

DRAINAGE AGREEMENT
Between
INDIANA DEPARTMENT OF TRANSPORTATION
And
CITY OF FISHERS,
CITY OF NOBLESVILLE
And
HAMILTON COUNTY

EDS # _____

PREAMBLE

This Drainage Agreement (“Agreement”) is made and entered into this _____ day of _____, 2018, by and between the State of Indiana, acting by and through the Indiana Department of Transportation (herein after referred to as “INDOT”), the City of Fishers, (hereinafter referred to as “Fishers”), the City of Noblesville, Indiana (hereinafter referred to as “Noblesville”) and the Commissioners of Hamilton County, Indiana (hereinafter referred to as the “County”) and hereinafter referred to collectively as the “Parties.”

RECITALS

WHEREAS, INDOT operates and maintains State Road 37 (“S.R. 37”) in Hamilton County, which is classified as part of the National Highway System and does not currently include grade-separated interchanges at intersections with other state and local roads; and

WHEREAS, the County, Noblesville and Fishers (hereinafter referred to as the “Local Parties”) and INDOT entered into an Interlocal Cooperative Agreement (EDS #A249-16-ON160031), (“ICA”) which is hereby incorporated by reference to cooperate in funding, design and construction of a project to improve S.R. 37 at the intersections of 126th Street, 131st Street, 141st Street and 146th Street and to construct other improvements on S.R. 37, including, but not limited to, the removal of the traffic signal at 135th Street and conversion of the 135th Street intersection to a right turn only intersection in both the northbound and southbound directions including any necessary auxiliary lanes (the “Project”); and

WHEREAS, in accordance with Section 1.2(C) of the ICA and all terms of the Road Transfer Agreement (EDS #A249-16-ON160032) (“Transfer Agreement”), which is hereby incorporated by reference, INDOT temporarily transferred S.R. 37 commencing at the south terminus of S.R. 37 continuing north to the northern right of way limit of the S.R. 37 intersection with 146th Street (the “Transferred Road”), as further described in Section 1.2 of the ICA; and

WHEREAS, following the successful completion of the Project as defined in the ICA and in the Transfer Agreement, the Local Parties shall transfer the improved Transferred Road back to INDOT, all in accordance with terms of the Transfer Agreement; and

WHEREAS, as part of the Project, two trunk lines will be installed for storm water runoff

for S.R. 37, which will extend beyond INDOT's right-of-way; and

WHEREAS, in accordance with the Sections 1.2 (C) and 1.5 of the Transfer Agreement, Fishers will be responsible to operate, maintain and regulate the entire drainage system, from approximately 126th Street to 146th Street, with the exception of the Northern Trunk Line (as defined in Section 3.1 herein), which will be operated, maintained and regulated by the County, until S.R. 37 is transferred back to INDOT in accordance with the Transfer Agreement; an

WHEREAS, upon transfer of S.R. 37 back to INDOT, INDOT will own and maintain all drainage features within INDOT right-of-way for S.R. 37; and

WHEREAS, the County will own and maintain the northern drainage trunk line along 146th Street from the INDOT right-of-way line west to and including the outfall ("Northern Trunk Line"), as shown in **Exhibit A**, which is attached hereto and incorporated herein by reference; and

WHEREAS, Fishers will own and maintain the southern drainage trunk line between 126th Street and 131st Street from the INDOT right-of-way line west to and including the outfall ("Southern Trunk Line"), as shown in **Exhibit B**, which is attached hereto and incorporated herein by reference; and

WHEREAS, the Parties understand that Fishers, Noblesville and the County have the ability to petition for these trunk lines be designated as legal drains pursuant to I.C. 36-9-27; however, the Parties mutually agree that local ownership of these drainage trunk lines is beneficial for the design flexibility that can be provided for the Project, and that INDOT is only willing to grant this request for local ownership with the understanding that aside from the initial construction costs of the Project, INDOT will not be financially responsible for any future costs, including, but not limited to, maintenance, repair or replacement of the trunk lines regardless of their status as legal drains;

