

INTERLOCAL COOPERATIVE AGREEMENT
Between
THE INDIANA DEPARTMENT OF TRANSPORTATION
And
THE CITY OF WESTFIELD
Concerning
INSTALLATION OF TRAFFIC SIGNAL

EDS #A249-_____

This Interlocal Cooperative Agreement (“Agreement”) entered into by and between the Indiana Department of Transportation (hereinafter referred to as “INDOT”), and the City of Westfield, Indiana, (hereinafter referred to as the “CITY”), collectively referred to as the “PARTIES”, is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the Parties agree as follows:

RECITALS

WHEREAS, the CITY has a local project currently under construction under Permit #E17GDW0002, which includes improving the intersection at State Road 32 (“SR 32”) and Ditch Road and installing underground infrastructure necessary for a future traffic signal with an expected completion date in August 2019; and

WHEREAS, INDOT has a programmed project under Des. No. 1800888 to install the traffic signal at SR 32 and Ditch Road in calendar year 2020, following the completion of the CITY’s project; and

WHEREAS, the PARTIES believe it is in the best interest of the public to coordinate the CITY’s project and INDOT’s project to expedite completion of the construction and installation of the traffic signal at SR 32 and Ditch Road; and

WHEREAS, INDOT wishes to partner with the CITY for installation of the traffic signal, and the PARTIES agree that the CITY shall be responsible for the design, construction and installation of the traffic signal (the “Project”); and

WHEREAS, INDOT has agreed to contribute state funds to cover costs of the Project, including the preliminary engineering, construction and inspection costs, in an amount not to exceed **\$200,000.00** (“INDOT’s Contribution”); and

WHEREAS, INDOT shall own, operate and maintain the traffic signal equipment upon acceptance post-construction; and

WHEREAS, in order to enhance both the state highway and local highway systems and improve safety and mobility at SR 32 and Ditch Road, the PARTIES desire to cooperate in funding for the preliminary engineering, construction and inspection of the Project;

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

I. SPECIFIC PROVISIONS

1.1. Project Description. The Project shall include preliminary engineering, construction, installation and inspection of the traffic signal at SR 32 and Ditch Road. A scope of work is attached as **Exhibit A** and incorporated herein by reference.

INDOT will not be responsible for any costs or overages that exceed INDOT's Contribution.

1.2. Project Delivery.

- A. In the interest of ensuring that the design and construction of the Project meets the needs of the traveling public on both the state and local highway systems and in order to provide the best value for taxpayers, the Parties have agreed that the CITY will be the lead agency on the design, preliminary engineering processes, construction and inspection. Subject to INDOT approval, the CITY shall directly hire and contract with a consultant to complete the preliminary engineering work for the Project.
- B. The CITY shall comply with all applicable state laws, regulations and processes throughout all phases of the Project (including without limitation all activities related to project design, development, utility relocations, construction and inspection.

Further, the CITY shall not take any actions in the course of any work on the Project that would have the effect of making this portion of SR 32 ineligible for the future use of federal funds in the corridor. If any portion of SR 32 is removed from the federal aid system as a result of the Project, or if any portion of SR 32 is found to be ineligible for federal aid funding in the future because of the Project, the road will be automatically transferred under the Agreement and in accordance with I.C. 8-23-4-10 and I.C. 8-23-4-12 from the state highway system to the CITY's respective highway systems.

1.3. CITY'S Responsibilities.

1.3.1 Financial Responsibilities. The CITY shall be responsible for all costs and overages of the Project which exceed INDOT's Contribution.

1.3.2. Project Responsibilities.

- A. The CITY shall complete all work necessary to prepare the Project for letting, including, but not limited to, all preliminary engineering, design, utility relocation, surveys, permitting, and right-of-way engineering. The CITY shall prepare all contract documents required to let a contract, including all necessary plans, drawings and specifications. All such documents will be prepared in accordance with and referencing the INDOT Standard Specifications and the Indiana Design Manual as appropriate.
- B. The CITY shall provide all needed plans, tracings, and other preliminary engineering needed for the Project. INDOT shall be provided the opportunity to review and approve all design plans, and the CITY shall promptly ensure that any changes required by INDOT are incorporated into the final plans. The CITY understands and agrees that INDOT shall be the sole and final decision maker on anything that is related to and/or may impact the quality and function of SR 32. All plans and other design work on the Project shall be completed in accordance with all requirements of the most recent edition of INDOT's standard specifications.
- C. The CITY shall coordinate with INDOT in the selection of the consultant for the Project.
- D. The CITY shall amend its existing Permit # E17GDW0002 to include construction of the new signal installation in accordance with INDOT's permitting policy. The approval of the design plans and acceptance of the traffic signal at construction completion will follow INDOT's standard permitting policies and procedures.
- E. The CITY shall let and award the Project for construction in accordance with applicable state laws.
- F. The CITY shall submit an invoice to INDOT for INDOT's Contribution upon the CITY's receipt of the fully executed Agreement.

