



INDIANA DEPARTMENT OF TRANSPORTATION

Detour Policy

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SECTION I: Purpose and Overview

This policy is intended to provide guidance when INDOT needs to detour traffic because of construction on the state highway system. The following procedures are in accordance with IC 8-23-21.

A. Official Detour Routes.

During the planning or development of a state highway improvement, if INDOT determines that a state highway should be closed during construction, an Official Detour should be established for the routing of traffic. Any public road can be considered for use as an Official Detour.

If (1) there is an Official Detour due to an INDOT project, (2) the detour will be in effect for more than 7 days, AND (3) the detour is along the state highway system, one Unofficial Detour can be identified on the local road systems. The unofficial detour route may be the same or a different route for the two directions of travel displaced from the highway under construction.

B. Unofficial Detour Routes.

The intent of the Unofficial Detour is to help local governments cope with damages to the local road system while construction is taking place on the state system. The intent of this policy is not for INDOT to improve the existing condition of the Unofficial Detour route.

The Unofficial Detour should be the local route that traffic will most likely take during the Official INDOT Detour. The Unofficial Detour must be a route that INDOT and the local public agency (LPA) have agreed upon in writing (such as by a countersigned Letter of Understanding) **prior to** the routing of traffic on the Official Detour. After the detour goes into effect should both INDOT and the local agency agree that a different local route is actually being used as the unofficial detour rather than the route originally identified the LOU and contract may be amended accordingly but documentation of the condition of the newly proposed unofficial detour prior to the detour going into effect will be needed. In accordance with IC §8-23-21-2, INDOT will be responsible to restore the Unofficial Detour route to its previous condition (or in accordance with the terms of the Unofficial Detour Agreement). A contract will be executed prior to the detour becoming active so that the locals can be compensated for approved work done to repair damages to the Unofficial Detour route.

SECTION II: Process for Identifying Detour Routes and Coordinating with LPA's

A. Determine the need and feasibility for an Official Detour on a local road.

1. The need for a detour in connection with any proposed work shall be determined as early as possible. This should be the earlier of:
 - a. During the preparation of the Engineer's Report or Abbreviated Scoping Report;
 - b. During the preparation of preliminary plans for projects that do not have an Engineer's Report; OR
 - c. During the advanced planning and scheduling of any work accomplished without plans.
2. The recommendation of an Official Detour on a local road should be determined by considering the availability of a practical detour route and whether the route is adequate to carry the additional traffic. Adequacy of potential Official Detour routes should consider pavement width, structural soundness, capacity, and safety features. **The criteria that should be considered are fully detailed in Chapter 503 of the Indiana Design Manual** – a worksheet to perform an analysis of detour route viability is available as an editable document on INDOT's website [https://www.in.gov/dot/div/contracts/design/dmforms/EdDoc%20503-2.05.2%20Detour%20Worksheet%20\(Non-Interstate\).xlsx](https://www.in.gov/dot/div/contracts/design/dmforms/EdDoc%20503-2.05.2%20Detour%20Worksheet%20(Non-Interstate).xlsx).
3. Among the other factors identified in Chapter 503 of the IDM, the following should be considered for any potential official detour route:
 - a. If reasonable, minimal geometric standards should be met on Official Detours.
 - b. The pavement and bridges must be able to accept Indiana's legal truck loads.
 - c. Trucks should be able to safely maneuver the route.

B. Coordination with Local Officials.

1. Once it has been determined that an INDOT improvement will require an Official Detour, the INDOT Project Manager will be responsible for establishing any necessary Official and/or Unofficial Detours with the affected local governments (LPAs). The District should contact the local transportation officials that will be affected by the closure of the INDOT road.

The District should meet with the LPA to determine the Official Detour. The Official Detour can be on the state or local system. If the Official Detour is on the state system, the affected LPA should be offered the opportunity to identify one proposed Unofficial Detour route on the local system.