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

ARTICLE I. SPECIFIC PROVISIONS

- 11. Term of Agreement.** This Agreement shall become effective on the date it is approved by the Attorney General of Indiana or an authorized representative. The term of this Agreement is twenty-five (25) years from the Effective Date and shall automatically renew under the same terms for three (3) successive twenty-five (25) year periods. This Agreement shall be subject to cancellation and termination by any Party giving the other Parties ninety (90) days written notice of such action. Notice to terminate the Agreement shall be given in accordance with Section 1.2.
- 12. Termination.** Written notice shall be sent via certified mail to all Parties to terminate the Agreement in accordance with Section 1.1 and 6.31. Within thirty (30) days of the date of the written notice to terminate this Agreement, the Parties shall meet to discuss and negotiate responsibilities.
- 13. Interpretation.** The Preamble and Recitals recorded above are incorporated by reference into this Agreement. All captions, section headings, paragraph titles and similar items are

provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Agreement.

ARTICLE II. FISHERS' DUTIES

2.1. Temporary Maintenance Responsibilities. In accordance with the 1.2 (C) and 1.5 of the Transfer Agreement, Fishers will be temporarily responsible to operate, maintain and regulate the entire drainage system, with the exception of the Northern Trunk Line, until S.R. 37 is transferred back to INDOT in accordance with the Transfer Agreement.

2.2. Ownership and Responsibilities. Fishers will own and maintain the Southern Trunk Line between 126th Street and 131st Street from the INDOT right-of-way line west to and including the outfall as shown in **Exhibit B**.

2.2.1. All costs, including but not limited to, post-construction maintenance, inspection, repair and reconstruction will be the financial responsibility of Fishers.

2.2.2. Fishers shall submit maintenance plans upon initial completion of the Project and upon request of INDOT. All documentation obtained by Fishers concerning the Southern Trunk Line, including, but not limited to, reports and videos, from routine maintenance shall be shared with INDOT.

2.3. Prior Approval Required. Neither Fishers nor any other party shall tie into the Southern Trunk Line without first obtaining unanimous approval from all Parties.

2.4. Emergency Access. In the event that S.R. 37 is impacted by a failure in the Southern Trunk Line, INDOT will make every effort to coordinate with Fishers to make the necessary repairs. If it becomes necessary for the safety of the motoring public and roadway, INDOT shall be permitted to enter into Fishers' right-of-way and easements to make any necessary repairs. INDOT will notify Fishers within forty-eight (48) hours of any encroachment and any costs incurred by INDOT for said repairs will be invoiced to Fishers.

2.5. Non-emergency Access. Fishers will allow INDOT to conduct their own non-emergency inspection of the drainage line, if INDOT so desires. INDOT shall coordinate with Fishers prior to performing the inspection. Should INDOT choose to conduct an inspection, the costs of the inspection shall be borne by INDOT.

2.6. Legal Drain Forfeiture. Fishers understands that it has the ability to petition for the Southern Trunk Line to be designated as a legal drain pursuant to I.C. 36-9-27. Fishers and INDOT mutually agree that in consideration of entering into this Agreement, Fishers agrees to forego its right to petition that the Southern Trunk Line become a legal drain.

2.7. Failure During Construction. In the event that the Southern Trunk Line cannot be constructed according to the plans at the time of contract letting, the Local Parties will be responsible for all costs associated with revising the design. The revised design shall utilize gravity only for all storm sewer systems. No lift stations will be allowed for any storm sewer systems in the revised design. All revised designs shall be subject to review and approval by INDOT.

2.8. Material. INDOT will allow the use of pipe material that has not been approved for use by INDOT in the Southern Trunk Line provided that this material will not be utilized and located under any state-owned facility and that the Parties agree this non-approved material is entirely under Fishers’ control and jurisdiction and Fishers agrees to assume all risks, costs in excess of initial construction of the Southern Trunk Line, and liabilities associated with the use of said material.

