JOINT USE AND MAINTENANCE AGREEMENT
Between
THE INDIANA DEPARTMENT OF TRANSPORTATION
And
THE TOWN OF WHITESTOWN, INDIANA
Concerning
INTERSECTION IMPROVEMENT
At
WHITESTOWN PARKWAY AND INDIANAPOLIS ROAD

EDS No. ________________________________

This Joint Use and Maintenance Agreement (“Agreement”) is made and entered into this _____ day of _______________________, 2018, by and between the Indiana Department of Transportation (“INDOT”), and the Town of Whitestown, Indiana, acting by and through the Whitestown Town Council (“Town”), jointly referred to as the “Parties.”

RECITALS

WHEREAS, the Town desires to construct and maintain a two-lane roundabout at the intersection of Whitestown Parkway and Indianapolis Road (the “Project”), as designed in the project plans, which are herein incorporated by reference; and

WHEREAS, the Project area is located near the I-65 interchange at Whitestown Parkway; and

WHEREAS, I-65 is a state highway facility; and

WHEREAS, the Town will construct, or cause to be constructed, the Project partially within state owned or controlled right-of-way, under the jurisdiction of INDOT, along Whitestown Parkway; and

WHEREAS, the Parties have entered into an INDOT – Local Public Agency Project Coordination Contract and Supplement Number 1 (EDS No. A249-14-321194) under DES No. 1400926 regarding the development, letting, cost and construction of the Project (the “Coordination Agreement”), attached as Exhibit A and Exhibit B and herein incorporated by reference; and

WHEREAS, the Town now wishes to obtain permission from INDOT to continue the Project through state owned or controlled right-of-way along Whitestown Parkway; and

WHEREAS, in the interest increasing safety for the traveling public, INDOT and the Town wish to cooperate as provided herein to allow for the construction and maintenance of the Project; and
WHEREAS, the Parties desire to delineate responsibilities related to maintenance of the Project;

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

ARTICLE I
SPECIFIC PROVISIONS

1.1. Purpose of Agreement. The purpose of this Agreement is to allow the Town to construct or cause to be constructed the Project which is partially within state owned or controlled right-of-way. 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.

1.2. Term of Agreement. This Agreement shall be effective on the date it is approved as to form and legality by the Office of the Indiana Attorney General for a two (2) year period and may be renewed for four (4) successive two (2) year periods under the same terms and conditions subject to the approval of all signing Parties. This Agreement shall terminate ten (10) years from the effective date, unless either of the following conditions occurs or unless terminated under the provisions of this Agreement.

   A. If the Project has not been installed and constructed in accordance with all terms of this Agreement within two (2) years of the effective date, this Agreement shall terminate.

   B. If the Project or significant portions thereof are removed by the Town, or are altered without INDOT’s prior written consent, this Agreement shall terminate.

1.3. Joint Use of Right-of-Way. Subject to the terms and conditions of this Agreement, INDOT grants to the Town, its employees and its contractors permission to enter upon state owned or controlled right-of-way, for the sole and exclusive purposes of constructing, installing, inspecting, maintaining, operating and repairing the Project.

1.4. 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.

1.5. Town’s Responsibilities.

   A. The Town shall design the Project in accordance with any and all applicable federal, state and local standards, requirements and best practices. To that end, prior to construction, the design plan for the Project shall be submitted to INDOT’s Crawfordsville District for review and approval. The Project design plans and specifications shall include the location of any fences and all structures and fixtures, as well as any large or significant plantings or vegetation. The Town shall allocate and INDOT shall have sixty (60) days to review and approve the design plan for the Project.
Any alterations to the original Project design plans must be approved by INDOT prior to construction. All revisions to the design plans for the Project shall be approved by INDOT prior to implementation.

B. The Town will be solely responsible to pay all costs of constructing, installing, operating and maintaining the Project.

