

**INTERLOCAL COOPERATIVE AGREEMENT**  
**Between**  
**THE INDIANA DEPARTMENT OF TRANSPORTATION**  
**And**  
**THE TOWN OF WHITESTOWN**  
**Concerning**  
**I-65 INTERCHANGE AT COUNTY ROAD 550 SOUTH**

EDS # \_\_\_\_\_

This Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the Indiana Department of Transportation (hereinafter referred to as “INDOT”), and the Town of Whitestown, Indiana, by and through the Whitestown Town Council (hereinafter referred to as the “Town”), and jointly referred to as the “Parties.”

**RECITALS**

WHEREAS, the Town has requested that INDOT add an interchange access point to I-65 in Boone County for the purpose of improving safety, mobility and to accommodate future economic growth in the region; and

WHEREAS, INDOT has examined the possibility of constructing a new interchange on I-65 in Boone County at County Road 550 South (CR E. 550 S.) (hereinafter the “Interchange”), and concluded that construction of such an interchange within the next twenty years would likely benefit both the interstate highway and local highway systems; and

WHEREAS, as part of ongoing efforts to promote economic development and job creation in Boone County and to reduce traffic on nearby local roads, the Town wishes to cooperate with INDOT to construct a new I-65 Interchange at CR E. 550 S. in Boone County (hereinafter the “Interchange Project”); and

WHEREAS, INDOT is making improvements to the I-65 and SR 267 interchange in Boone County (hereinafter the “SR 267 Project”) to improve safety, mobility and to accommodate future economic growth in the region (INDOT Contract No. R-39231, DES No. 1400071); and

WHEREAS, the scope of the SR 267 Project can be modified and cost savings realized if the Interchange Project is constructed; and

WHEREAS, the Parties currently estimate that the combined costs of the SR 267 Project and Interchange Project (including costs of preliminary engineering, design, right-of-way acquisition, utility relocation, construction and inspection) will be approximately **\$40,000,000.00**; and

WHEREAS, the Town has agreed to contribute local (non-federal) funds in the amount not to exceed **\$10,000,000.00** towards reimbursing INDOT for costs of the Interchange Project; and

WHEREAS, INDOT has agreed to develop a project, let a contract for construction, and provide funding towards the costs of the Interchange Project upon approval from the Federal Highway Administration (“FHWA”) and in accordance with the terms of this Agreement; and

WHEREAS, in order to enhance both the local highway system and the Interstate highway system by building the SR 267 Project and Interchange Project, INDOT and the Town desire to cooperate in funding and accelerating construction of the Interchange 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. Interchange Project Description.** The Interchange Project shall include construction of all entrance and exit ramps, acceleration or deceleration lanes, overpasses, signage, and any other elements or structures needed to provide an interchange at I-65 and CR E. 550 S. in Boone County. INDOT has prepared a preliminary project budget (attached as **Exhibit A** and herein incorporated by reference) and a concept drawing (attached as **Exhibit B** and herein incorporated by reference).

**1.2. Town’s Responsibilities.**

A. The Town shall provide local funds in an amount not to exceed **\$10,000,000.00** in accordance with the terms of this Agreement to reimburse INDOT for preliminary engineering, design, right-of-way acquisition, utility relocation, construction and inspection costs of the Interchange Project. Whitestown shall not be responsible for any cost of the Interchange Project or the SR 267 Project in excess of the \$10,000,000 reimbursement provided under this Subsection 1.2.A. The specific terms of the reimbursement from the Town to INDOT shall occur in the manner and as described in Section 1.4(A) below.

B. The Town shall be solely responsible for designing, funding (through any sources available to the Town), and constructing any additional improvements to CR E. 550 S. outside of the Interchange Project construction limits as identified on Exhibit B (and any other roads under the Town’s control and jurisdiction outside of the Interchange Project construction limits) that the Town determines are needed to accommodate the Interchange and the expected increase in traffic volume that will likely result from construction of the Interchange Project.

C. The Town shall cooperate with INDOT as needed to ensure successful completion of the Interchange Project, particularly with regard to any utility relocation of Town utilities. Consistent with FWHA Program guide, all Town owned utilities relocated as a result of the Projects will be reimbursed from Project funds.