2.9. Failure After Construction. In the event that SR 37 is impacted by a failure, in the Southern Trunk Line and the Southern Trunk Line cannot be repaired within a reasonable time frame, Fishers agrees to bear all costs to repair the Southern Trunk Line, which repair may include, but is not limited to, the installation, operation and maintenance of a lift station as designed in accordance with the Indiana Design Manual and approved by INDOT.

A failure includes, but is not limited to, (a) cracking within the trunk line which is determined to impact the structural integrity and hydraulics performance of the drainage line, or (b) joints within the trunk line which prevents positive drainage as originally designed and intended, or (c) ponding occurs within any of the travel lanes of SR 37, which would require a lane restriction for a one (1) hour duration and which occurs two (2) or more times within a twelve (12) month period or three (3) times within a sixty (60) month period.

ARTICLE III. COUNTY’S DUTIES

3.1. Ownership and Responsibilities. The County will own and maintain the Northern Trunk Line along 146th Street from the INDOT right-of-way line west to and including the outfall as shown in **Exhibit A**.

3.1.1. All costs, including but not limited to, post-construction maintenance, inspection, repair and reconstruction will be the responsibility of the County.

3.1.2. The County shall submit maintenance plans upon initial completion of the Project and upon request of INDOT. All documentation obtained by the County concerning the Northern Trunk Line, including, but not limited to, reports and videos, from routine maintenance shall be shared with INDOT.

3.2. Prior Approval Required. Neither the County nor any other party shall tie into the Northern Trunk Line without first obtaining unanimous approval from all Parties.

3.3. Emergency Access. In the event that S.R. 37 is impacted by a failure in the Northern Trunk Line, INDOT will coordinate with the County to make the necessary repairs. If it becomes necessary for the safety of the motoring public and roadway, INDOT shall be permitted to enter into the County’s right-of-way and easements to make any emergency repairs. The County will be notified as soon as the emergency situation arises for coordination via telephone if time is critical.

3.4. Non-emergency Access. The County will allow INDOT to conduct their own non-emergency inspection of the drainage line, if INDOT so desires. INDOT shall coordinate with the County prior to performing the inspection. Should INDOT choose to conduct an inspection, the costs of the inspection shall be borne by INDOT.

3.5. Legal Drain Forfeiture. The County understands that it has the ability to petition for the Northern Trunk Line to be designated as a legal drain pursuant to I.C. 36-9-27, the County and INDOT mutually agree that in consideration of entering into this Agreement, the County agrees to forego its right to petition that the Northern Trunk Line become a legal drain.

3.6. Failure During Construction. In the event that the Northern Trunk Line cannot be constructed according to the plans at the time of contract letting, the Local Parties will be responsible for all costs associated with revising the design. The revised design shall utilize gravity only for all storm sewer systems. No lift stations will be allowed for any storm sewer systems in the revised design. All revised designs shall be subject to review and approval by INDOT.

3.7. Material. INDOT will allow the use of pipe material that has not been approved for use by INDOT in the Northern Trunk Line provided that this material will not be utilized and located under any state-owned facility and that the Parties agree this non-approved material is entirely under the County’s control and jurisdiction and the County agrees to assume all risks, costs in excess of initial construction of the Northern Trunk Line, and liabilities associated with the use of said material.

3.8. Failure After Construction. In the event that SR 37 is impacted by a failure in the Northern Trunk Line and the Northern Trunk Line cannot be repaired within a reasonable time frame, the County agrees to bear all costs to repair the Northern Trunk Line, which repair may include, but is not limited to, the installation, operation and maintenance of a lift station as designed in accordance with the Indiana Design Manual and approved by INDOT.