If the LPA proposes an Official Detour on the local road system or an Unofficial Detour, the District should review the proposal as outlined in Section II.C of this Policy (below). If the District and the LPA agree on a local Official Detour or an Unofficial Detour, the District should initiate a Letter of Understanding as provided in Section II.D of this Policy (below).

If the LPA chooses not to participate in the determination of the Official Detour or, if applicable, does not wish to identify an Unofficial Detour route, the District should promptly send the LPA a letter to document the LPA's preference not to participate.

The District should provide the designer/project manager copies of any coordination correspondence prepared or received for the establishment of the detours.

2. Multiple jurisdictions – in cases where the Official Detour for a project could affect or pass through the jurisdiction of more than one LPA, each potentially affected LPA should be notified of the project. If the LPAs are all located in one county, the county should be considered the lead agency to coordinate the local proposal for the detour coordination. This should be explained to each LPA in the correspondence.

In cases where the official detour for a project passes through more than one county each affected county should be notified of the project, communication should be concurrent with each.

If the Official Detour only affects cities or towns, the Metropolitan Planning Organization or the largest city or town should be considered the lead agency to coordinate the LPA proposal.

C. Review of Local Road Detour Proposals.

1. Proposed Official Detour on Local Roads - The LPA may review INDOT's request or initiated their own request for INDOT to use their local roads as an Official Detour for a state highway project. In this case, the District should evaluate the local request in accordance with the Indiana Design Manual and Section II.A.2. of this Policy. If local roads are used for the Official Detour, then no Unofficial Detour shall be established.
2. Proposed Unofficial Detour - The LPA may identify a potential Unofficial Detour based on INDOT's proposed Official Detour along the state highway system and other project information. The LPA should send their recommended Unofficial Detour route to the District for review. The District should review the LPA's proposal in accordance with the Indiana Design Manual and Section II.A.2. of this Policy.

When it is anticipated that closure and detour will be in place for more than one construction season (over winter) consideration may be given to partial reimbursement at appropriate times during the project to aid the local agency in effecting timely repairs and maintenance to the unofficial detour.

****In reviewing proposals, keep in mind that the intent of the Unofficial Detour is to identify the route that traffic will *most likely take to avoid an Official Detour*. The review could show that traffic would use the proposed Unofficial Detour route, that traffic would use a different local route, or that the traffic would not use an Unofficial Detour but would choose to use the Official Detour. Review of proposed Unofficial Detour routes should consider:**

a. For the Proposed Unofficial Detour Route:

- i. travel time and mileage
- ii. existing condition of proposed route
- iii. capacity of proposed route
- iv. will traffic avoid using the Official Detour?
- v. are there load limits on the proposed route?

b. For Local Transportation System

- i. travel time and mileage of other routes
- ii. existing condition of other routes
- iii. capacity of other routes
- iv. major traffic generators

D. Letter of Understanding.

The Letter of Understanding should be completed as soon as detour routes are agreed to among the parties so that issues related to either local Official Detours or Unofficial Detours can be documented. A template Letter of Understanding for a local Official Detour is attached to this Policy as Appendix A. A template Letter of Understanding for an Unofficial Detour is attached to this Policy as Appendix B.

1. For an Official Detour on Local Road - Since the District is responsible for coordinating detours with the locals, the District is responsible to draft and ensure the execution of the Letter of Understanding. Calculations and other supporting information used to justify the terms of any local road improvements must be documented, and supporting information attached to the letter if needed. Typically, District Scoping generates these documents. Copies of the documentation should be sent to the designer. The Project Manager should also keep their copy in the project file.

Once the Letter of Understanding has been accepted and countersigned by the

locals, a copy of the final, executed document should be sent to the project manager. The Project Manager will then coordinate with the Construction Management Division to complete a Contract between INDOT and the LPA that specifies INDOT's reimbursement responsibilities, if any, as provided in Section II.F of this Policy (below). These form-approved contracts only need certain project specific information to be added prior to execution. The Indiana Code (IC 8-23-21-1) requires at minimum that INDOT perform needed maintenance during the period that the detour is in place.

