

**INTERLOCAL COOPERATIVE AGREEMENT**  
**Among**  
**THE INDIANA DEPARTMENT OF TRANSPORTATION,**  
**THE CITY OF FISHERS,**  
**THE CITY OF NOBLESVILLE,**  
**And**  
**HAMILTON COUNTY**  
**Concerning**  
**THE GRADE SEPARATION PROJECT ON S.R. 37 IN HAMILTON COUNTY**

**EDS #A249-16-\_\_\_\_\_**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015 by and between the Indiana Department of Transportation (hereinafter referred to as “INDOT”), the City of Fishers, Indiana (hereinafter referred to as the “Fishers”), the City of Noblesville, Indiana (hereinafter referred to as the “Noblesville”), and the Commissioners of Hamilton County, Indiana (hereinafter referred to as the “County”), jointly referred to 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, due to historical and projected population growth in Fishers, Noblesville and the County and in the interest of better accommodating current and future north and south vehicular traffic on S.R. 37 and the east and west movement of vehicular traffic across the S.R. 37 corridor, Fishers, Noblesville and the County have requested that INDOT consider significant changes to several major intersections; and

WHEREAS, INDOT agrees that changes to major intersections on the S.R. 37 corridor will serve the purposes of improving safety and mobility in Hamilton County and will accommodate future economic growth in the region, and will ultimately benefit both the interstate highway and local highway systems; and

WHEREAS, INDOT, Fishers, Noblesville and the COUNTY desire to cooperate to improve S.R. 37 in Hamilton County, commencing at a point 1,250 feet south of the intersection of S.R. 37 and 126<sup>th</sup> Street and continuing north at least to a point 1,350 feet north of the intersection of S.R. 37 and 146<sup>th</sup> Street (such improvements may, subject to completion and approval of the required environmental document, include construction of grade-separated interchanges at 126<sup>th</sup> Street, 131<sup>st</sup> Street, 141<sup>st</sup> Street, and 146<sup>th</sup> Street and other improvements including the removal of the traffic signal at 135<sup>th</sup> Street and conversion of the 135<sup>th</sup> Street intersection to a right turn only intersection) (hereinafter referred to as the “Project”); and

WHEREAS, the Parties currently estimate that costs of the Project (including costs of preliminary engineering, design, right of way acquisition, utility relocation, construction and inspection) will be approximately **\$124,000,000.00**; and

WHEREAS, Fishers and the County have agreed to contribute local (non-federal) funds in the total amount of **\$24,000,000.00** towards costs of the Project (as described in Section 1.5.A of this Agreement); and

WHEREAS, INDOT has agreed to commit federal aid highway funds in the amount up to **\$100,000,000.00** towards eligible costs of the Project; and

WHEREAS, Fishers, Noblesville and the COUNTY have been integral partners with INDOT in the design of the Project, and the financial participation of all Parties is essential to ensure the successful completion of the Project; and

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

## **ARTICLE I.**

**1.1. Project Description.** The Parties understand and agree that the Project concept is preliminary and that the environmental (NEPA) document must be completed and approved by the Federal Highway Administration before any design can be finalized, but at this time anticipate that the design will ultimately meet the criteria described herein. The Project shall include all necessary design, preliminary engineering (including right-of-way acquisition, utility relocation, etc.) and construction of a project to improve safety and traffic flow on S.R. 37 and local intersecting roads in Hamilton County, commencing at a point 1,250 feet south of the intersection of S.R. 37 and 126<sup>th</sup> Street and continuing north at least to a point 1,350 feet north of the intersection of S.R. 37 and 146<sup>th</sup> Street. The Project will be constructed under INDOT Des. Nos. 1592345, 1592346, 1592347, 1592348, 1592349, and 1592350. As a preliminary matter and pending completion and approval of the environmental document for the Project, the Parties anticipate that the Project may include grade-separated interchanges along the S.R. 37 in Hamilton County commencing at 126<sup>th</sup> Street and continuing north at 126<sup>th</sup> Street, 131<sup>st</sup> Street, 141<sup>st</sup> Street, and 146<sup>th</sup> Street. The Parties further anticipate that the Project may include other improvements, such as the removal of the traffic signal at 135<sup>th</sup> Street and conversion of the 135<sup>th</sup> Street intersection to a right turn only intersection in both the northbound and southbound directions including any necessary auxiliary lanes. Any and all such interchanges will include all entrance and exit ramps, acceleration or deceleration lanes, overpasses, signage, and any other elements or structures needed. The Parties have prepared a preliminary Project estimate, and expect the cost of the Project to be approximately **\$124,000,000.00**.