1.4 INDOT'S Responsibilities.

1.4.1. Financial Responsibilities. INDOT shall be responsible for the costs of preliminary engineering, construction and inspection in an amount not to exceed **\$200,000.00**. INDOT shall not be responsible for any and all costs and overages of the Project which exceed INDOT's Contribution.

1.4.2. Project Responsibilities. INDOT shall have the right to review and approve all design plans for the Project that are to be constructed as part of the Project and located on INDOT right-of-way. INDOT shall promptly notify the CITY in the event that changes are required. INDOT shall be the sole and final decision maker on anything that is related to and/or may impact the quality and function of SR 32.

INDOT shall own, operate and maintain the traffic signal equipment upon acceptance post-construction.

1.5. Payment of Project Costs.

- A. *Funding Contribution from INDOT.* INDOT agrees to contribute toward the costs of the Project in an amount not to exceed **\$200,000.00** in state highway funds. INDOT shall make a one-time lump sum payment in the amount of **\$200,000.00** to the CITY for the preliminary engineering, construction and inspection costs upon execution and approval by the Office of the Indiana Attorney General of this Agreement. The CITY shall invoice INDOT for INDOT's Contribution following receipt of the fully executed Agreement. INDOT shall remit payment to the CITY thirty-five (35) days following receipt of the CITY's invoice.
- B. If for any reason the CITY cancels the Project, terminates this Agreement without constructing the Project, or defaults on any material provision of this Agreement, without a default by INDOT, the CITY agrees to reimburse to INDOT, within 180 days after request from INDOT, all funds paid by INDOT to the CITY under this Agreement, plus interest on such funds at the nationally recognized thirty-year treasury bill rate (as published on the U.S. Department of the Treasury website, available at <http://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yieldYear&year=2011>, or in the Wall Street Journal Online Market Data Center, available at <http://online.wsj.com/public/page/news-fixed-income-bonds.html>) on the date of cancellation, termination, or notice of default from INDOT to the CITY, as the case may be. Such interest shall accrue beginning on the day INDOT delivered the funds at issue to the CITY and shall continue until the date of reimbursement.
- C. If, at any point in the project development or letting process, it appears that the total project cost (including construction and all other project costs) may exceed **\$200,000.00**, the CITY shall be solely responsible for the additional costs of the Project, which exceed **\$200,000.00**. Any modifications and/or additions to the current scope, shall be the sole financial responsibility of the CITY.

1.6. Duration and Renewal of Agreement. The term of this Agreement shall be from the date upon which the Agreement is approved by the Office of the Indiana Attorney General through December 31, 2020, or completion of final audit of the Project by INDOT, whichever occurs first. This Agreement may be renewed or extended under the same terms and conditions subject to the approval of all signing Parties.

1.7. Project Coordination. INDOT and the CITY agree to review and coordinate all plans and schedules pertaining to the Project.

1.8. 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 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 Project if, in the opinion of a Party's 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.

1.9. Interpretation. The Recitals recorded above are incorporated by reference into this Agreement.

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 designees. Copies shall be furnished at no cost to INDOT if requested.

2.2. Audit. 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 consider the CITY to be a "Contractor" under 2 CFR 200.300 for purposes of this Agreement. However, if it is determined that the CITY is a "subrecipient" and if required by applicable provisions of 2 CFR 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements), CITY shall arrange for a financial and compliance audit, which complies with 2 CFR 200.500 *et. seq.*

2.3. Authority to Bind CITY. 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 approvals to make this Agreement fully binding upon the CITY when his/her signature is affixed and accepted by the State.

2.4. 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.

2.5. 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.* and the regulations promulgated thereunder. **If the CITY has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the CITY shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Agreement.** 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, 35-44.1-1-4, and under any other applicable laws.

C. [OMITTED – NOT APPLICABLE.]

D. [OMITTED – NOT APPLICABLE.]

E. [OMITTED – NOT APPLICABLE.]

F. The CITY warrants that the CITY and its contractors 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 under this Agreement. 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. [OMITTED – NOT APPLICABLE.]

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 Agreement, 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.

2.6. Debarment and Suspension.

A. The CITY certifies by entering into this Agreement that neither it nor its principals nor any of its contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Agreement means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CITY.