2. Unofficial Detour - since the District is responsible for coordinating detours with LPAs, the District is responsible for the execution of the Letter of Understanding.

Once the Letter of Understanding has been accepted and countersigned by the locals, a copy of the final document should be sent to the Project Manager. The Project Manager will then coordinate with Construction Management to complete the Contract(s) between INDOT and the LPA that specifies INDOT's reimbursement responsibilities (as provided in Section II.F of this Policy, below). The current, form-approved contract templates for Official Detours and Unofficial Detours are available from the Construction Management Division.

E. Unofficial Detour Reimbursable Costs.

1. INDOT and the LPA(s) must document the condition of the Unofficial Detour route prior to the detouring of traffic to the Official Detour. A route condition inventory must be performed. INDOT's district representative and the designated LPA representative will perform the inventory prior to the use of the Official Detour. The INDOT official should take pictures, video, and notes to document the pre-detour condition of the roads along the Unofficial Detour.
2. INDOT must authorize any repair work completed on the Unofficial Detour Route. In accordance with the Indiana Code ([I.C. 8-23-21-2](#)) INDOT is responsible for the costs associated with the repair of damages to the Unofficial Detour. The district should use reasonable judgment when comparing the pre- and post-detour conditions and determining the need for repairs.

Repair needs on each Unofficial Detour will probably be different. It could be necessary for an LPA to patch potholes throughout the life of the Unofficial Detour. If the district agrees that such patching is needed, the district may authorize patching on an ongoing basis. If the district approves such work in advance, the LPA will not need INDOT approval prior to filling each pothole. On other projects repair work may not be required until the end of the Unofficial Detour period.

Districts should bear in mind that INDOT has no obligation to authorize, make, or pay for any work that results in improvement of the existing condition of the Unofficial Detour route prior to the start of the INDOT project. If the LPA wishes to improve a road while completing the repair work that INDOT is responsible for, the LPA should get itemized estimates for all work to be done – both the repairs attributable to use of the roadway as a detour route and the improvements the LPA desires. INDOT will only pay for the work associated with repair of damages resulting from the detour. The LPA will be solely responsible for all other costs. As always, all work must be approved by INDOT prior to the work being completed.

The LPA may perform the work with their own forces or may contract the work out in accordance with applicable law and the LPAs own procurement procedures.

3. The LPA should be reminded to document all costs incurred as a result of the use of the Unofficial Detour Route. Some LPAs may have difficulty documenting the costs of using their equipment or overhead. In those cases, INDOT may honor FEMA's prices for the use of equipment, labor, and materials, and it will be up to the local government to document current FEMA prices. FEMA's webpage: [Schedule of Equipment Rates | FEMA.gov](https://www.fema.gov/equipment-rates)
4. INDOT needs a contract with the LPA in order to pay their expenses, see Section II.F, below.

F. Reimbursement Contract.

The Letter of Understanding defines the Official or Unofficial Detour route and states that INDOT will be responsible for the costs to repair damages that occur to that route because of INDOT's closure of a state road. A Reimbursement Contract will need to be executed so that INDOT can pay the LPA for the approved work that has been performed.

1. A Reimbursement Contract must be fully executed for INDOT to pay the LPA for INDOT-approved work. The LPA must provide documentation to support the reimbursable amount. Once the district is satisfied with the documentation, the Reimbursement Contract may be processed.

In order to minimize paperwork, LPAs should accumulate their costs until the Official Detour has been eliminated.

2. Once the letter of Understanding is signed by the LPA and INDOT (as described in Section II.D., above), the Project Manager will request the appropriate contract template, for either an Official or an Unofficial Detour, from the Administrative Manager of the Construction Management Division who will send the contract template for use by the Project Manager.

