

INTERLOCAL AGREEMENT
Between
THE INDIANA DEPARTMENT OF TRANSPORTATION
And
THE TOWN OF WHITESTOWN, INDIANA
For
DESIGN, CONSTRUCTION, INSTALLATION AND MAINTENANCE
OF A TRAFFIC SIGNAL
AT THE INTERSECTION OF SR 267 AND INDIANAPOLIS ROAD
IN WHITESTOWN, BOONE COUNTY, INDIANA

EDS/SCM No. _____

THIS INTERLOCAL AGREEMENT (“Agreement”), made and entered into by and between the INDIANA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as “INDOT” or the “State”) and the TOWN OF WHITESTOWN, INDIANA (hereinafter referred to as the “Town”), is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General (“Effective Date”). INDOT and the Town are jointly referred to herein as the “Parties” and each individually as a “Party.”

WITNESSETH

WHEREAS, in the interest of public safety and for the purpose of regulating traffic, the Town wishes to design, construct, and install a traffic signal including related equipment, devices, accessories, and appurtenances (collectively, the “Traffic Signal”) at the intersection of SR 267 and Indianapolis Road (the “Intersection”), 0.29 miles south of I-65, in Whitestown, Boone County, Indiana; and

WHEREAS, INDOT has determined that the existing volume of traffic at the Intersection meets the requirements for a traffic signal and deems installation of the Traffic Signal and regulation of traffic at the Intersection by the Traffic Signal to be beneficial and warranted; and

WHEREAS, INDOT shall permit improvements related to the Traffic Signal at the Intersection to be made on and to the Indiana state highway/road system (the “State Highway System”) under and pursuant to the terms and conditions specified below; and

WHEREAS, the Town will pay all costs for the design, construction, and installation of the Traffic Signal (except as may be indicated otherwise herein), as the Town previously entered into an Agreement, EDS No. A249-10-320057, under which it agreed to pay for the design, construction, and installation of a traffic signal at the Intersection when such a signal became warranted.

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

ARTICLE I
SPECIFIC PROVISIONS

1.1. Purpose of Agreement. The purpose of this Agreement is to allow the Town to design, construct, and install the Traffic Signal at the Intersection, in accordance with project plans, and to delineate maintenance and other responsibilities related to the Traffic Signal. The Town understands and agrees that if and when the Traffic Signal conflicts with the operation, maintenance, regulation, construction, or reconstruction of or within any part of INDOT/State of Indiana right-of-way or any other State Highway System facility, the Traffic Signal shall be altered or removed partially or entirely, in INDOT's sole discretion, to accommodate use of INDOT/State of Indiana right-of-way or other State Highway System facility for state highway/road and/or other purposes, at no cost to INDOT.

1.2. Term. This Agreement shall commence on the Effective Date and terminate on the earliest to occur of the following:

A. If construction and installation activities related to the Traffic Signal permitted by this Agreement have not begun at the Intersection within one year of the Effective Date, this Agreement shall terminate as of such date;

B. If the Traffic Signal constructed and installed at the Intersection by the terms of this Agreement is removed from the State Highway System, this Agreement shall terminate on the date the Traffic Signal is fully removed;

C. If the Intersection is removed from the State Highway System, this Agreement shall terminate on the date the Intersection is removed;

D. The date a lack of funding determination is made by the Indiana State Budget Director as provided in Section 3.19 of this Agreement; or

E. If the State determines there has been an ethics or other violation by the Town which warrants the termination of this Agreement, this Agreement shall terminate on the date notice is given to the Town as provided in Section 3.31 of this Agreement.

Except as set forth otherwise herein, all obligations, responsibilities, and liability of the Town under this Agreement, including but not limited to those set forth in Articles II and III herein, shall remain in effect throughout the entire term of this Agreement and survive termination hereof.

1.3 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 Traffic Signal or this Agreement. However, this Section 1.3 does not prohibit either of the Parties from making a public statement or disclosure regarding the Traffic Signal or this Agreement if, but only if, in the opinion of a Party's legal counsel, such a public statement or 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 the Party.

1.4 Interpretation. The Preamble and Recitals above are incorporated by reference into this Agreement. All captions, section headings, paragraph titles, and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive, or to affect the interpretation of this Agreement.