### **1.2. Project Delivery Model.**

- A.** In the interest of ensuring that design and construction of the Project meets the needs of the traveling public on both the State and Local highway systems and in order to provide the best value for taxpayers, the Parties have agreed that Fishers, Noblesville and the County will be the lead agencies on design and preliminary engineering processes, as further described on **Exhibit A** and subject to INDOT approvals where necessary and in accordance with the terms contained herein and in a manner consistent with the typical Local Public Agency Project Development Process. Further, the Parties agree that the Project will be let through INDOT's established Local Federal Aid Process, with some allowances or modifications as described herein.
- B.** Due to the size and complexity of the Project, and in an effort to limit impacts of construction on the communities and the traveling public, the Parties anticipate that the Project will be let and constructed in phases to be determined through the design process.
- C.** In order to facilitate the Project and to ensure compliance with applicable state and federal law, and as a condition precedent to INDOT participating in funding the Project, the Parties agree that maintenance jurisdiction for the portion of S.R. 37 corridor to be improved under the Project must be temporarily transferred from the State highway system to the applicable Local highway

systems for the duration of the Project as described on **Exhibit A**. The Parties shall execute a separate Road Transfer Agreement to effect the transfer of maintenance jurisdiction contemporaneously with or shortly following execution of this Agreement. (A draft Road Transfer Agreement among the Parties is attached hereto as **Exhibit C** and herein incorporated by reference.)

- D. The Parties understand and agree that because federal funds will be used for construction of the Project, and because INDOT will maintain the facility after construction using federal aid funds, the S.R. 37 corridor must remain eligible for federal funding participation. For these reasons, the Parties shall comply with all applicable federal and state laws, regulations and processes throughout all phases of the Project (including without limitation all activities relating to project design, development, right-of-way acquisition, utility relocation, construction and inspection). In the event of any noncompliance resulting in requirements that INDOT repay federal funds already expended on the Project, the Local Parties shall reimburse INDOT the total amount of such federal funds to be repaid in accordance with Section 1.5(E) of this Agreement.

Further, the Local Parties shall not take any actions in the course of any work on the Project that would have the effect of making this portion of S.R. 37 ineligible for the future use of federal funds in the corridor. If any portion of S.R. 37 is removed from the federal aid system as a result of the Project, or if any portion of S.R. 37 is found to be ineligible for federal aid funding in the future because of the Project, the road will be automatically transferred under this Agreement and in accordance with I.C. §§8-23-4-10 and 8-23-4-12 from the state highway system to Fishers, Noblesville and the County's respective highway systems.

- E. The Parties anticipate that as the Project development process progresses and the Project scope is more fully defined, amendments to this Agreement will be necessary. All such amendments to this Agreement shall be in writing signed by all Parties and submitted for state approvals.

**1.3. Responsibilities of Fishers, Noblesville, and the County.** Fishers, Noblesville, and the County (the "Local Parties") will complete or cause to be completed all of the work and/ or be responsible for all requirements set out in **Exhibit A** (the Local Parties' Responsibilities), herein attached to and made an integral part of this Agreement. The Local Parties will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives in prosecuting work on the Project.

**1.4. INDOT'S Responsibilities.** INDOT will complete or cause to be completed all of the work and/ or be responsible for all requirements set out in **Exhibit B** (INDOT's Responsibilities), herein attached to and made an integral part of this Agreement.

**1.5. Project Funding.**

**A. Funding Contribution from Fishers and the County.** Fishers and the County each agree to provide funds in the amount of **\$12,000,000.00** from local (non-federal) funding sources for costs of the Project, for a total contribution of **\$24,000,000.00** (the "Local Funding Contribution"). At this time, the Parties contemplate that all funds contributed by the Local Parties will be applied first to the costs of preliminary engineering, design, right of way acquisition, utility relocation, and environmental work.

