

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF FISHERS,
INDIANA AND HAMILTON COUNTY, INDIANA CONCERNING THE
CONSTRUCTION, INSPECTION, & MAINTENANCE OF BRIDGE #314**

This Interlocal Cooperation Agreement (“Agreement”) is entered into by and between the City of Fishers, Hamilton County, Indiana (“Fishers”) and Hamilton County, Indiana (“County”) related to the construction, inspection, and maintenance of Bridge #314.

RECITALS

WHEREAS, Fishers and County share concerns and responsibilities for certain streets and roads located within and/or adjacent to their jurisdictions;

WHEREAS, 116th Street is a major thoroughfare that serves and affects the citizens of and the economic well-being of both Fishers and County;

WHEREAS, Fishers and County, individually and jointly, have determined that financing, designing, and constructing Bridge #314 (the “Structure”) at the intersection of 116th Street and the Nickel Plate Trail (the “Trail”), will result in a safer, more efficient pedestrian and vehicular traffic flow along 116th Street and the Trail, respectively (“the Project”);

WHEREAS, the Project will serve and benefit the public and enable Fishers and County to provide for safer, more efficient traffic flow, improve pedestrian movement, and improve the area in and around 116th Street and the Trail (“Public Purpose”);

WHEREAS, in accordance with Ind. Code §8-17-1 *et seq.*, the County executive may construct, reconstruct, improve, and maintain all public highways, bridges, and culverts in the county, including those located in municipalities;

WHEREAS, Fishers has agreed to perform all activities and be financially responsible for all costs necessary to design and construct the Structure, take the Structure into its inventory, and maintain the Structure after acceptance into its inventory, if the County will perform all inspection activities and be financially responsible for all costs necessary to inspect the Structure in accordance with applicable NBIS, INDOT, and FHWA requirements;

WHEREAS, Fishers and County now desire to enter into this Agreement pursuant to the authority of Ind. Code §§ 8-17-1-45(b), 36-1-3-9(c) and 36-1-7-2 to account for each party’s financial responsibility and ownership of the Project, all of which is necessary for completion of the Project to accomplish the Public Purpose.

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions contained herein, the parties agree as follows:

ARTICLE I. RECITALS

The Recitals are an integral part of this Agreement and are specifically incorporated by reference herein.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Each party represents to the other party that:

- a. It will submit this Agreement for approval by the party's fiscal body as required by I.C. § 36-1-7-4;
- b. Subject to approval by the party's fiscal body, it has all requisite power, authority and legal right to enter into and carry out the obligations set forth in this Agreement; and
- c. Subject to approval by the party's fiscal body, it will execute this Agreement by an authorized representative, upon which execution this Agreement will constitute a valid, legally binding obligation of the party, enforceable by its terms, and the party is estopped from making a claim based upon the unenforceability of this Agreement.

ARTICLE III. OBLIGATIONS OF FISHERS

Fishers shall be the lead agency on the Project and shall perform the following services:

- a. Perform all activities and be financially responsible for all costs necessary to design and construct the Project and perform necessary maintenance on the Structure after acceptance into its inventory. Notwithstanding the foregoing, the parties acknowledge and agree that the County shall be exclusively responsible for the performance of all inspection activities and be financially responsible for all costs necessary to inspect the Structure in accordance with NBIS, INDOT, and FHWA requirements (as further defined in Article IV herein);
- b. Be financially responsible for all reimbursable utility costs related to the Project;
- c. Furnish to the County all available maps, drawings, plans of existing structures, previous reports, traffic data, and other information including previously performed load ratings in its possession which may be useful in connection with the County's bridge inspection work;
- d. Provide the County access to enter upon private and public property as necessary for the County's inspection work;
- e. Comply with all applicable rules, regulations, ordinances, statutes, and law;
- f. Obtain all necessary permits for the Project;
- g. Perform all environmental due diligence and testing associated with the Project, and assume financial responsibility for all these activities and their respective results;
- h. Arrange for and award contract for Project in accordance with Indiana law;
- i. Appoint a project representative to act as liaison with County; and

- j. Upon Project completion, include the Structure in Fishers' inventory.

Nothing herein shall be construed to impose a duty upon Fishers to construct other improvements not specified in this Agreement.

ARTICLE IV. OBLIGATIONS OF COUNTY

County shall provide the following authority and services:

- a. Perform all inspection activities and be financially responsible for all costs necessary to inspect the Structure.
- b. Provide an INDOT prequalified consultant for work type code 14.1 "Regular Bridge Inspection" to complete the bridge inventory and appraisal of the Structure;
- c. Include the bridge inventory and appraisal of the Structure in the Hamilton Countywide Bridge Inventory Program;
- d. Provide the bridge inventory and appraisal of the Structure in accordance with the NBIS, INDOT, FHWA, the current "AASHTO Manual for Maintenance Inspection of Bridges," the current edition of the federal "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," the INDOT Bridge Inspection Program Coding Guide, the INDOT Bridge Inspection Manual, the Bridge Inspection QC/QA Procedures and the INDOT Bridge Inspection Database;
- e. Perform regular inspections in accordance with NBIS, INDOT, and FHWA requirements;
- f. Provide the City of Fishers Engineering Department with inspection data from the Countywide Bridge Inventory Program Final Reports;
- g. Respond to any notification or submittal by Fishers within fourteen (14) days of said notification or submittal. Failure to respond shall be deemed approval;
- h. Allow Fishers to construct the Structure and after Project completion, agree to place the Structure in Fishers' inventory;
- i. Cooperate with Fishers in obtaining any required permits, and agree to waive any and all permit, plan review, and inspection fees for the Project; and
- j. Appoint a project representative to act as liaison with Fishers.