ARTICLE II
SPECIFIC DESIGN, CONSTRUCTION, INSTALLATION,
AND MAINTENANCE RELATED PROVISIONS

2.1 Design.

A. The Town shall retain a Consulting Engineer, prequalified with INDOT in traffic signal design, to prepare plans and specifications for the Traffic Signal and the construction and installation of the Traffic Signal at the Intersection (the “Plans and Specifications”) in accordance with the INDOT 2020 Standard Specifications and any subsequent revisions. The Standard Specifications are available from the INDOT website at: <http://www.in.gov/dot/div/contracts/standards/>. The Plans and Specifications shall include but not be limited to:

1. All Traffic Signal materials and equipment specified shall be of the types, models and makes currently used and maintained by INDOT on the State Highway System. When a category of materials or equipment specified for the Traffic Signal is listed on the INDOT list of approved materials, any such materials or equipment shall be selected from the INDOT list of approved materials. Materials information is available from the INDOT website at: <https://www.in.gov/indot/div/mt/appmat/appmat.htm>;
2. The controller shall be configured to flash red for all approaches when needed;
3. All signage and pavement markings needed to direct and guide motorists at and approaching the Intersection with the Traffic Signal control shall be provided;
4. Durable material pavement markings shall be used for final markings at the Intersection. Any old pavement markings conflicting with new traffic patterns shall be designated for removal and not covered over;
5. All Traffic Signal indications shall be light emitting diode (“LED”). All LED indications shall be selected from INDOT’s approved list of traffic control equipment. All LED indications shall have a permanent indelible sticker affixed indicating month and year of installation; and
6. Left turn phasing shall be provided for all approaches to the Intersection in accordance with project plans.

B. The Town shall deliver two copies of the proposed Plans and Specifications for the Traffic Signal and associated work to the INDOT Crawfordsville District Traffic Engineer (the “Traffic Engineer”) for concurrence. The Traffic Engineer will notify the Town in writing when INDOT concurs with the proposed Plans and Specifications as final plans and specifications (the “Final Plans”) which may be used for design, bidding, construction, and installation.

C. Before construction and installation begins, the Town shall deliver one paper copy and one electronic copy of the Final Plans to the INDOT Crawfordsville District Traffic Office, Attn: Traffic Engineer. No changes to the Final Plans shall be made without prior written consent and approval from INDOT. Approval for changes to the Final Plans shall be obtained from the Traffic Engineer. When approved, a change to the Final Plans shall be considered as if it was a part of the original Final Plans.

D. The Town shall provide two copies of an “As-Built” plan to the Traffic Engineer in accordance with Section 2.3 of this Agreement.

2.2. Construction and Installation.

A. No construction, installation, or other work on the Traffic Signal and/or at the Intersection under this Agreement may begin on INDOT/State of Indiana right-of way and/or the State Highway System until this Agreement is approved by the Indiana Attorney General or an authorized representative and the paper and electronic copies of the Final Plans required in Section 2.1 of this Agreement are received by INDOT.

B. The Town shall employ a Project Engineer, who is independent from and unaffiliated with the Town’s contractor, to provide competent and adequate engineering, testing, and inspection services to monitor the Town’s contractor’s work for compliance with the Final Plans.

C. The Town, at its cost and expense, shall coordinate the relocation of any utilities necessitated by construction and installation of the Traffic Signal.

D. The Town, at its cost and expense, shall coordinate arrangements with the electric utility for the power connection to/for the Traffic Signal.

E. The Town shall advertise for bids for the work described by the Final Plans and shall award the contract in accordance with applicable state law.

F. The Town shall have its contractor order all traffic control equipment and necessary materials not in stock. A list of the ordered materials shall be delivered to the Traffic Engineer, for INDOT records. A list of materials to be used from the Town’s contractor’s own stock shall also be provided to the Traffic Engineer.

G. The signal indications shall not be hung or activated prior to the date specified by the Traffic Engineer.

H. At least one week prior to beginning construction and installation activities, the Town shall schedule a preconstruction meeting at the INDOT Crawfordsville District Office during regular business hours or at another time and place mutually convenient to the Traffic Engineer and the Town. Appropriate representatives of the Town shall attend the meeting. In addition, representatives of the design consultant, the Project Engineer, the Town’s contractor (and any subcontractors who may need to attend), and any affected utilities shall also attend. Topics for discussion may include but are not limited to:

1. the work plan;
2. the traffic control plan;
3. the inspection plan;
4. a list of contact names with mailing addresses, telephone/fax numbers, and email addresses; and

5. the anticipated construction/occupancy/openings schedule for the Development.

I. The Town shall notify the Traffic Engineer at least seven days prior to the Town's contractor commencing construction and installation of the Traffic Signal.