A failure includes, but is not limited to, (a) cracking within the trunk line which is determined to impact the structural integrity and hydraulics performance of the drainage line, or (b) joints within the trunk line which prevents positive drainage as originally designed and intended, or (c) ponding occurs within any of the travel lanes of SR 37, which would require a lane restriction for a one (1) hour duration and which occurs two (2) or more times within a twelve (12) month period or three (3) times within a sixty (60) month period.

ARTICLE IV. NOBLESVILLE’S DUTIES

41. Prior Approval Required. In Noblesville, storm water will run off into the Northern Trunk Line from Herriman Boulevard due to its proximity to 146th Street and S.R. 37. Neither Noblesville nor any other party shall tie into the Northern Trunk Line without first obtaining unanimous approval from all Parties.

42. Legal Drain Forfeiture. Noblesville understands that it has the ability to petition for the Northern Trunk Line to be designated as a legal drain pursuant to I.C. 36-9-27, Noblesville and INDOT mutually agree that in consideration of entering into this Agreement, Noblesville agrees to forego its right to petition that the Northern Trunk Line become a legal drain.

43. Failure During Construction. In the event that the Northern Trunk Line cannot be constructed according to the plans at the time of contract letting, the Local Parties will be responsible for all costs associated with revising the design. The revised design shall utilize gravity only for all storm sewer systems. No lift stations will be allowed for any storm sewer systems in the revised design. All revised designs shall be subject to review and approval by INDOT.

ARTICLE V. INDOT’S DUTIES.

5.1. INDOT operates and maintains S.R. 37 in Hamilton County, which is classified as part of the National Highway System. On or before August 8, 2018, INDOT shall temporarily transfer the Transferred Road to the Local Parties for the Project.

5.2. Under no circumstances shall INDOT be responsible for costs associated with the maintenance, operation, regulation, or costs of the Project other than those set forth in 1.5(B) of the ICA, unless otherwise modified or amended.

5.3. Ownership and Maintenance Responsibilities. Upon transfer of S.R. 37 back to INDOT, INDOT will own and maintain all drainage features within INDOT right-of-way for S.R. 37.

5.3.1. All costs, including but not limited to, post-construction maintenance, inspection, repair and reconstruction of the drainage features within INDOT’s right-of-way will be the financial responsibility of INDOT.

5.4. Prior Approval Required. The Parties must unanimously agree prior to allowing any other party to enter into the Northern Trunk Line and the Southern Trunk Line.

5.5. Emergency Access. In the event that S.R. 37 is impacted by a failure in the Northern Trunk Line and/or the Southern Trunk Line, INDOT will coordinate with the Local Parties to make the necessary repairs. If it becomes necessary for the safety of the motoring public and roadway, INDOT shall be permitted to enter into the Local Party’s right-of-way to make any emergency repairs. INDOT shall notify the Local Parties as soon as the emergency situation arises for coordination via telephone if time is critical. INDOT will notify the Local Parties within forty-eight (48) hours of any encroachment and any costs incurred by INDOT for said repairs will be invoiced to Fishers for the Southern Trunk Line and to the County for the Northern Trunk Line.

In the event that S.R. 37 right-of-way area is impacted by a failure in the SR 37 drainage system, INDOT will coordinate with the Local Parties to make the necessary repairs. If it becomes necessary for the safety of the motoring public and roadway, the Local Parties shall be permitted to enter into INDOT’s right-of-way and easements to make any emergency repairs. Prior to any work being conducted within INDOT’s right-of-way, the Local Parties shall give INDOT a

minimum of one (1) hour notice via telephone in accordance with Section 6.31.

5.6. Non-emergency Access. The Local Parties will allow INDOT to conduct their own non-emergency inspection of the drainage lines, if INDOT so desires. INDOT shall coordinate with the County and/or Fishers prior to performing the inspection. Should INDOT choose to conduct an inspection, the costs of the inspection shall be borne by INDOT.

