

JOINT USE AND MAINTENANCE AGREEMENT

Between

THE INDIANA DEPARTMENT OF TRANSPORTATION

And

THE CITY OF WESTFIELD, INDIANA

Concerning

INSTALLATION AND MAINTENANCE OF TRAIL

EDS No. _____

This Joint Use and Maintenance Agreement (“Agreement”) is made by and between the State of Indiana, acting by and through the Indiana Department of Transportation (hereinafter referred to as “INDOT”), and the City of Noblesville, Indiana (hereinafter referred to as the “CITY”), and jointly 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 applied for a permit #T130359 to install a trail running along the north side of State Road 32 (“SR 32”) east of Wheeler Road in Westfield, and for permit #T131144 to install a drainage culvert to run under the trail, as shown in **Exhibit A**, which is attached hereto and incorporated herein by reference (collectively referred to as the “TRAIL”); and

WHEREAS, the CITY has agreed to pay for all costs associated with the construction, installation and maintenance of the TRAIL; and

WHEREAS, the CITY has agreed to maintain the TRAIL after its installation to the satisfaction of INDOT and pay for all costs associated with future maintenance; and

WHEREAS, the construction, installation and maintenance will occur within the state-owned or controlled right-of-way, under the jurisdiction of INDOT, as shown in **Exhibit A**; and

WHEREAS, the PARTIES desire to delineate certain maintenance responsibilities, concerning the maintenance of the TRAIL; and

WHEREAS, it is of mutual interest for INDOT and the CITY to cooperate in maintaining the TRAIL for the convenience and safety of the public;

NOW, THEREFORE, the PARTIES to this Agreement hereby agree to the following terms and conditions:

ARTICLE I. PURPOSE AND TERM

1.1. Preamble. 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. Purpose. The purpose of this Agreement is to delineate maintenance responsibilities and the costs associated with said maintenance of the TRAIL. The CITY understands and agrees that if and when the TRAIL conflicts with the operation, maintenance, regulation, construction or reconstruction of any part of the state-owned or controlled right of way or any other state highway facility, the TRAIL shall be altered or removed entirely to accommodate use of INDOT highway right-of-way for state highway purposes, at no cost to INDOT.

1.3. Term. This Agreement shall be for a twenty-five (25) year period, commencing as of the date it is approved as to form and legality by the Office of the Indiana Attorney General and shall be subject to renewal upon the same terms for one additional twenty-five (25) year term. This Agreement shall be subject to cancellation and termination by either party upon giving the other party ninety (90) days written notice of such action.

1.4. Temporary Joint Use of Right-of-Way. Subject to the terms and conditions of this Agreement, INDOT grants to the CITY, its employees and its contractors permission to enter upon the state-owned or controlled right of way, as identified in **Exhibit A** (the "Right-of-Way"), for the sole and exclusive purposes of inspecting, maintaining, operating and repairing the TRAIL. The CITY shall notify INDOT of its intent of entering on to the Right-of-Way whenever doing so could affect flow of traffic or the safety of the traveling public on SR 32 at least ten (10) business days before commencing any such work. This includes even routine maintenance and repair activities if traffic on SR 32 may be affected. Pursuant to applicable state and federal law, for highway and limited access facilities, INDOT must grant written permission for each entry into the Right-of-Way, which must be based on specific traffic control and/or worker safety plans. Accordingly, as a condition precedent to giving effective notice, the CITY shall provide to INDOT all such traffic control and worker safety plans and other information as INDOT shall request or require in connection with granting such permission. The CITY shall not enter upon the Right-of-Way until the CITY has received written approval from INDOT, which shall not be unreasonably withheld, to enter upon the Right-of-Way. INDOT shall only be required to approve the CITY's request to enter upon the Right-of-Way if the CITY's request is consistent with all applicable federal and state laws and this Agreement.

1.5. No Interest in the Land. The parties understand that this Agreement does not: (1) grant any interest or other rights in the land, either temporarily or permanently; or (2) establish a shared-use facility which would require replacement if INDOT has a need to use the affected property for highway purposes in the future.

ARTICLE II. CITY'S RESPONSIBILITIES

2.1. Any use of the Right-of-Way permitted by this Agreement remains secondary to the interest of INDOT to use the Right-of-Way for highway or other transportation purposes. The CITY agrees that it shall surrender the Right-of-Way upon which the TRAIL or its infrastructure are located, whether in part or in its entirety, if, in INDOT's discretion, the Right-of-Way or any portion thereof, is required for future expansion, modification, or maintenance of SR 32. The CITY understands and agrees that it shall not be entitled to any damages or any other compensation in the event that INDOT requires complete or partial removal of the TRAIL, or its infrastructure for any reason. Except in cases of emergency (i.e., eminent threat of harm to the traveling public), INDOT will provide ninety (90) days written notice to the CITY that the TRAIL must be removed or modified. If the TRAIL are not removed or modified to INDOT's satisfaction within ninety (90) days of issuance of notice under this Section, INDOT may remove the TRAIL and bill the CITY for costs of removal.

2.2. The CITY shall not erect any signs, sculptures or structures within the Right-of-Way without the prior approval of INDOT.