J. The Town, in consideration of the benefits to traffic at the Intersection, shall have its contractor, who is pre-qualified with INDOT, construct and install the Traffic Signal according to the Final Plans and any subsequent approved revisions, as well as all rules and regulations of INDOT and all applicable state and federal laws. All work shall be done in accordance with the INDOT 2020 Standard Specifications and subsequent revisions and performed in a manner and quality meeting the satisfaction and approval of INDOT with regard to proper highway engineering and planning. A qualified IMSA Certified Traffic Signal Electrician, Level II, shall be in responsible for and in charge of any wiring installation and shall make all wiring connections.

K. All pavement improvements and signage (i.e., overhead signs and supports, new pavement, delineation, pavement markings, etc.) associated with proper operation of the Traffic Signal and/or Intersection shall be maintained by the Town during all construction and installation activities.

L. All final installations shall be complete before activation of the Traffic Signal.

M. The Town's contractor shall affix a permanent indelible sticker to all LED signal indications indicating the month and year of installation.

N. Construction and installation activities shall not materially restrict traffic flow at, in, or to the Intersection during morning or evening peak traffic flow periods (rush hours).

O. Signal poles may be installed up to two weeks prior to activation and first operation of the Traffic Signal.

P. The Town, or its Project Engineer, shall notify the Traffic Engineer at least five days prior to the intent to place the Traffic Signals in operation or in flash mode in connection with an inspection by INDOT. This inspection will be the basis to determine if the Traffic Signal is ready to be activated.

Q. The Town's contractor shall not activate the traffic signal system on a Monday, Friday, Saturday, Sunday, holiday, or the day before a holiday. An INDOT Traffic Section representative shall be present at the time of signal activation.

R. The Town shall maintain the Traffic Signal until it is accepted by INDOT. Notice of need for maintenance may be given directly to the Town's contractor by INDOT. Responses to reports of conditions requiring maintenance shall be made within two hours.

S. During construction and installation of the Traffic Signal, INDOT may inspect the work at any time. INDOT will promptly notify the Town or the Project Engineer in writing of any deficiencies from the Final Plans. The Town will have its contractor promptly correct such deficiencies. Any inspection by INDOT does not relieve the Town or the Project Engineer of the

responsibility to construct and install the Traffic Signal in accordance with the Final Plans as required herein.

T. INDOT will conduct a final inspection before accepting the Traffic Signal.

2.3. Acceptance of the Traffic Signal.

A. The Town shall provide two (2) copies of an “As-Built” plan to the Traffic Engineer prior to INDOT’s final acceptance of the Traffic Signal.

B. After satisfactory completion of the design, construction, and installation of the Traffic Signal, as determined by a final inspection by INDOT in its sole discretion, and upon completion of a 60 day trouble-free burn-in period, INDOT will accept the Traffic Signal as a permanent signal and the Traffic Signal shall be permitted to remain in place in accordance with this Agreement. INDOT will provide the Town with written notice when INDOT accepts the Traffic Signal as a permanent installation.

C. After final acceptance of the Traffic Signal by INDOT, the Traffic Signal shall become the property of and shall be controlled and maintained by INDOT under state law and the rules and regulations of INDOT in force or thereafter enacted.

D. The Town shall be obligated for paying the costs for electrical energy serving the Traffic Signal as provided in Section 2.6 of this Agreement.

E. If, at any time after the Traffic Signal attains permanent status, a traffic engineering study determines that the then current traffic signal criteria are no longer fulfilled at the Intersection and/or INDOT determines that the Traffic Signal is no longer warranted, the Traffic Signal may be removed and retained by INDOT in its sole discretion.

2.4. Rights of Entry.

A. INDOT grants the Town and its contractor and subcontractors permission to enter upon INDOT/State of Indiana right-of-way for the sole purpose of constructing and installing the Traffic Signal and related work in accordance with the Final Plans.

B. The Town grants INDOT and its contractors, subcontractors, agents, and representatives permission to enter upon the Town’s property, including but not limited to right-of-way, for the purpose of control, adjustment, maintenance, repair, replacement, modernization, alteration, or removal of the Traffic Signal and related work at any time.

2.5. Operation and Maintenance of the Traffic Signal.

A. Timing of Traffic Signal intervals and progressive system timing intervals will be at the sole discretion of INDOT.

B. Prior to acceptance of the Traffic Signal by INDOT, the Town shall be responsible for all operation, maintenance, and repair of the Traffic Signal. INDOT may, at its discretion, respond to a call of trouble or malfunction at the Intersection to determine the nature and extent of the trouble or malfunction or INDOT may contact the Town or its contractor directly to provide response to the reported trouble or malfunction. The Town or its contractor shall respond to a reported trouble or malfunction within two hours of receiving the report.