5.7. Legal Drain Forfeiture. INDOT understands that the Local Parties have the ability to petition for the Southern Trunk Line and/or the Northern Trunk Line to be designated as a legal drain pursuant to I.C. 36-9-27, the Parties mutually agree that in consideration of entering into this Agreement, the Local Parties agree to forego their right to petition that the Northern Trunk Line and Southern Trunk Line become legal drains.

VI. GENERAL PROVISIONS.

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

6.2. Assignment: Successors. The Local Parties bind their successors and assignees to all the terms and conditions of this Agreement. Except as otherwise specifically provided herein, the Local Parties shall not assign or subcontract the whole or any part of this Agreement without INDOT's prior written consent.

6.3. Assignment of Antitrust Claims. As part of the consideration for this Agreement, the Local Parties assign to the State all right, title and interest in and to any claims the Local Parties now have, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Agreement.

6.4. Audits. The Local Parties acknowledge that they may be required to submit to an audit of funds paid, if any, through this Agreement. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

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

6.6. Changes in Work. [OMITTED – NOT APPLICABLE.]

6.7. Certification for Federal-Aid Contracts Lobbying Activities. The Local Parties certify, by signing and submitting this Agreement, to the best of their knowledge and belief that the Local Parties have 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 Local Parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreements, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with such federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The Local Parties also agree by signing this Agreement that they shall require that the language of this certification be included in all contractor agreements including lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

6.8. Compliance with Laws.

A. The Local Parties shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the State and the Local Parties to determine whether the provisions of this Agreement require formal modification.

B. The Local Parties and its respective 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 Parties have**

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, have a financial interest in the Agreement, the Local Parties shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract. If the Local Parties are not familiar with these ethical requirements, the Local Parties 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 Parties or its respective agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the Local Parties. In addition, the Local Parties may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. [OMITTED – NOT APPLICABLE.]

D. [OMITTED – NOT APPLICABLE.]

E. [OMITTED – NOT APPLICABLE.]

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

G. [OMITTED – NOT APPLICABLE.]

H. As required by IC §5-22-3-7:

(1) The Local Parties and any principals of the Local Parties certify that:

(A) the Local Parties 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 Parties will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.

(2) The Local Parties and any principals of the Local Parties certify that an affiliate or principal of the Local Parties and any agent acting on behalf of the Local Parties or on behalf of an affiliate or principal of the Local Parties except for de minimis and nonsystematic violations,

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

(B) will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.

6.9. Condition of Payment. [OMITTED – NOT APPLICABLE.]

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

6.11. Continuity of Services. [OMITTED – NOT APPLICABLE.]

6.12. Debarment and Suspension.

A. The Local Parties certify by entering into this Agreement that neither they nor their principals nor any of its contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Agreement 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 Parties.

B. The Local Parties certify that they have verified the state and federal suspension and debarment status for all contractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor. The Local Parties shall immediately notify INDOT if any contractor becomes debarred or suspended, and shall, at INDOT’s request, take all steps required by INDOT to terminate its contractual relationship with the contractor for work to be performed under this Agreement.

6.13. Default by State. [OMITTED – NOT APPLICABLE.]

6.14. Disputes. [OMITTED – NOT APPLICABLE.]

6.15. Drug-Free Workplace Certification.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Local Parties hereby covenant and agree to make a good faith effort to provide and maintain a drug-free workplace. The Local Parties will give written notice to the State within ten (10) days after receiving actual notice that the Local Parties, or an employee of the Local Parties, in the State of Indiana, have been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of \$25,000.00, the Local Parties 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 workplace of the Local Parties, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the policy of the Local Parties maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Local Parties of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

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

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel

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

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

6.16. Employment Eligibility Verification. As required by IC §22-5-1.7, the Local Parties swear or affirm under the penalties of perjury that the Local Parties do not knowingly employ an unauthorized alien. The Local Parties further agree that:

A. The Local Parties shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Local Parties are not required to participate should the E-Verify program cease to exist. Additionally, the Local Parties are not required to participate if the Local Parties are self-employed and does not employ any employees.