2.3. Subject to the terms and conditions of this Agreement, and prior to entering the Right-of-Way, the CITY shall apply for a right-of-way permit for all construction and maintenance by the CITY (or other parties contracted by the CITY) within the Right-of-Way. This Agreement, in no way, binds INDOT to the issuance of any permit to the CITY. However, INDOT agrees, in good faith, to review the CITY's application, and if appropriate, issue a permit to the CITY. The CITY shall notify INDOT of its intent to enter the Right-of-Way a minimum of ten (10) business days before commencing work for approved activities as specified within this Agreement.

2.4. The CITY shall perform, or cause to be performed, all necessary routine maintenance for the TRAIL including without limitation, drainage, curbs, curb ramps, sidewalks and landscaping; this will also include mowing, trash removal and the removal of noxious weeds or undesirable plants at least six (6) times per year. The CITY shall remove litter prior to mowing. The CITY shall undertake maintenance of the TRAIL as needed to ensure the safety of the motoring public and TRAIL users.

2.5. In accordance with Section 2.3 of this Agreement, the CITY shall notify INDOT and submit a Maintenance of Traffic (MOT) plan thirty (30) days prior to any maintenance or construction activities if such activities require lane closures or traffic restrictions on SR 32.

2.6. In the event that future installation of lighting occurs on the TRAIL, the cost of the design, installation and maintenance shall be borne by the CITY and covered by a separate agreement between INDOT and the owner of the lighting. INDOT shall not be responsible for the costs of any fees for any utility services serving the TRAIL infrastructure.

2.7. The CITY shall pay all the fees for any utility services serving TRAIL. Any separately-metered utilities shall be billed directly to the CITY, and INDOT shall have no obligation with respect thereto. Any utility fees related to utilities that are not separately metered shall be prorated by INDOT, on a reasonable basis and the CITY shall pay any amount it owes within thirty (30) days of receiving an invoice for the same.

2.8. When performing work required hereunder, the CITY shall at all times adhere to the traffic control measures found in the most recent version of the Manual on Uniform Traffic Control Devices, as then-currently adopted by INDOT.

2.9. The CITY shall conduct all sidewalk maintenance and reconstruction work in accordance with all applicable federal and state laws as well as INDOT and FHWA standards and good engineering practices as set forth in the following: (1) Title 23, U.S. Code, Highways, (2) the regulations issued pursuant thereto, (3) the Americans with Disabilities Act of 1990, (4) I.C. 36, and (5) the policies and procedures promulgated by INDOT and FHWA relative to the Agreement.

2.10. The CITY shall be responsible for the CITY's improvements within the Right-of-Way. To the extent permitted by law, the CITY shall indemnify and hold INDOT harmless for any claims arising out of the above-said items within the Right-of-Way. This is in addition to representations provided under Section 4.22 of this Agreement. This section of this Agreement shall survive termination of this Agreement.

2.11. After the initial construction and acceptance of the TRAIL, if the CITY wishes to install additional improvements within the Right-of-Way, prior to construction, the CITY shall submit a design plan to INDOT's Greenfield District for review and approval.

2.12. In the event that INDOT determines, in its sole reasonable discretion, that the CITY is not adequately maintaining the TRAIL, or for any other justified reason (i.e., safety concerns for either TRAIL users or the motoring public, change in policy, requirement for compliance with federal law or other federal mandate, etc.), INDOT may order the CITY to remove or modify the TRAIL at the CITY's expense. Except in cases of emergency (i.e., eminent threat of harm to the traveling public, whether on the TRAIL or on a highway facility), INDOT will provide ninety (90) days written notice to the CITY that the TRAIL must be removed or modified. If the TRAIL (including any accompanying structures, landscaping or lighting) is not removed or modified to INDOT's satisfaction within ninety (90) days of issuance of notice under this Section, INDOT may remove the TRAIL and bill the CITY for costs of removal.

2.13. Maintenance activities performed on landscaping or any portion thereof shall not create any adverse impact or interfere with the safety and travel of the motoring public.

2.14. On an annual basis, but no later than March 31st of each year, the CITY shall submit to the Greenfield District Permit Manager a maintenance plan for approval prior to commencement of any maintenance activities within the Right-of-Way. The Greenfield District Permit Manager shall promptly notify the CITY of any concerns or deficiencies in the plan.

ARTICLE III. INDOT's RESPONSIBILITIES

3.1. INDOT shall have approval authority for the CITY's maintenance plans of the TRAIL and for any improvements on or along the TRAIL located within the Right-of-Way. Such review and approval shall be completed in a reasonable period of time.

3.2. INDOT shall maintain the INDOT structures which are located within the Right-of-Way.

3.3. Under no circumstances shall INDOT be responsible for any cost of construction, installation, maintenance, operation, regulation or removal of the TRAIL or TRAIL improvements.

3.4. In the event the CITY fails to timely complete any necessary repairs, inspection, or maintenance to the TRAIL or remediate any damage caused in whole or in part by the TRAIL, in the interest of the safety of the motoring public, INDOT may complete any necessary repairs and invoice the CITY for the total cost of the repair. The CITY shall pay each invoice within thirty (30) days of issuance of the invoice. The CITY's failure to pay any invoice received from INDOT may result in removal of the TRAIL from the Right-of-Way.