3. The Project Manager will fill in the needed specific information which includes - DES number, contract number, estimated value (cost) of the INDOT-approved work to the local detour route, and an exhibit (map) showing the local detour route. The District Construction office should be given an opportunity to review the estimated cost of the work. Be sure to note that the LPA will need a federal tax identification number for the contract to be processed.
4. The Project Manager will then send the Reimbursement Contract to the Construction Management Division. The contract is set up so that the LPA only needs to sign and fill in the applicable blanks on the signature page. Any LPA signature lines that are not applicable to the LPA's approving authority may be left blank. Construction Management will facilitate the approval process through DocuSign, beginning with the LPA, then the district, and then Central Office. Any changes to the Reimbursement Contract must be mutually agreed to by INDOT and the LPA.
5. The LPA will need to fill out the Reimbursement Contract and a Claim Voucher for the cost of reimbursable repairs. Blank claim vouchers can be supplied by the district.

Once the LPA has approved the Reimbursement Contract, and the Claim Voucher has been completed, the LPA should send the Reimbursement Contract and the Claim Voucher to the district.
6. The district will review the submitted Reimbursement Contract and Claim Voucher to make sure that the information provided by the LPA is acceptable.

Once the contract and the Claim Voucher are acceptable, the district shall send them by e-mail to the Construction Management Division Administrative Manager along with the original contract and signed Letter of Understanding with exhibit "A" showing a map of the agreed upon local detour route. Exhibit "A" detour route shall be attached to the original contract as one document. In a separate e-mail the local agency's federal tax ID number must also be sent to Construction Management Division Administrative Manager.
7. Construction Management will review the contract and then forward the original copy to Contracts Administration for INDOT approval.
8. The Contracts Administration Division is responsible for circulating all Contracts for signature and approval (including by INDOT's Executive Office, the Department of Administration, the State Budget Agency, and the Attorney General's Office). Once the contract is executed, the Contracts Administration Division will send copies of the executed Contract to the Construction Management Division Administrative Manager.
9. Upon receipt of the executed Reimbursement Contract from the Contracts Administration Division, the Construction Management Division Administrative Manager will generate a funding request in CAPWise and a purchase order in

PeopleSoft Financials with a copy of the executed Reimbursement Contract for processing. The Construction Management Division Administrative Manager will then notify the Project Manager and send the original contract along with purchase order to the Project Manager.

10. The Finance Operations Support Division will process the purchase order. The project manager will notify the LPA when the Reimbursement Contract is approved, and the purchase order is ready for use.

11. Payments will be made in PAYWise consistent with normal payment procedures.



INDIANA DEPARTMENT OF TRANSPORTATION

Driving Indiana's Economic Growth

Eric Holcomb, Governor
Michael Smith, Commissioner

RE: Letter of Understanding for Official Detour on Local Roads

Dear

Reference is made to the recent **choose** with **choose** from the **choose** District concerning the proposed

Work will involve

As discussed on **choose**, it will be necessary to close **choose** for **choose**.
As per the attached map, the Official Detour will be on **choose**. The detour is in accordance with IC 8-23-21.

The **choose** on **choose** is expected to be performed **choose**. The Official Detour will be needed for approximately **choose** days. You will be notified as to the exact dates and time frames once the referenced project has been let. INDOT will set-up and maintain the necessary traffic control for the Official Detour route or arrange with others to furnish the necessary items.

INDOT will

Please note that that an executed contract between **choose** and INDOT will be needed for payments to be made.

If the terms of this letter are acceptable, we would appreciate your concurrence as soon as practical. Please sign below and return to **choose** at **choose**

Respectfully,

ACCEPTED



INDIANA DEPARTMENT OF TRANSPORTATION

Eric Holcomb, Governor
Michael Smith, Commissioner

RE: Unofficial Detour Letter of Understanding

Dear

This is a follow up letter to our recent discussion concerning the closure of the location listed above. Traffic restrictions are expected to begin with an estimated completion date of . The total closure time for this project will be approximately days.

The Official Detour, in accordance with IC 8-23-21 and shown on the attached map, will utilize . The Unofficial Detour, as shown on the attached map, is proposed to be . The Unofficial Detour will be in effect during the same time period as the Official Detour.