B. The Local Parties shall not knowingly employ or contract with an unauthorized alien. The Local Parties shall not retain an employee or contract with a person that the Local Parties subsequently learn is an unauthorized alien.

C. The Local Parties shall require their subcontractors, who perform work under this Agreement, to certify to the Local Parties that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Local Parties agree to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

6.17. Employment Option. [OMITTED – NOT APPLICABLE.]

6.18. Force Majeure. [OMITTED – NOT APPLICABLE.]

6.19. Funding Cancellation Clause. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the

Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

6.20. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

6.21. HIPAA Compliance. [OMITTED – NOT APPLICABLE.]

6.22. Indemnification. The Local Parties agree to indemnify, defend, exculpate and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, to the person or property of anyone arising out of, or resulting from the performance of this Agreement or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent such liability is caused by the negligence of the Local Parties, including any claims arising out the Worker's Compensation Act or any other law, ordinance, order or decree. INDOT shall **not** provide indemnification to the Local Parties. The Local Parties agree to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith in the event that the Local Parties shall default under the provisions of this Section.

6.23. Independent Entity; Workers' Compensation Insurance. The Local Parties are performing as an independent entity under this Agreement. No part of this Agreement shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the Parties. Neither Party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other Party. The Local Parties shall provide all necessary unemployment and workers' compensation insurance for the employees of the Local Parties, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

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

6.25. Insurance. [OMITTED – NOT APPLICABLE.]

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

6.27. Licensing Standards. [OMITTED – NOT APPLICABLE.]

628. Merger & Modification. This Agreement constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, except by written agreement signed by all necessary Parties.

629. Minority and Women's Business Enterprises Compliance. [OMITTED - NOT APPLICABLE.]

630. Non-Discrimination.

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

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

B. The Local Parties understand that INDOT is a recipient of federal funds. Pursuant to that understanding, the Local Parties agree that if the Local Parties employ fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and are not exempt, the Local Parties will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Local Parties 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, 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, income status, limited English proficiency, or status as a veteran.)

C. During the performance of this Agreement, the Local Parties, for themselves, their assignees and successors in interest (hereinafter referred to as the “Local Parties”) agree to the following assurances under Title VI of the Civil Rights Act of 1964:

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

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

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Parties 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 Parties of the Local Parties’ obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

4. Information and Reports: The Local Parties 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 the Local Parties is in the exclusive possession of another who fails or refuses furnish this information, the Local Parties 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.

5. Sanctions for Noncompliance: In the event of the noncompliance of the Local Parties with the nondiscrimination provisions of this Agreement, 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 Parties under the Agreement until the Local Parties complies and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.

6. **Incorporation of Provisions:** The Local Parties shall include the provisions of paragraphs 1. through 5. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

631. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised:

A. For INDOT: Technical Services Director
INDOT Greenfield District
32 South Broadway
Greenfield, IN 46140
(317) 467-3484

With Copy: Chief Legal Counsel and Deputy
Commissioner Indiana Department of
Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

B. For Fishers: City Engineer
One Municipal Drive
Fishers, IN 46038

With Copy: City Attorney
One Municipal Drive
Fishers, IN 46038

C. For Noblesville: City Engineer, 16 South 10th Street, Noblesville, IN 46060

D. For the County: Highway Director, 1700 S. 10th Street, Noblesville, IN 46060

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

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

634. Payments.

A. All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Local Parties in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC §4-13-2-20.

B. If the Local Parties have any outstanding balances on any Agreement with INDOT (including any repayment to INDOT owed under this Agreement), and such outstanding balances due to INDOT are at least sixty (60) calendar days past the due date, INDOT may proceed in accordance with IC §8-14-1-9 to invoke the powers of the Auditor of the State of Indiana to make a mandatory transfer of funds from the Local Parties' allocation of the Motor Vehicle Highway Account and the Local Roads and Streets Account, if any, to INDOT's account, or INDOT may withhold or garnish payments otherwise due to the Local Parties from INDOT under this or any other Agreement to partially or wholly satisfy such outstanding balances. In addition, to satisfy any outstanding balance owed, INDOT reserves the right to withhold any and all distributions of discretionary federal funds normally issued or allocated to the Local Parties.