ARTICLE V. JOINTLY HELD PROPERTY

There will be no jointly held property under this Agreement. However, in the event there is other jointly held property, it shall be distributed to Fishers. In the event of a property distribution to Fishers, Fishers shall grant County easement rights sufficient for County to carry out any obligations which may survive the term of this Agreement.

ARTICLE VI. JOINT BOARD

The parties hereby acknowledge and agree that the purpose and intent of this Agreement is not to undertake the joint exercise of power within the meaning of I.C. § 36-1-7-2(a) and, therefore, this Agreement need not address other matters related to the financing, staffing, budget, administration through a joint board or separate legal entity, or the manner of acquiring, holding and disposing of real and personal property of a joint undertaking.

ARTICLE VII. DISPUTE RESOLUTION

Any disputes that may arise under this Agreement shall be resolved by the parties' respective executive officers or their designees.

In the event the parties are unable to resolve their claims through the executive officers or their designees, the parties shall endeavor to resolve their claims by mediation administered pursuant to the Indiana Rules for Alternative Dispute Resolution in effect on the date of the Agreement. The parties shall equally share the mediator's and any filing fees. The mediation shall be held in Fishers, Indiana, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

In the event of any litigation between Fishers and County that arises out of or relates to this Agreement, the "prevailing party" in such litigation shall be entitled to recover its attorneys' fees incurred in the litigation. For purposes of this paragraph, the term "prevailing party" shall mean the party that recovers all or substantially all of the relief requested in its pleadings, and includes attorney's fees incurred in the collection or enforcement of any judgment. The parties agree that the exclusive and sole venue for any claim arising out of or relating to the Contract shall be any court of competent jurisdiction located in Hamilton County, Indiana.

ARTICLE VIII. RECORDING AND FILING

This Agreement shall be recorded in the Office of the Recorder of Hamilton County, Indiana and filed with the Indiana State Board of Accounts within sixty (60) days of execution.

ARTICLE IX. EFFECTIVE DATE

This Agreement shall be effective upon the occurrence of the following:

- a. Signing by the parties hereto;
- b. The passage of appropriate resolutions and ordinances, recordation of this Agreement with the Hamilton County Recorder; and
- c. Filing of this Agreement with the Indiana State Board of Accounts, Hamilton County Auditor, and Auditor of the State.

ARTICLE X. TERM OF AGREEMENT

This Agreement shall be in effect until such time as the Project is completed. However, this Agreement shall terminate twenty-five (25) years after its effective date if the Agreement has not otherwise terminated or been extended. This Agreement may otherwise be terminated or extended only by a written agreement signed by all parties. If the Project is not completed within the above time period, the parties shall cooperate to extend the Agreement.

ARTICLE XI. NOTICE

All notices, requests, demands, and other communications that are required or may be given under this Agreement shall be in writing and shall be deemed given or delivered when (i) delivered by hand, (ii) mailed by prepaid express overnight mail service, such as "Federal Express" or similar mail service, or (iii) mailed by registered or certified U.S. mail, return receipt requested, and in any case addressed to the respective party at its address set forth below, or at such other address as either party to this Agreement has designated by notice in writing to the other party as provided in this Agreement:

If to Fishers:

Jason Taylor, Director of Engineering
One Municipal Drive
Fishers, IN 46038

With a copy to:

Chris Greisl, City Attorney
One Municipal Drive
Fishers, IN 46038

If to County:

Bradley Davis, Director
1700 S. 10th Street
Noblesville, IN 46060

ARTICLE XII. NON-DISCRIMINATION

Fishers and its sub-contractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, privilege of employment, or any matter directly or indirectly related to employment because of his or her race, sex, sexual orientation, gender identity, color, national origin, ancestry, age, disability, or United States military service veteran status.

ARTICLE XII. INDEMNIFICATION

Fishers agrees to indemnify, defend, exculpate, and hold harmless the County, and their respective officers and employees, from and against any and all claims, suits, and liabilities of any kind or character, including reasonable attorneys' fees, which result or arise from any negligent acts or omissions of said party, or those for whom said party is responsible, arising from or connected with the performance of any of the duties or responsibilities of said party under this Agreement. County agrees to indemnify, defend, exculpate, and hold harmless Fishers and its respective officers, employees and agents, from and against Tort Claims, including reasonable attorneys' fees, which result or arise from any negligent acts or omission of the County or those for whom County is responsible, including its officers, employees, agents and contractors, arising from or connecting with the performance of any of the duties or responsibilities of the County under this Agreement.