**B. Funding Contribution from INDOT.** INDOT agrees to provide additional federal-aid highway funds for the Project in an amount up to but not to exceed **\$100,000,000.00** (the "INDOT Contribution"). Nothing in this Agreement shall be deemed to restrict INDOT's ability to manage available funding sources in providing funds for the Project.

INDOT take all reasonable actions within its statutory power to allocate funds sufficient to provide the INDOT Contribution to the Project and meet INDOT's other obligations under this Agreement.

In the event that the bid price of the Project is less than expected and does not require the entire amount of INDOT's Contribution, the Local Parties may use any remaining funds from the INDOT Contribution to construct additional phases of the Project north of 146<sup>th</sup> Street on S.R. 37 (the "Additional Projects", as defined in Exhibit B, Section H). The balance of funds shall not be available to the Local Parties for use on other projects (any project not directly improving S.R. 37 in Hamilton County). INDOT shall retain the balance of any INDOT Contribution funds not used on the Project or the Additional Projects.

- C. **Documentation of Project Costs.** The Local Parties will provide quarterly statements concerning Project costs and expenditures to date, with appropriate or required documentation (i.e., invoices from contractors and consultants, proof of payment and any other supporting information), to INDOT and one another. The Local Parties' consultant (to be identified) shall be responsible to track all Project costs, invoice the Local Parties for expenses, and provide statements, invoices, proof of payment and any other appropriate or required documentation to the INDOT project manager by the 15<sup>th</sup> day of each calendar quarter. The Local Parties shall direct their consultant to provide any additional documentation or information concerning any part of work on the Project to INDOT or FHWA promptly upon request.
- D. **FHWA Funding Approval.** All federal funds requested for any phase of the project other than construction must be submitted to the INDOT Greenfield District Local Program Director for FHWA's approval.
- E. **Eligibility of expenses for Matching Credit or Federal Participation.** The Local Parties understand and agree that any costs incurred prior to the authorization of the Project by FHWA will not be eligible for reimbursement and/or will not be eligible for use as "credit" towards the matching requirements of federal-aid highway funds.
- F. **Repayment of Federal-Aid Funds.** If at any time, through the actions or inactions of any Local Party, INDOT is required to repay to the Federal Highway Administration any portion of the federal funds expended in any portion or phase of the Project, then the Local Parties shall promptly repay INDOT such sum or sums upon receipt of an invoice from INDOT. The Local Parties shall repay all such funds within forty-five (45) days of receiving an invoice from INDOT, unless the Local Parties and INDOT as agree to some other repayment schedule in writing. In the event that the Local Parties do not repay all funds within forty-five (45) days and the Parties do not reach an agreement as to an alternate repayment schedule, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the Local Parties' respective allocations of the Motor Vehicle Highway Account (if any) to INDOT's account until the amount due has been repaid. INDOT may also withhold and reallocate other eligible federal funds from any amounts that might otherwise be available to the Local Parties until the full amount of federal funds to be repaid has been recovered.

**1.6. Term and Renewal of Agreement.** The term of this Agreement shall be from the date upon which the Agreement is approved by the Office of the Indiana Attorney General through September 1, 2023 or completion of final audit of the Project by INDOT, whichever occurs first. This Agreement may be renewed or extended under the same terms and conditions subject to the approval of all signing Parties.

**1.7. Project Coordination.** The PARTIES agree to review and coordinate all plans and schedules pertaining to the Project.

**1.8. Criteria for Project Acceptance by INDOT.** The Parties understand and agree that the following criteria shall be incorporated into all plans and specifications, and/or shall be satisfied before INDOT will accept transfer of S.R. 37 back to the state highway system.

- A.** Project must meet the minimum pavement standards and measures identified in **Exhibit D** to this Agreement (attached and herein incorporated by reference) concerning Structural Strength (FWD measured), Useful Life, Rutting, Cracking, and IRI.
- B.** The bridges must pass the post-construction NBIS inspection.
- C.** Drainage systems must be inspected in accordance with the INDOT Standards Manual (718.07). Standard video inspection records must be available for INDOT review.
- D.** Standard construction inspection records are required for pavement markings, signs, signals, lighting, etc.
- E.** All As-Built documentation must be maintained and provided to INDOT upon completion of the project (including but not limited to all plans, design calculations, testing records, WMS inventory data, etc.).