C. The Town shall ensure that the location of the Project, as generally shown in Exhibit C, and the areas of state owned or controlled right-of-way used for the Project shall be in substantial conformity with the Project plans. INDOT shall have the right to terminate this Agreement and order removal of the Project if, in INDOT’s sole discretion, it is determined that the location of the constructed Project substantially deviates from plans previously approved by INDOT.

D. The Town shall be responsible to secure the Project site as needed during construction, and to provide appropriate traffic control measures.

E. Except as otherwise included in the Project design plans, the Town shall not erect any signs, sculptures, fences, structures, fixtures or vegetation within state owned or controlled right-of-way without the prior approval of INDOT.

F. The Town specifically agrees that any construction, repair or maintenance of the Project shall be in compliance with the Americans with Disabilities Act of 1990. The Town shall conduct all construction, maintenance and repair work in accordance with all applicable federal and state laws as well as INDOT and Federal Highway Administration (“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.

G. The Town shall be responsible for the Town’s improvements within the state owned or controlled right-of-way.

H. The Town shall maintain and operate the Project in accordance with the terms and conditions of this Agreement. The Town shall be responsible to provide and pay for all maintenance and operation activities, including, but not limited to, drainage and curbs. The Town shall undertake maintenance of the Project surface as needed to ensure the safety of the traveling public.

I. After the initial construction and acceptance of the Project, if the Town wishes to install additional improvements within state owned and controlled right-of-way, prior to construction, the Town shall submit a design plan to INDOT’s Crawfordsville District for review and approval.

J. Prior to constructing any additional improvements for the Project within state owned or controlled right-of-way, the Town shall apply for a right-of-way permit for all
construction by the Town (or other parties contracted by the Town) on the Project within state owned or controlled right-of-way. This Agreement in no way binds INDOT to the issuance of any permit to the Town. However, INDOT agrees, in good faith, to review the Town’s application, and if appropriate, issue a permit to the Town.

K. The Town shall submit to the Crawfordsville District Permit Manager a maintenance plan for approval prior to commencement of any maintenance activities within state owned and controlled right-of-way. The Crawfordsville District shall promptly notify the Town of any concerns or deficiencies in the plan.

L. The Town shall undertake maintenance of the Project surface as needed to ensure the safety of the traveling public. The Town shall perform all necessary snow removal on the Project. The Town shall perform, or cause to be performed, all necessary routine maintenance for the Project (including mowing and the removal of noxious weeds or undesirable plants).

M. The Town shall be responsible for maintaining any crosswalk pavement markings for the benefit of the traveling public. When performing work in state owned or controlled right-of-way, the Town shall at all times adhere to the traffic control measures found in the most recent version of the Indiana Manual on Uniform Traffic Control Devices.

N. Any use permitted by this Agreement remains secondary to the interest of INDOT to use the state owned or controlled right-of-way for highway or other transportation purposes. The Town agrees that it shall surrender the state owned or controlled right-of-way upon which the Project is located, whether in part or in its entirety, if the right-of-way or any portion thereof is required for future expansion, modification, or maintenance of I-65 or its associated facilities. The Town understands and agrees that it shall not be entitled to any damages or any other compensation in the event that INDOT removes the Project from state owned or controlled right-of-way for expansion, modification, or maintenance of I-65 or its associated facilities.

O. The Town shall compel the contractor awarded the contract for the Project to indemnify and hold harmless INDOT and also include INDOT as an additional insured party under any applicable insurance policy or bond.

P. The Town shall be responsible for all costs associated with construction, maintenance, and operation of the Project or Project improvements.

Q. INDOT understands and agrees that the Town may choose to enter into contracts with other entities to accomplish its responsibilities under this Agreement. The Town understands and agrees that all applicable terms of this Agreement shall be incorporated into any other contracts it enters into pertaining to construction, operation, regulation or maintenance of this Project.

1.6. **INDOT’s Responsibilities.**
A. INDOT shall have approval authority for the Town’s design plans for the Project prior to constructing the Project or any improvements on or along the Project located within state owned or controlled right-of-way. INDOT will timely review all plans and specifications for the Project and will provide feedback as needed to arrive at an approvable set of plans and specifications.