C. The Town shall maintain pavement quality on its approaches to the Intersection such that detection devices installed in the pavement may be maintained in good operation and order by INDOT. Failure to maintain the pavement quality may be basis for removal of the Traffic Signal and/or closing of the Intersection by INDOT.

D. The Town shall not erect any signs or structures upon, across, or within INDOT/State of Indiana right-of-way without the prior approval of INDOT. If “SIGNAL AHEAD” signs are necessary on the SR 267 or Indianapolis Road approaches to the Intersection, the Town shall install these signs at its cost, but only after approval thereof by INDOT.

E. Upon acceptance of the Traffic Signal by INDOT, INDOT shall be responsible, at its cost and expense, for operating, maintaining, and repairing the Traffic Signal according to current INDOT policies and procedures for operation and maintenance of traffic signals, except as otherwise provided herein. The Town shall not be responsible for any operation, maintenance, or repair of the Traffic Signal after INDOT’s acceptance thereof, except for maintenance or repair caused or necessitated by the Town’s action or omissions.

F. The Traffic Signal shall be operational before commencement of construction of the new interchange, R-39231, in the vicinity of the Intersection.

2.6. The Town’s Responsibilities.

The Town’s responsibilities shall include, but are not limited to, the following:

A. The Town shall perform all work under this Agreement to INDOT’s reasonable satisfaction, as determined at the discretion of INDOT and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations.

B. At all times during which the Traffic Signal is operational, the Town shall be responsible for the account management, and obligated to the electrical provider(s) and other parties for full and timely payment, of all electrical utility and other costs for and related to the Traffic Signal.

C. To providers other than INDOT, the Town shall be fully responsible and pay for:

1. Design of the Traffic Signal and associated work for signalization of the Intersection;
2. Bidding and contracting of the work described by the Final Plans;
3. Reimbursable utility expenses due to work at the Intersection and any power connection charges for the electric utility to connect power to operate the Traffic Signal;

4. All materials, equipment, and labor required to construct and install the Traffic Signal and perform associated work in accordance with the Final Plans;
5. Costs for employing a Project Engineer and for testing and inspection work by the Project Engineer;
6. Costs for employing a traffic engineer to conduct traffic engineering studies of the Intersection;
7. Costs associated with vendor or manufacturer warranty service until INDOT's acceptance of the Traffic Signal; and
8. Costs associated with having a contractor pre-qualified by INDOT maintain the operation of the Traffic Signal in accordance with the INDOT 2020 Standard Specifications and other applicable specifications until the Town is notified by INDOT, in writing, that the Traffic Signal has been accepted by INDOT.

D. Wherever in this Agreement any obligation or responsibility is assumed by the Town, the same shall be deemed an obligation of the Town.

2.7. INDOT's Responsibilities.

INDOT's responsibilities shall include, and are limited to, the following:

A. INDOT shall have no responsibility for any costs for and/or related to the design, construction, and installation of the Traffic Signal at the Intersection.

B. Prior to INDOT's acceptance of the Traffic Signal, INDOT shall have no responsibility, obligation, or liability whatsoever for the Traffic Signal or the design, construction, installation, operation, maintenance, and/or repair thereof.

C. In its normal course of business, INDOT will provide payment only for the following so long as this Agreement remains in effect:

1. All costs for operation, maintenance, and repair of the Traffic Signal after acceptance thereof by INDOT;
2. All costs for future modernization of the Traffic Signal; and
3. Costs for any equipment or materials INDOT agrees to furnish at its own cost.

ARTICLE III **GENERAL PROVISIONS**

3.1 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 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 Party or state or federal 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, correspondence, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

3.2 Assignment; Successors. [OMITTED – NOT APPLICABLE]

3.3 Assignment of Antitrust Claims. [OMITTED – NOT APPLICABLE]

3.4 Audits. The Town acknowledges that it may be required to submit to an audit of funds, if any, 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.

3.5 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.

3.6 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. This Agreement may only be amended, supplemented, or modified by a written document executed in the same manner as this Agreement.

3.7 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

3.8 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, 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. [OMITTED – NOT APPLICABLE]

D. [OMITTED – NOT APPLICABLE]

E. [OMITTED – NOT APPLICABLE]

F. The Town warrants that the Town and its contractors and 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 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 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.

3.9 Condition of Payment. All services provided by the Town under this Agreement must be performed to the State’s reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Agreement or performed in violation of federal, state or local statute, ordinance, rule or regulation.