**1.9. Public Statements or Disclosures.** The Parties shall consult with each other and must agree as to the timing, content, and form before issuing any press release or other public statements or disclosures related to the Project or this Agreement. However, this Section does not prohibit either of the Parties from making a public statement or disclosure regarding this Agreement or the Project if, in the opinion of a Party's legal counsel, such a disclosure is required by law, including but not limited to Indiana's Access to Public Records Act (IC 5-14-3), legal process or directive of a regulatory authority having jurisdiction over either party.

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**ARTICLE II.**  
**GENERAL PROVISIONS**

For purposes of this Article, Fishers, Noblesville and the County are each individually referred to as the Local Public Agency or “LPA”, and all of the following provisions apply to each of the LPAs.

**2.1. Access to Records.** The LPA 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 LPA agrees 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 LPA 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.

**2.2. Assignment; Successors.** The LPA binds its successors and assignees to all the terms and conditions of this Agreement. Except as otherwise specifically provided herein, the LPA shall not assign or subcontract the whole or any part of this Agreement without INDOT’s prior written consent. The LPA may assign its right to receive payments, if any, to such third parties as the LPA may desire without the prior written consent of INDOT, provided that the LPA gives written notice (including evidence of such assignment) to INDOT thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

**2.3. Assignment of Antitrust Claims.** As part of the consideration for the award of this Agreement, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Agreement.

**2.4. Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the LPA to be a “Contractor” under 2 C.F.R. 200.330 for purposes of this Agreement. However, if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), LPA shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

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

**2.6. Changes in Work.** The LPA shall not commence any additional work or change the scope of the work until authorized in writing by the State. The LPA shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all parties and signatories hereto. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

**2.7. Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the LPA, 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 LPA also agrees by signing this Agreement that it shall require that the language of this certification be included in all contractor agreements including lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

**2.8. Compliance with Laws.**

A. The LPA shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment 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 LPA to determine whether the provisions of this Agreement require formal modification.

B. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the LPA has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the LPA shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the LPA or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the LPA. In addition, the LPA 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 LPA warrants that the LPA 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 LPA and any principals of the LPA certify that:

(A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

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

(2) The LPA and any principals of the LPA certify that an affiliate or principal of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or principal of the LPA, 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.

**2.9. Condition of Payment.** All work completed or caused to be completed by the LPA under this Agreement must be performed in accordance with the terms of this Agreement and all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be inconsistent with this Agreement or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

**2.10. Confidentiality of State Information.** [OMITTED – NOT APPLICABLE.]

**2.11. Continuity of Services.** [OMITTED – NOT APPLICABLE.]

**2.12. Debarment and Suspension.**

A. The LPA certifies by entering into this Agreement that none 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.

B. The LPA certifies that it has verified or shall verify the state and federal suspension and debarment status for all contractors and subcontractors 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 subcontractor. The LPA shall immediately notify the State if any contractor or 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 contractor or subcontractor for work to be performed under this Agreement.

**2.13. Default by State.** [OMITTED – NOT APPLICABLE.]

**2.14. Disputes.** [OMITTED – NOT APPLICABLE.]

**2.15. Drug-Free Workplace Certification.**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LPA hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LPA will give written notice to the State within ten (10) days after receiving actual notice that the LPA, or an employee of the LPA in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (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 LPA 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 LPA's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying 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.

**2.16. Employment Eligibility Verification.** As required by IC §22-5-1.7, the LPA swears or affirms under the penalties of perjury that the LPA does not knowingly employ an unauthorized alien. The LPA further agrees that:

A. The LPA 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 LPA is not required to participate should the E-Verify program cease to exist. Additionally, the LPA is not required to participate if the LPA is self-employed and does not employ any employees.

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

C. The LPA shall require his/her/its subcontractors, who perform work under this Agreement, to certify to the LPA 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 LPA agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

**2.17. Employment Option.** [OMITTED – NOT APPLICABLE.]

**2.18. Force Majeure.** In the event that any Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a “Force Majeure Event”), the Party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other Parties and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement. However, the terminating Party shall be responsible to reimburse the other Parties for all costs incurred on the Project prior to termination within forty-five (45) days.