**1.3. INDOT’S Responsibilities.**

- A. INDOT shall be responsible for all aspects of and will complete all work necessary to prepare for letting and construct the Interchange Project, including all preliminary engineering, design, right-of-way acquisition, utility relocation, environmental work, permitting, construction, and inspection. Upon selection of a configuration for the Interchange, INDOT shall coordinate as needed with the Indianapolis Metropolitan Planning Organization (IMPO) to ensure that the Interchange Project is added to the IMPO's Transportation Improvement Program and to the Statewide Transportation Improvement Program.
- B. INDOT shall coordinate with the Town in developing plans for construction of the Interchange Project, including a development schedule (hereinafter the "Interchange Development Schedule"). INDOT shall submit plans to the Town for review and comment prior to letting in accordance with the Interchange Development Schedule. However, the Town understands and agrees that INDOT shall make all final decisions concerning project design, construction, project schedule and specifications. INDOT shall notify the Town of the final project design, construction, project schedule and specifications. The Town may terminate this Agreement within sixty (60) days of receipt thereof if the Interchange Project is materially different than the concept drawing attached as **Exhibit B**.
- C. INDOT will let and award the Interchange Project for construction through its usual processes as soon as possible, but will in no event let the Interchange Project before the Interchange TIF Area (as defined in Section 1.4(A), below) is established. The Parties anticipate that a contract for construction of the Interchange Project shall be awarded no later than January 31, 2021.
- D. INDOT will manage, administer, inspect and supervise the Interchange Project on a day-to-day basis in accordance with applicable laws and INDOT policies, procedures and specifications, and INDOT agrees to pursue the development of the Interchange Project in accordance with the Interchange Development Schedule whenever possible.

INDOT, in its sole discretion, may choose to let the Interchange Project using one single contract for all construction, or may let multiple construction contracts for the Interchange Project. Further, INDOT may choose to let the Interchange Project as a design-build or a design-bid-build contract.

#### **1.4. Payment of Interchange Project Costs.**

- A. *Funding Reimbursement from the Town.* The Town agrees to reimburse INDOT an amount not to exceed **\$10,000,000.00** from fifty percent (50%) of the tax increment revenues ("TIF") derived on real property in the tax increment allocation area as described in the map attached hereto as **Exhibit C** (such area, the "Interchange TIF Area"). The Interchange TIF Area shall be established by the Town in accordance with Indiana Code 36-7-14, as amended, prior to the letting of the Interchange Project. The Town shall deposit upon receipt fifty (50) percent (50%) of the tax increment revenues

derived on real property (such fifty percent (50%) of tax increment, the “INDOT TIF”) in the Interchange TIF Area to a separate account (the “INDOT TIF Account”) and transmit such INDOT TIF to INDOT until the earlier of (i) the total payment of **\$10,000,000.00** to INDOT or (ii) the expiration of the Interchange TIF Area (25 years from the date the first obligation payable from tax increment in the TIF is incurred). The Town shall make transfers of INDOT TIF from the INDOT TIF Account semiannually within thirty (30) days of receipt of INDOT TIF from the Boone County Auditor. Reedy Financial Group P.C., on behalf of the Town, has prepared a schedule of the estimated future increment in the new INDOT TIF and estimated INDOT payback based on a potential retail & commercial development in the INDOT TIF, which is attached hereto as **Exhibit D**. The parties hereto acknowledge that the maximum reimbursement obligation of the Town hereunder is **\$10,000,000.00** and that the actual amount available from the Town to pay to INDOT is based exclusively upon the availability of INDOT TIF. In the event the INDOT TIF is not sufficient to pay **\$10,000,000.00** and the TIF Area expires, the Town shall have no further reimbursement obligation hereunder to INDOT. The Town reserves the right at any time to use other available funds to reimburse INDOT up to **\$10,000,000.00** to extinguish the reimbursement obligation hereunder, but in any event, is in no way obligated to expend funds for reimbursement to INDOT hereunder except from the INDOT TIF as herein described.

- B. *Funding Contribution from INDOT.* INDOT agrees to provide all funds necessary to cover the costs of the Interchange Project. The Parties anticipate that INDOT will contribute federal-aid highway funds in the approximate amount of **\$30,000,000.00** to complete both the SR 267 Project and Interchange Project, and that INDOT will provide an additional **\$10,000,000.00** to cover costs of the Project that would be reimbursed by the Town as provided herein. Nothing in this Agreement shall be deemed to restrict INDOT’s ability to manage available funding sources in providing funds for either the SR 267 Project or Interchange Project. INDOT shall be entitled to reimbursement from the Town for up to **\$10,000,000.00** as described in Section 1.4A above.
  
- C. If for any reason INDOT cancels the Interchange Project or SR 267 Project, terminates or cancels this Agreement without completing construction of the Interchange Project or SR 267 Project, or defaults on any material provision of this Agreement without a material default by the Town, or if the Town timely terminates this Agreement under Section 1.3(B), INDOT agrees to reimburse to the Town, within 180 days after request from the Town, any funds paid by the Town to INDOT under this Agreement.
  
- D. In the event that the Town is unable to obtain necessary approvals for the creation of the INDOT TIF (to be used to fund the Town’s reimbursement obligation as provided in Section 1.4(A) of this Agreement) by November 1, 2019, or extensions of such date as may be agreed upon by the parties, this Agreement may be terminated by either Party without penalty. However, following such termination INDOT shall have the sole

and exclusive right to change, rescope or eliminate the Interchange Project as it sees fit.

