

**LOCAL PUBLIC AGENCY  
PROJECT COORDINATION CONTRACT**

**Between**

**INDIANA DEPARTMENT OF TRANSPORTATION**

**and**

---

**EDS #:** \_\_\_\_\_

## Table of Contents

1.	Notice to Parties.....	1
2.	Recitals.....	1
3.	Project Description.....	2, Attachment A
4.	LPA Responsibilities .....	2, Attachment B
5.	INDOT Responsibilities.....	2, Attachment C
6.	Funding Commitments.....	2, Attachment D
7.	Term and Schedule .....	3, Attachment E
8.	Access to Records.....	3
9.	Certification for Federal-Aid Contracts Lobbying Activities.....	3
10.	Compliance with Laws .....	4
11.	Conflict of Interest .....	5
12.	Disadvantaged Business Enterprise Program .....	5
13.	Disputes.....	6
14.	Drug-Free Workplace Certification .....	7
15.	Force Majeure .....	8
16.	Funding Cancellation Clause .....	8
17.	Governing Laws.....	8
18.	Insurance; Liability for Damages.....	8
19.	Merger and Modification .....	8
20.	Non-Discrimination .....	8
21.	Payment.....	10
22.	Penalties, Interest and Attorney’s Fees.....	10
23.	Pollution Control Requirements .....	10
24.	Severability .....	10
25.	Status of Claims .....	10
26.	Non-Collusion.....	12
	Signatures.....	12

**INDIANA DEPARTMENT OF TRANSPORTATION -LOCAL PUBLIC AGENCY  
PROJECT COORDINATION CONTRACT**

**EDS # A249-\_\_\_\_\_**

This Contract is made and entered into \_\_\_\_\_, 20\_\_\_\_, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the \_\_\_\_\_, a Local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

**NOTICE TO PARTIES**

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

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

Contract Administration Division  
ATTN: LPA Manager  
IGCN, Room N855  
100 North Senate Avenue.  
Indianapolis, Indiana 46204

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RECITALS**

WHEREAS, LPA has applied to INDOT and the Federal Highway Administration (FHWA) has approved the LPA's application to receive Federal Funds for the Project described in Attachment A, and

WHEREAS, LPA agrees to provide the Local funding match for the Federal monies as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain scheduling, project description, the LPA's funding commitment and other such terms required for receipt of the Federal Funds, and

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

WHEREAS, the PARTIES desire to maximize funds available for the Project consistent with all Federal laws and regulations, including but not limited to Title 23 of the United States Code, Title 49 of the United States Code, Title 23 of the Code of Federal Regulations, Title 49 of the Code of Federal Regulations, National Environmental Policy Act, Clean Air Act, Federal Water Pollution Control Act, Land and Water Conservation Fund Act, The Civil Rights Act, Uniform Relocation and Real Property Acquisition Act, and

WHEREAS, the PARTIES have authority to execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 8-23-17-19, 36-1-4-7, 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulation, and.

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

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

The "Recitals" and "Notice to Parties" above is hereby made an integral part and specifically incorporated into this Contract.

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

**SECTION II**            **LPA RESPONSIBILITIES.** The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA's Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives as described in INDOT's "Local Programs Resource Guide" which manual is herein incorporated by reference.

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

**SECTION IV**            **FUNDING COMMITMENTS.** The maximum amount of Federal aid, including credits is \$ \_\_\_\_\_. INDOT's maximum contribution of State Funds under this Contract is \$ \_\_\_\_\_. Payment will be made for the services performed under this Contract in accordance with Attachment D (Funding Commitment), which is attached to and made an integral part of this Contract. No increase of Federal aid shall be effective unless INDOT and FHWA approve it.

