

**INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY
EXCHANGE CONTRACT**

EDS #: A249-17-L160145

Des. No.: 1401650

CFDA No.: 20.205

This Contract is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract, 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 Westfield, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA/MPO and Grant Administration
Attention: Director of LPA/MPO and Grant Administration
100 North Senate Avenue, Room N955
Indianapolis, Indiana 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

Greenfield District Office
32 South Broadway
Greenfield, Indiana 46140

- C. Notices to the LPA shall be sent to:

City of Westfield
130 Penn Street
Westfield, Indiana 46074

RECITALS

WHEREAS, LPA has applied to INDOT, and INDOT has found the LPA eligible to receive federal funds for the Project described in Attachment A; and

WHEREAS, LPA requests an exchange of federal funds for state funds under IC 36-9-42.2; and

WHEREAS, LPA agrees to pay its share of the Project cost as stated in this Contract; and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation; and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana; and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-6, 8-23-4-7, 36-1-4-7, 36-1-7-3, and 36-9-42.2; and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all State requirements and fiscally manage the Project; and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The “Recitals” and “Notice to PARTIES” above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I **PROJECT DESCRIPTION.** INDOT and the LPA enter into this Contract to complete the project described in **Attachment A** (the “Project”), herein attached to and made an integral part of this Contract.

SECTION II **LPA RESPONSIBILITIES.**

A. Pursuant to Indiana Code § 36-9-42.2(8) the LPA agrees to the following:

1. The LPA may only exchange federal funds for state funds;
2. The LPA may use the state funds only for a capital project that will fulfill the purpose of the original federal project award and is approved by INDOT;
3. If the LPA uses the state funds to replace local funds in order to use the local funds for purposes unrelated to transportation, the LPA:
 - a. must repay the state funds to INDOT; and
 - b. may not participate in the exchange program during the succeeding fiscal year.
4. The exchange rate is not less than seventy-five cents (\$0.75) of state funds for each one dollar (\$1) of federal funds;
5. The LPA agrees to provide local matching funds equal to not less than ten percent (10%) of the estimated project cost; and
6. The LPA agrees that INDOT will disburse the funds on a reimbursement basis.

B. The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in **Attachment B** (LPA’s Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

SECTION III **INDOT RESPONSIBILITIES.** INDOT will provide the information and services as set out in **Attachment C** (INDOT’s Rights and Duties), herein attached to and made an integral part of this Contract.

SECTION IV **PROJECT FUNDS.** INDOT will provide state funds in exchange for federal funds at a rate of \$.75 state dollar per \$1.00 federal dollar for the cost of the Project. INDOT will reimburse LPA for actual costs, less the 10% local match, and payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is herein attached to and made an integral part of this Contract. The Maximum amount of state funds that INDOT will reimburse LPA for is **\$ 4,500,000.00.**

SECTION V **TERM AND SCHEDULE.**

The Term of this Contract shall be from **July 1, 2016 to June 30, 2019.**

SECTION VI **GENERAL PROVISIONS**

- A. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT.
- B. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. 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 LPA to be a “sub-recipient” for purposes of this Contract. 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 Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. 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 LPA 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 Contract.

For audits conducted pursuant to Indiana Code 5-11-1, and audited by the Indiana State Board of Accounts on the time schedule set forth by the Indiana State Board of Accounts, the LPA shall provide to the Indiana State Board of Accounts, all requested documentation necessary to audit the Local Public Agency in its entirety.

If the audit is conducted by an independent public or certified public account and not the Indiana State Board of Accounts, the LPA shall submit the completed audit to the Indiana State Board of Accounts within 10 (ten) days of the completion of the audit.

The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, 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.

C. Compliance with Laws.

1. The LPA 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 there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
2. The LPA 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 Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44-1-3 and under any other applicable State or Federal laws.
3. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as 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 Contract and grounds for termination and denial of further work with the State.
4. As required by I.C. 5-22-3-7:
 - (1) The LPA and any officials of the LPA certify that:
 - (A) the LPA, 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 LPA 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 LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA 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 Contract, even if IC §24-4.7 is preempted by federal law.

D. Debarment and Suspension.

1. The LPA certifies by entering into this Contract that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, key employee or other person with primary management or supervisory responsibilities, or a person who has critical influence on or substantive control over the operations of the LPA.
2. The LPA certifies that it will verify the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The LPA shall immediately notify INDOT if any subcontractor becomes debarred or suspended, and shall, at INDOT's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

E. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor 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 Contract 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 Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

1. 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 Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor'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;
3. 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 Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. 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;
5. 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

6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

- F. Force Majeure.** In the event either party is unable to perform any of its obligations under this Contract 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 Contract 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 Contract.
- G. Funding Cancellation Clause.** 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 Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- H. Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
- I. Indemnification.** The LPA agrees to and shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:
- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
 - (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
 - (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
 - (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

J. Merger & Modification. This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

K. Non-Discrimination.

1. This Contract is enacted 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 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any subcontractor.