Notwithstanding the foregoing or anything to the contrary contained herein, each party hereby acknowledges and agrees that each party's financial exposure for certain claims is limited by the Indiana Tort Claims Act, and each party's obligation to indemnify and save the other party, its agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fee and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Indiana Code section 34-13-3-4, as amended.

ARTICLE XIV. GOVERNING LAW & VENUE

This Agreement is governed by the laws of the State of Indiana. Fishers and County, to the extent provided by law, WAIVE THEIR RIGHT TO A JURY TRIAL IN ANY MATTER ARISING OUT OF THIS AGREEMENT AND THIS WAIVER IS ABSOLUTE AND UNCONDITIONAL. The Parties hereby submit to the jurisdiction of Hamilton County, Indiana courts, and waive any objection to venue with respect to actions brought in such courts.

ARTICLE XV. MODIFICATION/ NO WAIVER

The terms and conditions set forth in this Agreement may be modified only by the express, written consent of both parties. Except for changes made in accordance with this Article, no deviation, whether intentional or unintentional, shall constitute an amendment or modification of this Agreement, nor constitute a waiver by Fishers of any rights in this Agreement.

ARTICLE XVI. ASSIGNMENT

Fishers and County may only assign their rights and obligations under this Agreement with the prior written consent of the other party. This Assignment shall be binding upon and inure to

the benefit of the parties hereto and their respective legal representatives, successors, and permitted assigns.

ARTICLE XVII. INTERPRETATION AND INTENT

This Agreement constitutes the entire agreement between the parties. Any representations, promises or conditions in connection therewith not set forth in the foregoing or in a writing signed by both parties will not be binding. Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against Fishers solely by virtue of Fishers' representatives having drafted all or any portion of this Agreement.

ARTICLE XVIII. SEVERABILITY

If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

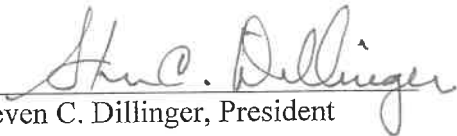
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set out herein.


[signatures on following page]

ALL OF WHICH IS AGREED this 9th day of May, 2022.

HAMILTON COUNTY, INDIANA

BOARD OF COMMISSIONERS OF
HAMILTON COUNTY


Steven C. Dillinger, President


Christine Altman, Vice President


Mark Heirbrandt, Member

ATTEST:


Robin M. Mills, Auditor

ALL OF WHICH IS SO ORDAINED this 9th day of May, 2022.

APPROVED BY THE HAMILTON COUNTY COUNCIL this 1 day of June, 2022.

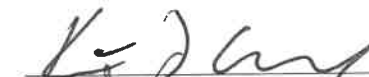
HAMILTON COUNTY COUNCIL




Amy Massillamany



Fred Glynn



Ken Alexander



Sue Maki



Steven Nation



Steve Schwartz



Brad Beaver

ATTEST:



Robin M. Mills, Auditor

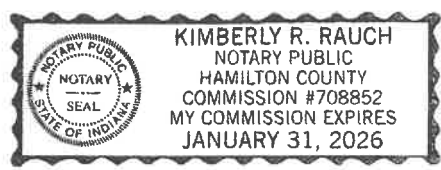
STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Commissioners & Council personally known to me to be the authorized representative of **Hamilton County, Indiana** and acknowledged the execution of the foregoing Interlocal Agreement for and on behalf of said party.

WITNESS my hand and notarial seal this 1 day of June, 2022.

Kimberly R Rauch

Notary Public



Kimberly R Rauch

(Printed Signature)

My Commission Expires: 1-31-2026

My County of Residence: Hamilton

**COMMON COUNCIL OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

R062022E

YAY

NAY

ABSTAIN

	Todd Zimmerman, President		
	John Weingardt, Vice President		
	C. Pete Peterson, Member		
	Cecilia C. Coble, Member		
	Brad DeReamer, Member		
	Selina Stoller, Member		
	Jocelyn Vare, Member		
	Crystal Neumann, Member		
	David Giffel, Member		

I hereby certify that the foregoing Ordinance/ Resolution was delivered to City of Fishers Mayor Scott Fadness on the 20th day of June 2022, at _____ m.

ATTEST: _____

Jennifer L. Kehl, City Clerk

MAYOR'S APPROVAL

Scott A. Fadness, Mayor

DATE

MAYOR'S VETO

Scott A. Fadness, Mayor

DATE

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared **Scott Fadness**, personally known to me to be the **Mayor of Fishers, Indiana** and acknowledged the execution of the foregoing Interlocal Agreement for and on behalf of said party.

WITNESS my hand and notarial seal this 20th day of June, 2022.

Notary Public

Jennifer L. Kehl

(Printed Signature)

My Commission Expires: _____

My County of Residence: _____

This instrument prepared by: Christopher P. Greisl, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038.

“I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.” /s/ Christopher P. Greisl