The LPA agrees to the funding participation below (Note: the actual funding structure is contained in Attachment D). Failure to comply with Federal requirements may result in FHWA withdrawing participation in the Project and the LPA is responsible for repayment of Federal Funds already disbursed:

Environmental:	_____	Federal Participation	_____	Local Only
	_____	Use as Credit		
Design:	_____	Federal Participation	_____	Local Only
	_____	Use as Credit		
Right of Way:	_____	Federal Participation	_____	Local Only
	_____	Use as Credit		
Construction Eng.:	_____	Federal Participation	_____	Local Only
Construction:	_____	Federal Participation	_____	Local Only
Utility Relocation:	_____	Federal Participation	_____	Local Only
Railroad Const.:	_____	Federal Participation	_____	Local Only

**SECTION V**                      **TERM AND SCHEDULE.**

The term of this Contract shall be from the date of the last signature affixed to this Contract to the earlier of December 31<sup>st</sup> of the second year after the programmed construction year of 20\_\_\_\_\_ or final project audit. A schedule for completion of the services and deliverables is described in Attachment E (Major Milestones and Project Schedule), herein attached and made an integral part of this Contract.

**SECTION VI**                      **GENERAL PROVISIONS**

**The LPA and any subsequent parties to this contract shall follow the “General Provisions”, number 1 through 18, including the noncollusion, to the extent these provisions are applicable under law to the LPA. The LPA shall also cause any contractor or agent working on the Project to follow the “General Provisions” and will include the “General Provisions” in any contract entered into regarding the work for the Project.**

1.     **Access to Records.**     The LPA will maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred and shall make such materials available at their respective offices at all reasonable times under the Contract period and for three (3) years from the date of final payment by the FHWA to the LPA through INDOT under the Contract, for inspection or audit by INDOT, FHWA or any other authorized representatives of the Federal Government and copies thereof shall be furnished, if requested.
  
2.     **Certification for Federal-Aid Contracts Lobbying Activities.**     The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA 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 undersigned, 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 Contract, 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 contract, 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 this Federal contract, 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 LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier sub contracts, 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. Compliance with Laws.**

- A. The LPA shall comply with all applicable Federal, State and Local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any State or Federal statute or the promulgation of regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
- B. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et. seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If the LPA or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6 and 4-2-7, and under any other applicable State or Federal laws.
- C. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INDOT. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.
- D. As required by IC 5-22-3-7: (1) the LPA and any officials of the LPA certify that (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7

is preempted by Federal law; and (B) the LPA will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by Federal law. (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by Federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by Federal law.

**4. Conflict of Interest.**

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing a contract pursuant to this LPA Contract;
2. An individual who has an interest of three percent (3%) or more of LPA's contractor, if the contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Commission" means the State Ethics Commission.

B. INDOT may cancel this Contract without recourse by the LPA if any interested party is an employee of the State of Indiana.

C. INDOT will not exercise its right of cancellation under section B, above, if the LPA gives INDOT an opinion by the Commission indicating that the existence of this Contract and the employment by the State of the interested party does not violate any statute or code relating to ethical conduct of State employees. INDOT may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.

D. The LPA has an affirmative obligation under this Contract to disclose to INDOT when an interested party is or becomes an employee of INDOT. The obligation under this section extends only to those facts that the LPA knows or reasonably could know.

**5. Disadvantaged Business Enterprise Program.** Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted

contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

**6. Disputes.**

- A. Should any dispute arise with respect to the Contract, the LPA and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The LPA agrees that the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the LPA as a result of such failure to proceed shall be borne by the LPA, and the LPA shall make no claim within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:
  - 1. The parties agree to resolve such matters through submission of this dispute to the Commissioner of the Indiana Department of Administration (IDOA). The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA and INDOT within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration or mediation for the determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
  - 2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.

- 7. Drug-Free Workplace Certification.** The LPA hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it shall give written notice to the INDOT and the IDOA within ten (10) days after receiving actual notice that an employee of the LPA in the State of Indiana has been convicted of a criminal drug violation occurring in the LPA's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract



payments, termination of the Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Contract amount set forth in this Contract is in excess of \$25,000.00, LPA hereby further agrees that this Contract is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the IDOA is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the LPA and made a part of the contract or agreement as part of the contract documents.