INDOT will set up and maintain the necessary signage and traffic control for the Official Detour route or arrange with others to furnish the necessary items. The Unofficial Detour route will not be signed as a detour. Your County Commissioners will be responsible for any necessary weight restriction signage on the Unofficial Detour.

INDOT agrees to reimburse your County for costs related to damage repair on the listed Unofficial Detour. Reimbursable work must be pre-approved by INDOT prior to the completion of any work. All expenses must be documented to be considered for reimbursement. Once the District has agreed to the documented expenses, INDOT and the County must execute an agreement concerning reimbursement for the repairs.

choose one

If the terms of the Unofficial Detour detailed in this letter are acceptable, please check the "Detour Approved" option below, sign and return to within thirty (30) days. If the terms are not acceptable, please check the "Detour Rejected" option below, sign and provide an alternative detour within thirty (30) days for our consideration. If we do not hear from you within thirty (30) days of the date of this letter, We will take the position that the Unofficial Detour is not acceptable to you and you must provide an alternative detour for our consideration.

Respectfully,

DETOUR APPROVED: ☐

DETOUR REJECTED: ☐

Date

cc: File

APPENDIX C Relevant Indiana Code Excerpt

IC 8-23-21-0.3 "Official detour route" defined

Sec. 0.3. As used in this chapter, "official detour route" means the path the department designates a motorist to use to reach a destination while a state highway, part of a state highway, or state highway bridge is closed to the public as a thoroughfare while under construction, while being repaired, or when closed for any other reason. *As added by P.L.120-1995, SEC.1.*

IC 8-23-21-0.5 "Unofficial detour route" defined

Sec. 0.5. As used in this chapter, "unofficial detour route" means the path that the department in conjunction with local officials determines many motorists have taken or are likely to take in place of the official detour route because the path is or was:

- (1) a shorter distance;
- (2) a quicker trip;
- (3) a simpler route to follow; or
- (4) perceived as better by a motorist for any other reason the department recognizes in the department's rules;

than the official detour route or other means the department has prescribed for a motorist to reach a destination while a state highway, part of a state highway, or state highway bridge is closed to the public as a thoroughfare while under construction or while being repaired by the department.

As added by P.L.120-1995, SEC.2.

IC 8-23-21-1 Maintenance requirement

Sec. 1. Whenever it is necessary for the department to designate and use a county highway as an official detour route, the department shall keep the highway used as an official detour route in a reasonable state of repair at all times while the highway is being used as an official detour route.

As added by P.L.18-1990, SEC.230. Amended by P.L.120-1995, SEC.3.

IC 8-23-21-2 Maintenance of unofficial detour route

Sec. 2. (a) When a state highway that was temporarily closed is reopened to traffic as a public thoroughfare, the department shall place the official detour route in the condition agreed to in writing by the department and the county before the official detour route was designated by the department.

(b) When a state highway that was temporarily closed is reopened to traffic as a public thoroughfare, the department shall restore the route that has been determined as an unofficial detour route to a condition that:

- (1) is at least as good as the condition the unofficial detour route was in before it was determined by the department to be an unofficial detour route; or
- (2) satisfies specifications of a written agreement between the department and the county in which the unofficial detour route is located.

(c) The department is required to restore only one (1) unofficial detour route for each official detour route under this section.

(d) Except as provided in section 4 of this chapter and if the establishment of run arounds is determined to be the most cost effective alternative of all available alternatives, the department shall establish run arounds instead of detours and may install temporary structures or other facilities to render the run arounds usable by persons traveling over the highway.

As added by P.L.18-1990, SEC.230. Amended by P.L.78-1990, SEC.1; P.L.120-1995, SEC.4.

IC 8-23-21-4 Designation of official detour route

Sec. 4. The department shall designate a county highway as the official detour route if:

- (1) the executive of the county through which the county highway passes adopts a resolution consenting to the official detour route; and
- (2) under rules adopted by the department, the department determines that it is not more expensive to designate a county highway as an official detour route than it is to provide other means for a motorist to reach a destination.

As added by P.L.120-1995, SEC.5.