B. INDOT shall maintain INDOT structures, if any, which are located within state owned or controlled right-of-way.

C. INDOT may inspect the work of the Project construction at any time. INDOT will perform a final inspection of any improvements after construction and shall notify the Town of any deficiencies.

D. Under no circumstances shall INDOT be responsible for any cost of construction, maintenance, operation, or regulation of the Project or Project improvements.

1.7. Termination.

A. In the event the Town fails to construct, operate, regulate and maintain the Project in a safe manner and in accordance with all terms of this Agreement and/or a permit, if any, INDOT will send the Town a deficiency notice. The Town shall have ninety (90) days to correct all deficiencies. Should the Town fail to correct all deficiencies within the ninety (90) day time period (or such other timeframe as is both reasonably necessary and agreed by the Parties), INDOT shall have the right to immediately remove the Project from the state owned or controlled right-of-way and terminate this Agreement.

B. In the event that the state owned or controlled right-of-way or any portion thereof on which the Project is located is required for future expansion, modification, or maintenance of any highway or associated facilities, the Town agrees that it shall surrender the state owned or controlled right-of-way upon which the Project is located, whether in part or in its entirety, and INDOT may terminate this Agreement. The Town understands and agrees that it shall not be entitled to any damages or any other compensation in the event that INDOT removes the Project from state owned or controlled right-of-way for expansion, modification, or maintenance of any highway or associated facilities.

C. In the event that INDOT determines, in its sole discretion, that the presence or public use of the Project is posing an eminent risk of harm to the motoring public or to any part of the state highway system, INDOT may immediately close down and/or begin removal of the Project or any portion thereof, and may terminate this Agreement.

D. In the event that INDOT disposes of the state owned or controlled right-of-way in question (i.e., transfers the right-of-way to the Town), this Agreement shall terminate upon full execution of such transfer.

ARTICLE 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, if any, 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.** The Town binds its successors and assignees to all the terms and conditions of this Agreement. The Town shall not assign or subcontract the whole or any part of this Agreement without INDOT’s prior written consent. The Town may assign its right to receive payments, if any, to such third parties as the Town may desire without the prior written consent of INDOT, provided that the Town gives written notice (including evidence of such assignment) to INDOT thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

2.3. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Agreement, the 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.

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 approvals 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.** The Town shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Town shall make no claim for additional compensation, if any, in the absence of a prior written approval and amendment executed by all Parties and signatories hereto. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

2.7. **Certification for Federal-Aid Contracts Lobbying Activities.** [OMITTED – NOT APPLICABLE.]

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 the State 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, in 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, if any, 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 the State.

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 issued pursuant to this Agreement.

E. [OMITTED – NOT APPLICABLE]

F. The Town warrants that the Town and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work with the State.

G. [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 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 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) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

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

2.16. 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 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 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 performance of this Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

2.20. **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 Town agrees to exculpate and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, or other causalities 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 Town, 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 Town.

2.23. **Independent Entity; Workers’ Compensation Insurance.** The Town 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 Town shall provide all necessary unemployment and
workers’ compensation insurance for the Town’s employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

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

2.25. **Insurance.**

A. The Town shall cause and require its contractors to secure and keep in force during the term of this Agreement the following insurance coverages (if applicable) covering the Town and naming the State as additional insured for any and all claims of any nature which may in any manner arise out of or result from performance of work on the Project contemplated under this Agreement:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than $700,000 per person and $5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.

2. Automobile liability for owned, non-owned and hired autos with minimum liability limits of $700,000 per person and $5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.

3. Errors and Omissions liability with minimum liability limits of $1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Agreement.

4. Fiduciary Liability is required if the Town is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. These contractors face potential claims for mismanagement brought by plan members. Limits should be no less than $700,000 per cause of action and $5,000,000 per occurrence.

5. Valuable Papers coverage, available under an Inland Marine policy, is required when any plans, drawings, media, data, records, reports, billings and other documents are produced or used under this agreement. Insurance must have limits sufficient to pay for the re-creation and reconstruction of such records.