ARTICLE IV. GENERAL PROVISIONS

4.1. **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 designee. Copies shall be furnished free of charge, if requested by INDOT. Copies shall be furnished at no cost to INDOT, if requested.

4.2. **Assignment; Successors.** The CITY binds their successors and assignees to all the terms and conditions of this Agreement. Except as otherwise specifically provided herein, the CITY shall not assign or subcontract the whole or any part of this Agreement without INDOT's prior written consent.

4.3. **Assignment of Antitrust Claims.** As part of the consideration for 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.

4.4. **Audits.** The CITY acknowledges that it may be required to submit to an audit of funds paid, if any, 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.

4.5. **Authority to Bind the 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.

4.6. **Changes in Work.** [OMITTED – NOT APPLICABLE.]

4.7. **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.

4.8. 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 contract.** 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.

4.9. Condition of Payment. [OMITTED – NOT APPLICABLE.]

4.10. Confidentiality of State Information. [OMITTED – NOT APPLICABLE.]

4.11. Continuity of Services. [OMITTED – NOT APPLICABLE.]

4.12. 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.

4.13. Default by State. [OMITTED – NOT APPLICABLE.]

4.14. Disputes. [OMITTED – NOT APPLICABLE.]

4.15. 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.

4.16. 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.

4.17. Employment Option. [OMITTED – NOT APPLICABLE.]

4.18. 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 as is reasonably possible under the circumstances give notice to the other Parties 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.

4.19. 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.

4.20. Governing Law. 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.

4.21. HIPAA Compliance. [OMITTED – NOT APPLICABLE.]

4.22. Indemnification. The CITY agrees to indemnify, defend, 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, 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.

4.23. Independent Entity; Workers' Compensation Insurance. The CITY is performing as an independent entity under this Agreement. No part of this Agreement shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the Parties. Neither Party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other Party. The CITY shall provide all necessary unemployment and workers' compensation insurance for the CITY's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

4.24. Information Technology Enterprise Architecture Requirements. [OMITTED – NOT APPLICABLE.]

4.25. Insurance. [OMITTED – NOT APPLICABLE.]

4.26. Key Person(s). [OMITTED – NOT APPLICABLE.]

4.27. Licensing Standards. [OMITTED – NOT APPLICABLE.]

4.28. 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.

4.29. Minority and Women's Business Enterprises Compliance. [OMITTED - NOT APPLICABLE.]

4.30. 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.

4.31. 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: Greenfield District Permit Manager
INDOT Greenfield District
32 South Broadway
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
City of Westfield
2728 East 171st Street
Westfield, IN 46074

4.32. Order of Precedence; Incorporation by Reference. [OMITTED – NOT APPLICABLE.]

4.33. Ownership of Documents and Materials. [OMITTED – NOT APPLICABLE.]

4.34. Payments.

A. 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.

B. If the CITY has any outstanding balances on any Agreement with INDOT (including any repayment to INDOT owed under this Agreement), and such outstanding balances due to INDOT are at least sixty (60) calendar days past the due date, INDOT may proceed in accordance with IC §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, if any, 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.

4.35. 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.

4.36. Progress Reports. [OMITTED – NOT APPLICABLE.]

4.37. Public Record. The CITY acknowledges that the State will not treat this Agreement as containing confidential information, and will post this Agreement on its website as required by

Executive Order 05-07. Use by the public of the information contained in this Agreement shall not be considered an act of the State.

4.38. Renewal Option. This Agreement may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed Agreement may not be longer than the term of the original Agreement.

4.39. 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.

4.40. 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.

4.41. Substantial Performance. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

4.42. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the CITY or its contractors as a result of this Agreement.

4.43. 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.

4.44. Termination for Default. [OMITTED – NOT APPLICABLE.]

4.45. Travel. [OMITTED – NOT APPLICABLE.]

4.46. Indiana Veteran’s Business Enterprise Compliance. [OMITTED – NOT APPLICABLE.]

4.47. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State’s review, approval or acceptance of, nor payment for, the work performed under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the CITY shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the CITY’s negligent performance of any of the services furnished under this Agreement.

4.48. Work Standards. [OMITTED – NOT APPLICABLE.]

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Party, or that the undersigned is the properly authorized representative, agent, member or officer of the Party. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Party, 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 Party 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 REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

**CITY OF WESTFIELD
BOARD OF PUBLIC WORKS & SAFETY**

J. Andrew Cook, Member

Date: _____

Kate Snedeker, Member

Date: _____

Randy Graham, Member

Date: _____

ATTEST:

Pat Leuteritz, Office Administrator

**STATE OF INDIANA
Indiana Department of Transportation
Recommended for approval by:**

Clark W. Packer
Greenfield District Deputy Commissioner

Date: _____

Executed by:

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

Date: _____

APPROVALS

STATE OF INDIANA
Budget Agency

By: _____ (FOR)
Zachary Q. Jackson, 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