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

3.11 Continuity of Services. [OMITTED – NOT APPLICABLE]

3.12 Debarment and Suspension. [OMITTED – NOT APPLICABLE]

3.13 Default by State. [OMITTED – NOT APPLICABLE]

3.14 Disputes. [OMITTED – NOT APPLICABLE]

3.15 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 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 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 days after such conviction;

D. Notifying the State in writing within 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.

3.16 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 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 contractors and subcontractors, who perform work under this Agreement, to certify to the Town that the contractor or subcontractor does not knowingly employ or contract with an unauthorized alien and that the contractor or 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 contractor or 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.

3.17 Employment Option. [OMITTED – NOT APPLICABLE]

3.18 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.

3.19 Funding Cancellation. As required by Financial Management Circular 2007-1 and IC §5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

3.20 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.

3.21 HIPAA Compliance. [OMITTED – NOT APPLICABLE]

3.22 Indemnification. The Town agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the Town and/or its agents, officials, employees, contractors and subcontractors, if any, in the performance of this Agreement. The State shall not provide such indemnification to the Town.

3.23 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, contractors 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.

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

3.25 Insurance. The Town shall cause and require the contractors and subcontractors servicing and maintaining the Traffic Signal to secure and keep in force during the term of this Agreement the insurance coverages specified in the 2019 INDOT Standard Specifications.

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

3.27 Licensing Standards. The Town, its employees, contractors and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Town pursuant to this Agreement. The State will not approve any study, plans or work performed by the Town when the Town, its employees, contractors or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Town shall notify the State immediately and the State, at its option, may immediately terminate this Agreement.

3.28 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 Parties.

3.29 Minority and Women’s Business Enterprises Compliance. [OMITTED – NOT APPLICABLE]

3.30 Nondiscrimination.

A. Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the 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 or any other characteristic protected by federal, state or local law (“Protected Characteristics”). The Town certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this 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 contractor or subcontractor.

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

The 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 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 incorporated herein 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 contractors or 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 contractor or 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 the Federal Highway Administration 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 the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Town's noncompliance with the nondiscrimination provisions of this Agreement, INDOT 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 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. above 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 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 Town becomes involved in, or is threatened with, litigation with a contractor, 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.

3.31 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:

INDOT Crawfordsville District
Attn: District Traffic Engineer
41 West 300 North
Crawfordsville, IN 47933
Phone: (765) 361-5249
Email: twatson@indot.in.gov

With 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
Email: hkennedy@indot.in.gov

B. For the Town:

Town of Whitestown, Indiana
Administration Department
Attn: Jason Lawson, Town Manager
Whitestown Municipal Complex, Room 900
6210 Veterans Drive
Whitestown, Indiana 46075
Phone: (317) 732-4530
Email: jlawson@whitestown.in.gov

As required by IC §4-13-2-14.8, payments to the Town shall be made via electronic funds transfer in accordance with instructions filed by the Town with the Indiana Auditor of State.

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

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

3.34 Payments.

A. All payments, if any, shall be made 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. [OMITTED – NOT APPLICABLE]

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

3.36 Progress Reports. [OMITTED – NOT APPLICABLE]

3.37 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.

3.38 Renewal Option. [OMITTED – NOT APPLICABLE]

3.39 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.

3.40 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.

3.41 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.

3.42 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 or subcontractors as a result of this Agreement.

3.43 Termination for Convenience. [OMITTED – NOT APPLICABLE]

3.44 Termination for Default. [OMITTED – NOT APPLICABLE]

3.45 Travel. [OMITTED – NOT APPLICABLE]

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

3.47 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.

3.48 Work Standards. The Town shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards (or by ensuring that its contractors and subcontractors do the same). If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and the Town shall grant such request.

3.49 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 Party, or that the undersigned is the properly authorized representative, agent, member or officer of the Party. Further, to the undersigned’s knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Party, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Agreement, the Party attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

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

TOWN OF WHITESTOWN, INDIANA

Executed by:

Attest:

Jason Lawson, Town Manager

Matt Sumner, Clerk Treasurer

Date: _____

Date: _____

INDIANA DEPARTMENT OF TRANSPORTATION

Recommended for approval by:

Shane Spears, District Deputy Commissioner

Date: _____

Executed By:

_____(FOR)
Joseph McGuinness, Commissioner

Date: _____

[APPROVALS FOLLOW ON NEXT PAGE]

APPROVALS

STATE OF INDIANA
Office of Management and Budget

By: _____ (FOR)
Zachary Q. Jackson, Director

Date: _____

STATE OF INDIANA
Department of Administration

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

Date: _____

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

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

Date: _____