The LPA certifies and agrees it shall provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a Statement notifying their employees the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LPA's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties which 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 as a condition of continued employment the employee shall (1) abide by the terms of the Statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (B)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or Local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.
8. **Force Majeure.** In the event either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
9. **Funding Cancellation Clause.** When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.  
I.C.2-17-3
10. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
11. **Insurance; Liability for Damages.** The LPA agrees to indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT, and their officials and employees from any claims and suits including court costs, attorneys fees, and other expenses caused by any act or omission of the LPA under this Contract or any liability due to loss, damage, injuries, or other casualties of whatever kind, or by whomsoever caused, to the person or property of anyone on or off the Project arising out of, or resulting from the work covered by this Contract 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 of negligence of the LPA, including any claims arising out of the Worker's Compensation Act or any other law, ordinance, order or decree. The LPA agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith in the event the LPA shall default under the provisions of this Section. INDOT shall not provide such indemnification to the LPA. Notwithstanding the proceeding provisions of this Section, the obligation of the LPA to indemnify, and hold harmless shall only arise if the LPA also would be liable under IC 34-13-3. Further the liability of the LPA shall be limited by the provisions of IC 34-13-3-4.
12. **Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

**13. Non-Discrimination.**

- A. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the LPA, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
  
- B. The LPA understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the LPA, agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964 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 Title VI enforcement shall include the following additional grounds: sex, ancestry, age, religion and disability.) The following are examples of where this policy shall be applied relative to the INDOT.

INDOT shall not:

- C. Discriminate in its selection and retention of contractors, including without limitation, those services retained for, or incidental to, construction, planning, research, engineering, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisitions of right-of-way.
  
- D. Locate or design a highway in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons, (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, religion and disability).
  
- E. Locate, design or construct a highway in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, religion and disability.)

- F. Discriminate against eligible persons in relocation payments, in providing relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.
- G. Discriminate against the traveling public and business users of the highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation and vehicle servicing) constructed on, over or under the right-of-way of such highways.
- H. Neither allow discrimination by contractors in their selection and retention of subcontractors, lessors and/or material suppliers, nor allow discrimination by their subcontractors in their selection of subcontractors, lessors or material suppliers, who participate in construction, right-of-way clearance and related projects.

INDOT shall:

- I. Take appropriate actions to correct any deficiency determined by itself and/or the FHWA within a reasonable time period, not to exceed ninety (90) days, in order to implement Title VI compliance in accordance with INDOT's assurances and guidelines.
14. **Payment.** All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.
15. **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, I. C. 34-54-8, and I. C. 34-13-1.
16. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:
- A. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
  - B. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued there under; and
  - C. Stipulates, as a condition of Federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

17. **Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
  
18. **Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

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

**Non-Collusion**

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

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

**LPA** \_\_\_\_\_  
(County, City or Town)

**STATE OF INDIANA**  
**Department of Transportation**

\_\_\_\_\_  
Signature and Date

**Recommended for approval by:**

\_\_\_\_\_  
Member (Print or type name and title)

\_\_\_\_\_  
John Morton, Director  
Contract Administration Division

\_\_\_\_\_  
Signature and Date

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

\_\_\_\_\_  
Member (Print or type name and title)

**Executed by:**

\_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
Gilbert F. Viets, Chief of Staff

\_\_\_\_\_  
Member (Print or type name and title)

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

**Department of Administration**

\_\_\_\_\_  
Carrie Henderson, Commissioner

Attest:

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

\_\_\_\_\_  
Clerk Treasurer

**Office of Management and Budget**

\_\_\_\_\_  
Christopher A. Ruhl, Director

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

**Approved as to Form and Legality:** \_\_\_\_\_ (FOR)

Stephen Carter, Attorney General of Indiana

Date      Approved: \_\_\_\_\_

**ATTACHMENT A**

**PROJECT DESCRIPTION**

- I. Through the cooperation of the LPA, INDOT and FHWA, the following designated Project has been approved by FHWA:

Des. No. \_\_\_\_\_;