APPENDIX D Sample Reimbursement Contract

Contract Number:

Road:

Des:

UNOFFICIAL DETOUR REIMBURSEMENT CONTRACT

THIS CONTRACT ("CONTRACT") is made and entered by and between the State of Indiana, acting by and through the **Indiana Department of Transportation** (hereinafter referred to as "INDOT") and _____, acting by and through its proper officials (hereinafter referred to as the "LOCAL GOVERNMENT"), jointly referred to as the "Parties" and individually as a "Party."

WITNESSETH

WHEREAS, because of construction project # _____ impacting the LOCAL GOVERNMENT, INDOT and the LOCAL GOVERNMENT have designated an unofficial detour route, which is attached hereto as **Exhibit A** and incorporated herein; and

WHEREAS, the construction project which necessitated the establishment of such routes has been completed; and

WHEREAS, pursuant to IC §8-23-21-2, INDOT is required to restore the unofficial detour route to its pre-designation condition or to the condition set forth in a contract between the Parties; and

WHEREAS, INDOT and the LOCAL GOVERNMENT have agreed that INDOT shall reimburse the LOCAL GOVERNMENT an amount not to exceed \$ _____ for the restoration of the unofficial detour route to its pre-designation condition, in lieu of INDOT restoring the unofficial detour route;

NOW THEREFORE, in consideration of the promises and the mutual agreements and covenants herein contained (the adequacy of which consideration as to each of the Parties to this CONTRACT is hereby mutually acknowledged), and other good and valuable consideration, and intending to be legally bound, INDOT and the LOCAL GOVERNMENT hereby covenant and agree as follows:

Section 1. Restoration of Unofficial Detour Route

The LOCAL GOVERNMENT shall restore the unofficial detour described in **Exhibit A** to its pre-designation condition (hereinafter the "Project").

Section 2. Compensation from INDOT

In lieu of constructing the Project, INDOT shall pay to the LOCAL GOVERNMENT an amount not to exceed \$ for the costs of the Project. The LOCAL GOVERNMENT shall be responsible for any and all costs of the Project which exceed the amount set forth in this Section 2. The term of this CONTRACT shall be for two (2) years or until the amount is paid to the LOCAL GOVERNMENT, whichever occurs first.

Section 3. Design and Construction

The LOCAL GOVERNMENT shall award the construction contract or perform the work itself, in accordance with all applicable bidding statutes and requirements.

Section 4. Construction and Project Management Compensation Procedure

The LOCAL GOVERNMENT shall submit vouchers to INDOT for the work completed. Upon approval of the voucher by INDOT, INDOT shall make such payment to the LOCAL GOVERNMENT. Such approval shall not be unreasonably withheld.

Section 5. Non-Discrimination

(1) This CONTRACT is enacted pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this CONTRACT, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LOCAL GOVERNMENT or any subcontractor.

Under IC §22-9-1-10 the LOCAL GOVERNMENT covenants that it shall not discriminate against any employee or applicant for employment relating to this CONTRACT with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran.

(2) The LOCAL GOVERNMENT understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the LOCAL GOVERNMENT agrees that if the LOCAL GOVERNMENT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the LOCAL GOVERNMENT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LOCAL GOVERNMENT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this CONTRACT.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial

assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran.)

(3) During the performance of this CONTRACT, the LOCAL GOVERNMENT, for itself, its assignees and successors in interest (hereinafter referred to as the "LOCAL GOVERNMENT") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

(a). Compliance with Regulations: The LOCAL GOVERNMENT shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this CONTRACT.

(b). Nondiscrimination: The LOCAL GOVERNMENT, with regard to the work performed by it during the CONTRACT, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LOCAL GOVERNMENT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c). Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LOCAL GOVERNMENT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LOCAL GOVERNMENT of the LOCAL GOVERNMENT's obligations under this CONTRACT, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

(d). Information and Reports: The LOCAL GOVERNMENT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LOCAL GOVERNMENT is in the exclusive possession of another who fails or refuses to furnish this information, the LOCAL GOVERNMENT shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(e). Sanctions for Noncompliance: In the event of the LOCAL GOVERNMENT's noncompliance with the nondiscrimination provisions of this CONTRACT, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(a) withholding payments to the LOCAL GOVERNMENT under the CONTRACT until the LOCAL GOVERNMENT complies, and/or (b) cancellation, termination or suspension of the CONTRACT, in whole or in part.