6. The Town shall secure the appropriate Surety or Fidelity Bond(s) as required by the state department served or by applicable statute.

7. The Town shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Agreement and proof of workers’ compensation coverage.
meeting all statutory requirements of IC §22-3-2. In addition, proof of an “all states endorsement” covering claims occurring outside the State is required if any of the services provided under this Agreement involve work outside of Indiana.

B. The Town shall ensure that its or its Contractors’ insurance coverage meets the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Town or its Contractors.

3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Town or its Contractors in excess of the minimum requirements set forth above. The duty to indemnify the State under this Agreement shall not be limited by the insurance required in this Agreement.

4. The insurance required in this Agreement, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days’ prior written notice to the undersigned State agency.

5. The Town waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Agreement may be deemed a material breach of contract entitling the State to immediately terminate this Agreement. The Town shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Agreement.

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 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, religion, disability, income status, 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 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:

   Ann Bishop  
   Project Manager  
   Crawfordsville District  
   41 W. 300 N.  
   Crawfordsville, IN 47933  
   Phone: (765) 361-5241  
   Email: abishop@indot.in.gov

   With a copy to:

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

B. For the Town:

   Dax Norton  
   Town Manager  
   6210 South CR 700 East  
   Whitestown, IN 46075  
   Phone: (317) 732-4530  
   Email: dnorton@whitestown.in.gov

   With a copy to:

   Stephen Unger, Whitestown Town Attorney  
   Bose McKinney & Evans LLP  
   111 Monument Circle, Suite 2700  
   Indianapolis, IN 46204  
   Phone (317) 684-5465

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, 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 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 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, IC §34-13-1 and IC §34-52-2-3.

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 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.

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.** 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.

2.42. **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 Town or its contractors as a result of this Agreement.

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 State’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 Town shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Town’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]

2.50. **No Third Party Beneficiaries.** Nothing herein is intended to give, nor shall it have the effect of giving, any enforceable rights to any third parties who are not the signed Parties hereto (solely the Town and INDOT, as an agency of the State of Indiana), whether such claims are asserted as third party beneficiary rights or otherwise.
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 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.

TOWN OF WHITESTOWN

Executed by: ___________________________  Attest: ___________________________

Eric Miller, Town Council President  Dax Norton, Town Manager

Date: _______________________________  Date: _______________________________

STATE OF INDIANA  )  )SS:
COUNTY OF: ______________________)

Before me, a Notary Public in and for said County and State personally appeared ____________________________, of the Town of Whitestown, Indiana, who acknowledged the execution of the foregoing Agreement on this _____ day of ____________________, 20_____.

________________________________________
NOTARY PUBLIC (signature)

________________________________________
NOTARY PUBLIC (printed)

My Commission expires: ____________________________

My County of Residence is: ____________________________
STATE OF INDIANA
Indiana Department of Transportation

Recommended for approval by:

__________________________________________
Shane Spears
Crawfordsville District Deputy Commissioner

Date: ______________________________

Executed By:

__________________________________________ (for)
Joseph McGuinness
Commissioner

Date: ______________________________

STATE OF INDIANA )
COUNTY OF: ________________)

SS:

Before me, a Notary Public in and for said County and State personally appeared __________________________, __________________________ of the Indiana Department of Transportation, who acknowledged the execution of the Agreement on this ______ day of ______________________, 20____.

__________________________________________
NOTARY PUBLIC (signature)

__________________________________________
NOTARY PUBLIC (printed)

My Commission expires: _________________________________

My County of Residence is: _______________________________
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 Form and Legality:

__________________________________ (for)
Attorney General Curtis T. Hill, Jr.

Date: ______________________________

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

__________________________________
Kristi K. Shute
Attorney No. 26588-32
100 N. Senate Ave., Room N730
Indianapolis, IN 46204-2216
317-232-7574

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

__________________________________
Kristi K. Shute