Type of Project: \_\_\_\_\_

Location: \_\_\_\_\_

A general description of the Project is as follows:

## ATTACHMENT B

### LPA'S RIGHTS AND DUTIES

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

1. The LPA has requested and intends to use Federal Funds to pay for the Project. The LPA asserts that the Project is eligible for Federal Funds and that the LPA has completed or will complete the following in accordance with all pertinent State and Federal laws, regulations, policies and guidance:
  - A. Design Consultant selection (If Federal participation or match credit will be used).
  - B. Construction Engineering Consultant selection (If Federal participation or match credit will be used.)
  - C. Consultant Contract (If Federal participation or match credit will be used).
  - D. Notice-to-Proceed
  - E. Draft Environmental Document
  - F. Engineers Report
  - G. Stage 1 Design
  - H. Final Environmental Document
  - I. Stage 3 Design
  - J. Tracings
  - K. Right-of-Way Acquisition
  - L. Utility Coordination
  - M. Rail Coordination
  - N. Permits
  - O. Concurrence with INDOT for Construction Contract letting
  - P. Concurrence with INDOT for Construction Contract award
  - Q. Local Match (LM) payment sent by LPA
  - R. Concurrence with INDOT on Final Construction Contract Acceptance
2. The LPA agrees to provide all relevant documents including, but not limited to all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve a LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable; including the deliverables enumerated in Attachment E, the schedule, costs, and FHWA's participation in the Project may be jeopardized.
3. The LPA agrees to complete all right-of-way acquisition, utility and rail coordination and acquire the necessary permit(s) and submit documentation of such to INDOT.
4. At least sixty (60) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal



body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

5. If the LPA has failed to meet any of the requirements of sections 1, 2, 3, or 4 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
6. The LPA shall pay the cost as described in Attachment D within thirty (30) calendar days of INDOT's award of the construction contract.
7. The LPA understands prompt payment is crucial to the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the LM due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel the contracts listed in II.B.1 above and/or proceed in accordance with IC 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
8. The LPA shall also be responsible for all costs associated with additional provisions and or expenses requested by the LPA as well as all necessary change orders. The LPA, in conjunction with FHWA and INDOT, shall review and approve all change orders, and such approvals shall not be unreasonably withheld. If the LPA does not approve a change order within two (2) calendar days of receipt and the change order is necessary for the continuation of the project, INDOT may approve the change order.
9. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
10. The LPA shall provide for project management and oversight of the Project. The LPA shall submit reports to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods.
  - a. *Project Management by LPA:*

The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve in writing the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for Federal-Aid reimbursement. All claims for reimbursement will be submitted to the District office for payment as referenced on page 1.

b. *Project Management by LPA's Consultant:*  
INDOT must approve in writing the Consultant's selection process and personnel prior to their assignment to the project. The LPA shall execute a contract with a Consultant setting forth the scope of work, and fees. The LPA shall submit this contract to INDOT for review and approval, prior to INDOT's construction letting for the Project. Only costs incurred after INDOT's written notice-to-proceed to the LPA and the LPA's written notice-to-proceed to the Consultant shall be eligible for Federal-aid reimbursement. All claims for reimbursement shall be submitted to the District office for payment as referenced on page 1.

11. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Accommodation Policy. The LPA shall execute written use and occupancy contracts as defined in this Policy.
12. If for any reason, INDOT is required to repay to FHWA the sum or sums of Federal Funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums upon receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for Federal funding shall be the sole obligation of the LPA.

## ATTACHMENT C

### INDOT'S RIGHTS AND DUTIES

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

1. INDOT, with FHWA input, agrees to the funding terms and match defined in Attachment D.
2. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Projects documents were created.
3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for the construction project.
4. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules, conduct a scheduled letting.
5. INDOT shall award the construction contract for the Project according to applicable laws and rules.
6. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's adjusted cash amount of the LPA's contribution to the actual cost of the Project.
7. If INDOT has received LPA's cash contribution to the Project and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice-to-proceed on the Project within ten (14) calendar days of its receipt of the LPA cash contribution.
8. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction meets or is likely to meet INDOT's Standard Specifications.
9. In the event the engineering, testing, and inspection services provided by the LPA,, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other Federal Aid construction contracts.