(f). Incorporation of Provisions: The LOCAL GOVERNMENT shall include the provisions of paragraphs a through e in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LOCAL GOVERNMENT shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation, the Federal Highway Administration, or the Office of Federal Contract Compliance Programs may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LOCAL GOVERNMENT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LOCAL GOVERNMENT may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LOCAL GOVERNMENT may request the United States of America to enter into such litigation to protect the interests of the United States of America.

Section 6. Modification/Entire CONTRACT

This CONTRACT may be amended from time to time hereafter only in writing executed by all parties, and submitted to the Indiana Attorney General for approval as to form and legality. No verbal change, modification, or amendment shall be effective unless in writing and signed by the Parties and the Attorney General. The provisions hereof constitute the entire CONTRACT between the Parties and supersede any verbal statements, representations or warranties stated or implied.

Section 7. Governing Laws

This CONTRACT 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.

Section 8. Subsequent Acts

The Parties agree that they will, at any time and from time to time, from and after the execution of this CONTRACT, upon request, perform or cause to be performed such acts, and execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such documents as may be reasonably required for the performance by the Parties of any of their obligations under this CONTRACT.

Section 9. Non-Waiver

No delay or failure by either Party to exercise any right hereunder, and no partial or single

exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Section 10. Headings

Headings in this CONTRACT are for convenience only and shall not be used to interpret or construe its provisions.

Section 11. Assignment

This CONTRACT shall be binding upon and shall inure to the benefits of the Parties, their legal representatives, successors and assigns, provided, however, because this CONTRACT is personal to each of the Parties hereto, no Party may sell, assign, delegate, or transfer this CONTRACT or any portion thereof, including, without limitation, any rights, title, interests, remedies, powers, and/or duties hereunder without the express written consent of the other Party.

Section 12. Severability

The invalidity of any section, subsection, clause or provision of this CONTRACT shall not affect the validity of the remaining sections, subsections, clauses or provisions of this CONTRACT.

Section 13. Attorney General Approval

This CONTRACT shall not be effective unless and until approved by the Attorney General of Indiana, or their authorized representatives, as to legality and form.

Section 14. Authorizations

Any person executing this CONTRACT in a representative capacity hereby warrants that they have been duly authorized by their principal to execute this CONTRACT on such principal's behalf.

Section 15. Force Majeure

In the event that 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 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 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.

Section 16. Substantial Performance

This CONTRACT shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.

Section 17. Indemnification

The LOCAL GOVERNMENT agrees to indemnify, defend, exculpate, and hold harmless INDOT, its agents, officials and employees from any liability, loss, damage, injuries, or other casualties of whatever kind, or by whomsoever caused, due to the performance of any of the obligations under this CONTRACT, whether due in whole or in part to the negligent acts or omissions of INDOT, its agents, officials, or employees; or the LOCAL GOVERNMENT, its agents, officials, or employees, or other persons engaged in the performance of the work; or the joint or several acts or omissions of any of them; including any claims arising out of the Worker's Compensation Act or any other law, ordinance, order, or decree. The LOCAL GOVERNMENT further agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on INDOT in connection herewith in the event that the LOCAL GOVERNMENT shall default under the provisions of this Section. INDOT shall **not** provide indemnification to the LOCAL GOVERNMENT.