B. The CITY certifies that it has verified the state and federal suspension and debarment status for all contractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor. The CITY shall immediately notify INDOT if any contractor becomes debarred or suspended, and shall, at INDOT’s request, take all steps required by INDOT to terminate its contractual relationship with the contractor for work to be performed under this Agreement.

2.7. Drug-Free Workplace Certification.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the CITY hereby covenants and agrees to make a good faith effort to provide and maintain a drug-

free workplace. The CITY will give written notice to the State within ten (10) days after receiving actual notice that the CITY, or an employee of the CITY in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of \$25,000.00, 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 them 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 the State in writing 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) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring 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.

2.8. Employment Eligibility Verification.

The CITY affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien. The CITY further agrees that:

A. The CITY shall enroll in and verify the work eligibility status of all 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 do not employ any employees.

B. 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.

C. The CITY shall require its subcontractors, who perform work under this Agreement, 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.

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.

2.9. Force Majeure. In the event that any 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 or as soon is reasonably possible under the circumstances 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.

2.10. Funding Cancellation Clause. As required by Financial Management Circular 2007-1 and IC 5-22-17-5, when the Director of the State Budget Agency 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 Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

2.11. 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.

2.12. Indemnification. The CITY agrees to indemnify, defend, exculpate and hold harmless the State of Indiana, and its officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, 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 such liability is caused by the 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 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.

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.

2.13. Merger & Modification. This Agreement constitutes the entire Agreement between the PARTIES. No understandings, Agreements, or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, except by written Agreement signed by all necessary Parties.

2.14. Non-Discrimination.

A. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the CITY covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The CITY certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the CITY or any subcontractor.

B. INDOT is a recipient of federal funds, and therefore, where applicable, the CITY and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

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 Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act 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 nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, income status, limited English proficiency, or status as a veteran.)

C. During the performance of this Agreement, the CITY, for itself, its assignees and successors in interest (hereinafter referred to as the "CITY") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

1. Compliance with Regulations: The CITY shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: The CITY, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CITY shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CITY of the CITY's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

4. Information and Reports: The CITY shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses furnish this information, the CITY shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the CITY's noncompliance with the nondiscrimination provisions of this Agreement, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration

may determine to be appropriate, including, but not limited to: (a) withholding payments to the CITY under the Agreement until the CITY complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions: The CITY shall include the provisions of paragraphs 1. through 5. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CITY shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the CITY becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CITY may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the CITY may request the United States of America to enter into such litigation to protect the interests of the United States of America.

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

A. For INDOT: Technical Services Director
INDOT Greenfield District
23 South Broadway Street
Greenfield, IN 46140

With Copy To: Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

B. For CITY: City Engineer
2728 East 171st Street
Westfield, IN 46074

2.16. Payment.

All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit 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.

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, 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. Termination for Convenience. This Agreement may be terminated, in whole or in part, by INDOT whenever, for any reason, INDOT determines that such termination is in its best interest. Termination shall be effected by delivery to the CITY of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective.

2.21. 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, reference this Section 2.20 and be signed by duly authorized representatives of the PARTIES (and by all necessary approving State agencies or parties). Neither this Agreement nor any portions of it may be assigned, licensed or otherwise transferred by the CITY without the prior written consent of INDOT. 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. 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.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the CITY, or 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 member, 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. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the CITY attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

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

THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

CITY OF WESTFIELD, INDIANA

By: Jim Ake, Member

By: James J. Edwards, Member

By: Steven Hoover, Member

By: Robert L. Horkay, Member

By: Mark F. Keen, Member

By: Charles Lehman, Member

By: Cindy L. Spoljaric, Member

Members of the City Council
City of Westfield, Indiana

Date: _____

ATTEST:

By: Cindy J. Gossard, Clerk-Treasurer

Date: _____

STATE OF INDIANA
Indiana Department of Transportation

_____ (for)
Joseph McGuinness, Commissioner
Indiana Department of Transportation

Date: _____

APPROVALS

STATE OF INDIANA
State Budget Agency

By: _____ (FOR)
Jason D. Dudich, Director

Date: _____

STATE OF INDIANA
Department of Administration

By: _____ (FOR)
Lesley A. Crane, Commissioner

Date: _____

Approved as to Form and Legality:
Office of the Attorney General

By: _____ (FOR)
Curtis T. Hill, Jr.
Attorney General of Indiana

Date : _____

This instrument was prepared for the Indiana Department of Transportation, 100 N. Senate Avenue, Indianapolis, IN 46204, by the undersigned attorney.

Marjorie A. Millman, Attorney No. 21748-36