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

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

636. Progress Reports. [OMITTED – NOT APPLICABLE.]

637. Public Record. The Local Parties acknowledge that the State will not treat this Agreement as containing confidential information, and will post this Agreement on its website as required by Executive Order 05-07. Use by the public of the information contained in this Agreement shall not be considered an act of the State.

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

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

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

6.41. Substantial Performance. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

6.42. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Local Parties or its contractors as a result of this Agreement.

6.43. Termination for Convenience. [OMITTED – NOT APPLICABLE.]

6.44. Termination for Default. [OMITTED – NOT APPLICABLE.]

6.45. Travel. [OMITTED – NOT APPLICABLE.]

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

6.47. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State’s review, approval or acceptance of, nor payment for, the work performed under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Local Parties shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Local Parties’ negligent performance of any of the services furnished under this Agreement.

6.48. Work Standards. [OMITTED – NOT APPLICABLE.]

649. State Boilerplate Affirmation Clause. [OMITTED – NOT APPLICABLE.]

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Non-Collusion and Acceptance

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

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

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

CITY OF FISHERS, INDIANA

Executed by:

Scott Fadness, Mayor

Date: _____

Attest:

Jennifer Kehl, Clerk

Date: _____

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State personally appeared Scott Fadness, Mayor, of Fishers, Hamilton County, Indiana, who acknowledged the execution of the foregoing Drainage Agreement on this day of _____, 2018.

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence: _____

CITY OF NOBLESVILLE, INDIANA

Executed by:

John Ditslear, Mayor

Date: _____

Attest:

Evelyn Lees, Clerk

Date: _____

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State personally appeared John Ditslear, Mayor, of Noblesville, Hamilton County, Indiana, who acknowledged the execution of the foregoing Drainage Agreement on this day of _____, 2018.

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence: _____

HAMILTON COUNTY, INDIANA

Executed by: Board of Commissioners of Hamilton County, Indiana

Christine Altman, Commissioner

Date: _____

Steve Dillinger, Commissioner

Date: _____

Mark Heirbrandt, Commissioner

Date: _____

Attest:

Robin M. Mills, County Auditor

Date: _____

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State personally appeared Christine Altman, Steve Dillinger and Mark Heirbrandt, of Hamilton County, Indiana, who acknowledged the execution of the foregoing Drainage Agreement on this day of _____, 2018.

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence: _____

STATE OF INDIANA
Indiana Department of Transportation

Recommended for approval by:

Todd A. May
Greenfield District Deputy Commissioner
Indiana Department of Transportation

Date: _____

Executed By:

_____ (FOR)
Joseph McGuinness, Commissioner
Indiana Department of Transportation

Date: _____

STATE OF INDIANA)
) :SS
COUNTY OF: _____)

Before me, a Notary Public in and for said County and State personally appeared _____,
of the Indiana Department of Transportation, who acknowledged the execution of the foregoing
Drainage Agreement on this _____ day of _____, 2018.

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence is: _____

APPROVALS

STATE OF INDIANA
Office of Management and Budget

By: _____(FOR)
Jason D. Dudich, Director

Date: _____

STATE OF INDIANA
Department of Administration

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

Date: _____

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

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

Date: _____

I affirm, under penalties of perjury, that all Social Security numbers have been redacted from the forgoing, and all attachments thereto, except as allowed by law.

Marjorie A. Millman

This instrument was prepared for the Indiana Department of Transportation, 100 N. Senate Avenue, Indianapolis, IN 46204, by the undersigned attorney.

Marjorie A. Millman, Attorney No. 21748-36