**1.5. Term 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 the final payment of the Town's reimbursement obligation hereunder, completion of final audit of the Interchange Project by INDOT, or the completion of final audit of the SR 267 Project by INDOT, whichever occurs last. This Agreement may be renewed or extended under the same terms and conditions subject to the approval of all signing Parties.

**1.6. Project Coordination.** The Parties agree to review and coordinate all plans and schedules pertaining to the Interchange Project.

**1.7. 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 related to the Interchange 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 Interchange Project if, in the opinion of its legal counsel, such a disclosure is required by law, including but not limited to Indiana's Access to Public Records Act (IC 5-14-3), legal process or directive of a regulatory authority having jurisdiction over either Party.

**1.8. Town of Whitestown Approvals.** The Town's obligations are contingent upon the Town's establishment of the INDOT TIF on or before November 1, 2019, unless such date is extended by agreement of the parties. In the event that the Town is unable to establish the INDOT TIF, INDOT shall have the sole and exclusive right to change, rescope or eliminate the Interchange Project as it sees fit.

## II. GENERAL PROVISIONS

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

**2.2. Assignment; Successors.** [OMITTED – NOT APPLICABLE]

**2.3. Assignment of Antitrust Claims.** As part of the consideration for the award of this Agreement, the Town assigns to the State all right, title and interest in and to any claims the Town

now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Agreement.

**2.4. Audits.** The Town 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.

[OMITTED – NOT APPLICABLE]

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

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

**2.7. Certification for Federal-aid Contracts Lobbying Activities.** The Town certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the Town 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 Town, 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 Town 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.

**2.8. Compliance with Laws.**

- A. The Town 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 INDOT and the Town to determine whether the provisions of this Agreement require formal modification.

- B. The Town 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 Town 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 Town shall ensure compliance with the disclosure requirements in IC §4-2-6-10.5 prior to the execution of this Agreement.** If the Town is not familiar with these ethical requirements, the Town 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 Town or its agents violate any applicable ethical standards, the State may, at its sole discretion, terminate this Agreement immediately upon notice to the Town. In addition, the Town 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. The Town certifies by entering into this Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Town agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Town. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Town is current in its payments and has submitted proof of such payment to INDOT.
- D. The Town warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Town agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issues pursuant to this Agreement.
- E. [OMITTED – NOT APPLICABLE]
- F. [OMITTED – NOT APPLICABLE]
- G. [OMITTED – NOT APPLICABLE]
- H. As required by IC §5-22-3-7:
  - (1) The Town and any principals of the Town certify that:
    - (A) the Town, 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 Town 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 Town and any principals of the Town certify that an affiliate or principal of the  
Town and any agent acting on behalf of the Town or on behalf of an affiliate or  
principal of the Town, 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.

**2.9. Condition of Payment.** [OMITTED – NOT APPLICABLE]

**2.10. Confidentiality of State Information.** [OMITTED – NOT APPLICABLE]

**2.11. Continuity of Services.** [OMITTED – NOT APPLICABLE]

**2.12. Debarment and Suspension.** [OMITTED – NOT APPLICABLE]

**2.13. Default by State.** [OMITTED – NOT APPLICABLE]

**2.14. Disputes.** [OMITTED – NOT APPLICABLE]

**2.15. Drug-Free Workplace Certification.**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of  
Indiana, the Town hereby covenants and agrees to make a good faith effort to provide and  
maintain a drug-free workplace. The Town will give written notice to the State within ten  
(10) days after receiving actual notice that the Town, or an employee of the Town 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 Agreement 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 Town 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 Town'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 Town'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 Town 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) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**2.16. Employment Eligibility Verification.** As required by IC §22-5-1.7, the Town swears or affirms under the penalties of perjury that the Town does not knowingly employ an unauthorized alien. The Town further agrees that:

- A. The Town 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 Town is not required to participate should the E-Verify program cease to exist. Additionally, the Town is not required to participate if the Town is self-employed and does not employ any employees.
- B. The Town shall not knowingly employ or contract with an unauthorized alien. The Town shall not retain an employee or contract with a person that the Town subsequently learns is an unauthorized alien.
- C. The Town shall require its subcontractors, who perform work under this Agreement, to certify to the Town 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 Town 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 Town fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

**2.17. Employment Option.** [OMITTED – NOT APPLICABLE]

**2.18. Force Majeure.** In the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a “Force Majeure Event”), the Party who has been so affected shall immediately or as soon as 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.

**2.19. 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 Agreement, this Agreement 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.