10. After the final Project audit is approved by INDOT, the LPA shall make any final payment to INDOT pursuant to Attachment D or INDOT shall refund any Project overpayment to the LPA.

## ATTACHMENT D

### FUNDING COMMITMENT

#### I. Project Costs.

A. Overall Project Amounts: The following total project costs/funding commitments are based upon the totals of the amounts in sections I.B., I.C. and I.D. (See Exhibit #1, LPA/State Cost Worksheet) Exhibit #1 is herein attached and incorporated by reference.

1. The estimated Project total cost is \$\_\_\_\_\_.
2. The maximum, not to exceed amount of the Federal aid (FA) contribution is \$\_\_\_\_\_. This amount will be disbursed to the LPA at a rate of \_\_\_\_% of eligible expenditures (**Note:** this amount is **not** an estimate and no further monies are available).
3. The LPA's estimated minimum contribution or Local match (LM) is \$\_\_\_\_\_.
4. The LPA's estimated Local supplemental funding (LSF) is \$\_\_\_\_\_. The LPA's costs will be reviewed bi-annually. ***The LPA will be responsible for additional costs that exceed the amount in I.A.2.***

B. Planning, Design and Preliminary Engineering: The Planning, Design and Preliminary Engineering are any costs attributable to the project and falling within the parameters of the FHWA "preliminary engineering project phase" (hereinafter "PE"). The following are the costs/funding commitments for the PE for the Project:

1. The estimated PE costs are \$\_\_\_\_\_.
2. The estimated amount of direct FA contribution for PE is \$\_\_\_\_\_.
3. The estimated amount of FA contribution toward approved LPA up-front PE costs is \$\_\_\_\_\_.
4. The LPA's estimated LM for PE is \$\_\_\_\_\_.
5. The LPA's estimated LSF for PE is \$\_\_\_\_\_.

C. Right of Way Activities: The right of way activities are any costs attributable to the project and falling within the parameters of the FHWA "right of way project phase" (hereinafter R/W). The following are the costs/funding commitments for the R/W for the Project:

1. The estimated R/W costs are \$\_\_\_\_\_.
2. The estimated amount of the FA contribution for R/W is \$\_\_\_\_\_.
3. The estimated amount of FA contribution toward approved LPA up-front RW costs is \$\_\_\_\_\_.
4. The LPA's estimated LM for R/W is \$\_\_\_\_\_.
5. The LPA's estimated LSF for R/W is \$\_\_\_\_\_.

D. Construction and Construction Engineering: The construction and construction engineering as any costs attributable to the project and falling within the parameters of the FHWA “construction project phase” (hereinafter “Const. & CE” including utilities and railroad). The following are the costs/funding commitments for the Const. & CE for the Project (Sections 1-4 below are totals that encompass the amounts listed in Section 6a-e below):

1. The estimated Const. & CE costs are \$ \_\_\_\_\_.
2. The estimated amount of the FA contribution for Const. & CE is \$ \_\_\_\_\_.
3. The LPA’s estimated match credit for Const. & CE is \$ \_\_\_\_\_.
4. The LPA’s estimated LM for Const. & CE is \$ \_\_\_\_\_.
5. The LPA’s estimated LSF for Const. & CE is \$ \_\_\_\_\_.
6. Additionally, the Construction Engineering is a specific subcategory of the FHWA construction project phase. The LPA will award this Contract and will be subject to the following:
  - a. The estimated CE costs are \$ \_\_\_\_\_.
  - b. The maximum not exceed amount of the FA contribution for CE is \$ \_\_\_\_\_.
  - c. The LPA’s estimated LM for CE is \$ \_\_\_\_\_.
  - d. The LPA’s estimated LSF for CE is \$ \_\_\_\_\_.
  - e. The LPA understands and agrees that the total CE costs eligible for Federal reimbursement cannot exceed \_\_\_\_\_% of the final construction costs.