Section 18. Drug-Free Workplace Certification

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LOCAL GOVERNMENT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LOCAL GOVERNMENT will give written notice to INDOT within ten (10) days after receiving actual notice that the LOCAL GOVERNMENT, or an employee of the LOCAL GOVERNMENT in the State of Indiana, has been convicted of a criminal drug violation occurring in the 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 for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this CONTRACT is in excess of \$25,000.00, the LOCAL GOVERNMENT 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 LOCAL GOVERNMENT'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 its employees of (1) the dangers of drug abuse in the workplace; (2) the LOCAL GOVERNMENT'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; and
- 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 LOCAL GOVERNMENT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- 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.

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

Section 20. Debarment and Suspension

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

Section 21. Compliance with Telephone Solicitations Act

As required by IC §5-22-3-7:

- (1) The LOCAL GOVERNMENT and any principals of the LOCAL GOVERNMENT certify that:
 - (A) The LOCAL GOVERNMENT, 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 LOCAL GOVERNMENT 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 LOCAL GOVERNMENT and any principals of the LOCAL GOVERNMENT certify that an affiliate or principal of the LOCAL GOVERNMENT and any agent acting on behalf of the LOCAL GOVERNMENT or on behalf of an affiliate or principal of the LOCAL GOVERNMENT, except for de minimis and nonsystematic violations,

- (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
- (B) will not violate the terms of IC §24-4.7 for the duration of the CONTRACT, even if IC §24-4.7 is preempted by federal law.

Section 22. Ethics

The LOCAL GOVERNMENT 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 LOCAL GOVERNMENT 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 CONTRACT, the LOCAL GOVERNMENT shall ensure compliance with the disclosure requirements in IC §4-2-6-10.5 prior to the execution of this CONTRACT.** If the LOCAL GOVERNMENT is not familiar with these ethical requirements, the LOCAL GOVERNMENT 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 LOCAL GOVERNMENT or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this CONTRACT immediately upon notice to the LOCAL GOVERNMENT. In addition, the LOCAL GOVERNMENT may be subject to penalties under IC §4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

Section 23. Payments

All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the LOCAL GOVERNMENT 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.

Section 24. Employment Eligibility Verification

As required by IC §22-5-1.7, the LOCAL GOVERNMENT swears or affirms under the penalties of perjury that the LOCAL GOVERNMENT does not knowingly employ an unauthorized alien. The LOCAL GOVERNMENT further agrees that:

- A. The LOCAL GOVERNMENT 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 LOCAL GOVERNMENT is not required to participate should the E-Verify program cease to exist. Additionally, the LOCAL GOVERNMENT is not required to participate if the LOCAL GOVERNMENT is self-employed and does not employ any employees.
- B. The LOCAL GOVERNMENT shall not knowingly employ or contract with an unauthorized alien. The LOCAL GOVERNMENT shall not retain an employee or contract with a person that the LOCAL GOVERNMENT subsequently learns is an unauthorized alien.
- C. The LOCAL GOVERNMENT shall require its contractors, who perform work under this CONTRACT, to certify to the LOCAL GOVERNMENT that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The LOCAL GOVERNMENT agrees to maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the LOCAL GOVERNMENT fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

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Non-collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member or officer of the LOCAL GOVERNMENT. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the LOCAL GOVERNMENT, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this CONTRACT 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 CONTRACT, the LOCAL GOVERNMENT attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

In Witness Whereof, the LOCAL GOVERNMENT and the State have, through their 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 agree to the terms thereof.

**Mayor, with (Board of Public Works)
or (Town Board) or (LPA Commissioners)**

Signature

Printed Name

Title

Date: _____

Signature

Printed Name

Title

Date: _____

Clerk-Treasurer or LPA Auditor

Signature

Printed Name

Title

Date: _____

Signature

Printed Name

Title

Date: _____

STATE OF INDIANA
Indiana Department of Transportation

Recommended for approval by:

Steve Duncan, Director
Contract Administration

Date: _____

Executed by:

_____ (for)
Kent Abernathy, Commissioner

Date: _____

State Budget Agency

_____ (for)
Chad Ranney, Director

Date: _____

Department of Administration

_____ (for)
Brandon Clifton, Commissioner

Date: _____

Attorney General

_____ (for)
Theodore E. Rokita, Attorney General

Date: _____