INDOT may pursue any and all remedies available at law or in equity to recover all payments and interest outstanding.

1.6. On the Closing Date, the CITY agrees to place the Bonds with INDOT for the SIB, as provided in this Agreement, as amended and supplemented. "Closing Date" means the date of original issuance of the Bonds. Notwithstanding any other provision of this Agreement, INDOT will hold the Bonds evidencing the Loan for the SIB as security until the Loan is repaid in full.

1.7. Nonpayment of Fees. No placement fee, underwriter's discount or like fee is payable by CITY or INDOT or any other persons in connection with the transactions contemplated by this Agreement, as amended and supplemented.

1.8. As applicable, the CITY will (i) execute any and all agreements, documents and instruments, including the Investment Letter and a certificate as to the final terms of the Bonds, and (ii) take such other actions as may be necessary or appropriate, to give effect to the transactions contemplated by this Agreement, as amended and supplemented. Further, the CITY agrees that it shall be solely responsible to bear all costs associated with its bond issuance process.

1.9. The Parties understand and agree that the Project is eligible for federal-aid highway funding under Title 23 of the United States Code, and that the Project shall be constructed and maintained in accordance with all laws, regulations, and FHWA policies applicable to projects receiving federal-aid highway funds.

1.10. Entire Agreement. This Agreement, as amended and supplemented, together with the Bond Resolution and all the other agreements, certificates and instruments relating to the Bonds and the SIB Program, merge and supersede all prior negotiations, representations and agreements between INDOT and the CITY relating to the issuance and placement of the Bonds, and constitute the entire agreement between INDOT and the CITY with respect to the issuance and placement of the Bonds.

II. GENERAL PROVISIONS

2.1. Access to Records. The CITY shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under 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 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. Non-Discrimination

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: Brian Burkert
Director of Accounting
Indiana Department of Transportation
100 N. Senate Avenue, IGCN N749
Indianapolis, IN 46204
317-232-5358 (Office)
bburkert@indot.in.gov

With copy to:
Mark Ratliff
Director of Economics, External Audit, and Performance Metrics
Indiana Department of Transportation
100 N. Senate Avenue, IGCN N749
Indianapolis, IN 46204
317-234-5204
Mratliff@indot.in.gov

B. For CITY:

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. This Agreement will be binding upon the Parties and their permitted successors or assigns. 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.

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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: _____

This instrument was prepared for the Indiana Department of Transportation, 100 N. Senate Avenue, Indianapolis, IN 46060, by:

Jennifer L. Jansen, INDOT Attorney
Attorney No. 24962-41
100 N. Senate Ave.
IGCN Room N730
Indianapolis, IN 46204-2216
(317)234-5402

I affirm, under penalties of perjury, that all Social Security numbers have been redacted from the forgoing, and all attachments thereto, except as allowed by law.