**2.20. 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.

**2.21. HIPAA Compliance.** [OMITTED – NOT APPLICABLE]

**2.22. Indemnification.** The Parties agree to indemnify, defend and hold harmless the State, the other Party, and the other Party’s agents, 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 other Party, including any claims arising out the Worker's Compensation Act or any other law, ordinance, order or decree.

The Town 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 Town shall default under the provisions of this Section.

**2.23. Independent Entity; Workers’ Compensation Insurance.** [OMITTED – NOT APPLICABLE]

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

2.25. **Insurance.** [OMITTED – NOT APPLICABLE]

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

2.27. **Licensing Standards.** [OMITTED – NOT APPLICABLE]

2.28. **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.

2.29. **Minority and Women’s Business Enterprises Compliance.** [OMITTED - NOT APPLICABLE]

2.30. **Non-Discrimination.**

A. This Agreement 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 Agreement, 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 Town or any subcontractor.

Under IC §22-9-1-10 the Town 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, or status as a veteran.

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

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, limited English proficiency, or status as a veteran.)

- C. During the performance of this Agreement, the Town, for itself, its assignees and successors in interest (hereinafter referred to as the "Town") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
1. Compliance with Regulations. The Town 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 Town, 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 Town 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 Town 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 Town of the Town'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 Town 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 INDOT and FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Town is in the exclusive possession of another who fails or refuses to furnish this information, the Town shall so certify to INDOT or FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
  5. Sanctions for Noncompliance. In the event of the Town's noncompliance with the nondiscrimination provisions of this Agreement, INDOT shall impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to: (a) withholding payments to the Town under the Agreement until

the Town complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.

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

**2.31. 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:

Travis Kohl  
Project Manager  
41 W. 300 N.  
Crawfordsville, IN 47933  
Phone: (765)361-5297  
Email: TKohl@indot.in.gov

And with copy to:

Chief Legal Counsel and Deputy Commissioner  
100 North Senate Avenue, Room N758  
Indianapolis, IN 46204  
Phone: (317) 232-5012

B. For the Town:

Dax Norton, Town Manager  
6210 Veterans Drive  
Whitestown, Indiana 46075  
Phone: (317) 732-5430  
Email: dnorton@whitestown.in.gov

And with copy to:

Stephen Unger  
Bose McKinney & Evans, LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204  
Phone: (317) 684-5465  
Email: sunger@boselaw.com

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

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

**2.34. Payments.**

A. All payments 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 Town 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 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 Town has any outstanding balances on any agreement with INDOT, and such outstanding balances due to INDOT are at least sixty (60) calendar days past the due date, INDOT may proceed in accordance with 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 Town'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 Town 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 Town.

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

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

**2.36. Progress Reports.** [OMITTED – NOT APPLICABLE]

**2.37. Public Record.** The Town 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.

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

**2.39. 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.

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

**2.41. Substantial Performance.** [OMITTED – NOT APPLICABLE]

**2.42. Taxes.** [OMITTED – NOT APPLICABLE]

**2.43. Termination for Convenience.** [OMITTED – NOT APPLICABLE]

**2.44. Termination for Default.** [OMITTED – NOT APPLICABLE]

**2.45. Travel.** [OMITTED – NOT APPLICABLE]

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

**2.47. 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 other Party’s review, approval or acceptance of, nor payment for, the services required 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 Party shall be and remain liable to the other Party in accordance with applicable law for all damages to the other Party caused by the Party’s negligent performance of any of the services furnished under this Agreement.

**2.48. Work Standards.** [OMITTED – NOT APPLICABLE]

**2.49. State Boilerplate Affirmation Clause.** [OMITTED – NOT APPLICABLE]

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



**Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member or officer of the Town. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Town, 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 Town attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

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

**TOWN OF WHITESTOWN**

**STATE OF INDIANA  
Department of Transportation**

**Executed by:**

**Recommended for approval by:**

\_\_\_\_\_  
Eric Miller, Town Council President

\_\_\_\_\_  
Michael J. Smith,  
Deputy Commissioner of Operations

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

**Executed by:**

\_\_\_\_\_  
Dax Norton, Town Manager

\_\_\_\_\_  
Joseph McGuinness, Commissioner

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVALS**

STATE OF INDIANA  
State Budget Agency

\_\_\_\_\_ (for)  
Jason D. Dudich, Director

Date: \_\_\_\_\_

STATE OF INDIANA  
Department of Administration

\_\_\_\_\_ (for)  
Jessica Robertson, Commissioner

Date: \_\_\_\_\_

Approved as to Legality and Form:

\_\_\_\_\_ (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:

\_\_\_\_\_  
Kristi K. Shute  
Attorney No. 26588-32  
100 N. Senate Ave.  
IGCN Room N730  
Indianapolis, IN 46204-2216  
(317) 232-7574  
3253390