Under IC 22-9-1-10 LPA covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract 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, or status as a veteran.

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

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - a. Compliance with Regulations: The LPA 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 Contract.

- b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, 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 LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA 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 LPA of the LPA's obligations under this Contract, 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.
- d. Information and Reports: The LPA 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 LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA 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.
- e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, 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 LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
- f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA 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 LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA 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 LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- L. Payment.** All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the LPA 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 Contract except as permitted by I.C. 4-13-2-20.
- M. 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, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13
- N. Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- O. Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

The remainder of this page is intentionally left blank.

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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

LPA: City of Westfield

**STATE OF INDIANA
Department of Transportation**

Recommended for approval by:

Print or type name and title

Robert D. Cales, Director
Contract Administration Division

Signature and date

Date: _____

Print or type name and title

Executed by:

Signature and date

(FOR)
Brandye Hendrickson, Commissioner

Print or type name and title

Date: _____

Department of Administration

Signature and date

Jessica Robertson, Acting Commissioner

LPA DUNS #: _____

Date: _____

Attest

State Budget Agency

Auditor or Clerk Treasurer

Brian E. Bailey, Director

Date: _____

This instrument prepared by:

Approved as to Form and Legality:

Ellen Hite
November 15, 2016

(FOR)
Gregory F. Zoeller, Attorney General of Indiana

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **1401650**
Program: **Federal Exchange Funds**
Type of Project: **New Road Construction**
Location: **Westfield Blvd.**

A general scope/description of the Project is as follows:

The **\$ 4,500,000.00** not to exceed amount is for the Preliminary Engineering, Right of Way and Construction (including Construction Engineering) phases.

A project for new road construction on Westfield Blvd., from the Poplar and Jersey Street intersection, running south to 169th Street, in the City of Westfield, Hamilton County, Indiana.

ATTACHMENT B**LPA'S RIGHTS AND DUTIES**

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. Pursuant to Indiana Code § 36-9-42.2, the LPA has requested and intends to use state funds instead of federal funds to partially pay for the Project. The LPA shall use sound engineering practices for the design of the Project. The LPA should complete the Project in accordance with INDOT's Design Manual (See http://www.in.gov/indot/design_manual/) and all pertinent state and federal laws, regulations, policies and guidance.
2. The LPA or its consultant should prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/2523.htm>.) and all pertinent state and federal laws, regulations, policies and guidance.
3. The LPA acknowledges that in order for the cost of consultant services to be eligible for state funds, the consultant selection must be accordance with INDOT's consultant selection procedure.
4. **REQUIREMENTS FOR ADDITIONAL CONTRACTS**
 - A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:
 1. use the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/283.htm> and is incorporated by reference; or
 2. use a form of agreement that has been reviewed and approved by INDOT.
5. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and state funds for the Project may be jeopardized.
6. The LPA agrees to complete all right-of-way acquisition, utility coordination, railroad coordination, and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
7. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the state funds allocated to the project.
8. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT may withhold reimbursement of state funds for this work.

9. If INDOT should require reports, the LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, state funds may be withheld.

10. If INDOT finds violations of this contract, state or federal law, or otherwise denies or withholds state funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
 - a. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.

 - b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, this paragraph shall apply and adjustments shall be made as follows:
 1. The LPA shall reimburse INDOT the total amount of costs.

 - c. If INDOT issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with requirements, and construction work was or is in progress, the following shall apply:
 1. INDOT may elect to terminate, suspend, or continue reimbursement of the construction work.

 2. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of INDOT.

 3. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to INDOT, or for whatever reason the citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of state funds allowed by INDOT.

 - d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for state reimbursement.

 - e. If for any reason, the LPA is required to repay to INDOT the sum or sums of state funds paid to the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for state funding shall be the sole obligation of the LPA.

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have the option to access and to inspect all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.
2. The LPA shall let and award the construction contract for the Project according to applicable laws and rules.
3. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.

ATTACHMENT D

PROJECT FUNDS

I. Project Costs.

A. Pursuant to Indiana Code § 36-9-42.2 state Funds made available to the LPA by INDOT will be used to pay **75 % of the eligible Project costs** that had been approved for federal funding. The maximum amount of state funds allocated to the Project is **\$ 4,500,000.00**.

B. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

II. Billings.

- A. The LPA shall pay the LPA's contractor and then shall seek reimbursement from INDOT for actual costs expended, less the 10% local match, not to exceed the amount listed in Section I.A. above.
- B. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.

III. Repayment Provisions.

If for any reason INDOT finds non compliance and requires a repayment of state funds previously reimbursed the LPA is required to submit such sum or sums within thirty (3) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.