## II. LPA’s Funding Commitments.

A. LPA Official Action: The LPA’s fiscal body will resolve or take other official action irrevocably committing the LPA to fund the LPA’s share of the LM cost enumerated in Section I.A.3.

B. Billing:

1. When INDOT awards and enters into a contract (i.e.: construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT’s billing.
2. The LPA understands prompt payment is crucial to the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount of the LM due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel the contracts listed in II.B.1 above and/or proceed in accordance with IC 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA’s allocation of the Motor Vehicle Highway Account to INDOT’s account.

C. Other Costs:

1. In accordance with IC 8-23-2-14, the LPA shall pay INDOT the actual cost, less the amount eligible for Federal-aid reimbursement, for performing laboratory testing of materials. The cost of providing material testing is included in the maximum limitation number shown in I.D. 6f.
2. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.
3. The LPA shall pay INDOT for expenses incurred in supervising the Project out of the maximum limitation shown in I.D. 6e.

**III. Repayment Provisions.**

If for any reason, INDOT is required to repay to FHWA the sum or sums of Federal Funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums upon receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, proceed in accordance with IC 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

## ATTACHMENT E

### MAJOR MILESTONES AND SCHEDULE

#### I. Project Major Milestones.

##### A. Definitions:

1. “Major Milestones” are those items that are project-specific critical path items that are created to meet State and Federal requirements, keep the project on schedule and to fiscally manage the project costs.
2. “Schedule” is the date or dates in which a Major Milestone is due.
3. “Breach of Contract” is a Major Milestone which has not been reached on schedule.

##### B. Major Milestones:

The following are Major Milestones for the Project:

1. Consultant Selection
2. Consultant PE and/or R/W contract
3. Notice to Proceed for PE and/or R/W
4. Draft Environmental Document
5. Engineers Report
6. Stage 1 Design
7. Final Environmental Document
8. Stage 3 Design
9. Tracings
10. Right-of-Way Acquisition
11. Utility Coordination
12. Rail Coordination
13. Permits
14. Consultant Selection
15. Construction Contract Letting
16. Construction Contract Award
17. Local Match (LM) Remitted by LPA
18. Consultant CE Contract
19. Notice-to-Proceed for CE
20. Concurrence with INDOT for Construction Acceptance
21. Final Audit/Closeout



## **II. Schedule.**

### Project timeline

The following is the timeline agreed to for the project:

1. Consultant Selection: within 3 months from project approval
2. Consultant Contract: within 4 months from selection
3. Notice-to-Proceed -PE and/or R/W: within 2 weeks from contract(s) signature
4. Draft Environmental Document: within 2 years, 4 months from NTP
5. Engineers Report within 6 months from Draft Environmental Document
6. Stage 1 Design: within 1 year from Draft Env. Doc.
7. Final Environmental Document: within 1 year, 9 months from Stage 1 Design
8. Stage 3 Design: within 9 months from Final Env. Document
9. Tracings: within 10 months from Stage 3 Design
10. Consultant Selection –CE: complete at time of Tracings submittal
11. Right of Way Acquisition: within 4 months before scheduled letting
12. Utility Coordination: complete at time of Tracings submittal
13. Rail Coordination: complete at time of Tracings submittal
14. Permits: complete at time of Tracings submittal
15. Construction Contract Letting: within 4 months from Tracings submittal
16. Construction Contract Award: as soon as contract is awardable
17. Local Match payment by LPA:  
INDOT within 30 calendar days after billing by
18. Consultant CE Contract completed at time of LM payment
19. Notice to Proceed: within 14 calendar days payment of LM

## **III. Breach of Contract.**

- A. Failure to Reach Milestone Correctly:

1. Violation of Federal Requirements/law.
2. Violation of State Requirements/law.

B. Failure to Meet Schedule:

1. Advance Notice of Breach
2. Missed deadline