**2.19. 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.

**2.20. 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.

**2.21. Indemnification.** The LPA agrees to 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 LPA, 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 LPA.

The LPA agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith in the event that the LPA shall default under the provisions of this Section.

**2.22. Independent LPA; Workers' Compensation Insurance.** The LPA is performing as an independent entity under this Agreement. No part of this Agreement shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the Parties. No 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 any other party. The LPA shall provide all necessary unemployment and workers' compensation insurance for the LPA's employees, and/or shall require its contractors to: (i) provide all necessary unemployment and workers' compensation insurance for the contractor's employees and (ii) provide the LPA with a Certificate of Insurance evidencing such coverage prior to starting any work on the Project contemplated in this Agreement.

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

**2.24. Insurance.**

A. The LPA shall cause and require its contractors to secure and keep in force during the term of this Agreement the following insurance coverages (if applicable) covering the LPA and naming the State as additional insured for any and all claims of any nature which may in any manner arise out of or result from performance of work on the Project contemplated under this Agreement:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.
2. Automobile liability for owned, non-owned and hired autos with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Agreement.
4. Fiduciary Liability is required if the LPA is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. These contractors face potential claims for mismanagement brought by plan members. Limits should be no less than \$700,000 per cause of action and \$5,000,000 per occurrence.
5. Valuable Papers coverage, available under an Inland Marine policy, is required when any plans, drawings, media, data, records, reports, billings and other documents are produced or used under this agreement. Insurance must have limits sufficient to pay for the re-creation and reconstruction of such records.
6. The LPA shall secure the appropriate Surety or Fidelity Bond(s) as required by the state department served or by applicable statute.
7. The LPA shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Agreement and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition,

proof of an “all states endorsement” covering claims occurring outside the State is required if any of the services provided under this Agreement involve work outside of Indiana.

B. The LPA’s insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the LPA.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the LPA in excess of the minimum requirements set forth above. The duty to indemnify the State under this Agreement shall not be limited by the insurance required in this Agreement.
4. The insurance required in this Agreement, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days’ prior written notice to the undersigned State agency.
5. The LPA waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Agreement may be deemed a material breach of contract entitling the State to immediately terminate this Agreement. The LPA shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Agreement.

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

**2.26. Licensing Standards.** The LPA, its employees and contractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing work on the Project to be completed by the LPA pursuant to this Agreement. The State will not participate in payment for any services performed when the LPA, its employees or contractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the LPA shall notify the State immediately and the State, at its option, may require substitution of personnel or contractors so that work is prosecuted in compliance with applicable law.

**2.27. 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.

**2.28. Minority and Women’s Business Enterprises Compliance.** [OMITTED - NOT APPLICABLE.]

**2.29. Non-Discrimination.**

A. 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 LPA or any subcontractor.

Under IC 22-9-1-10 the LPA 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.

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

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, 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 Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

1. Compliance with Regulations: The LPA 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.

2. Nondiscrimination: The LPA, 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 LPA 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.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA 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 LPA of the LPA'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.

4. Information and Reports: The LPA 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 LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA 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 LPA'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 LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.

6. Incorporation of Provisions: The LPA 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 LPA 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 LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA 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 LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

**2.30. 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: Jennifer Beck  
INDOT Local Projects Manager  
100 N. Senate Ave.  
Indianapolis, IN 46204  
[jbeck@indot.in.gov](mailto:jbeck@indot.in.gov)  
317-232-0911

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

B. For Fishers: Mayor of the City of Fishers, One Municipal Drive, Fishers, Indiana 46038

C. For Noblesville: Mayor of the City of Noblesville, 16 South 10<sup>th</sup> Street, Noblesville, Indiana 46060

D. For the County: Board of Commissioners of Hamilton County c/o Hamilton County Auditor, 33 North 9<sup>th</sup> Street, Suite L-21, Noblesville, Indiana 46060

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

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

**2.33. Payment.** A. 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 LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC §4-13-2-20.

B. If the LPA has any outstanding balances on any Agreement with INDOT, and such outstanding balances due to INDOT are at least sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 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 LPA's 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 LPA 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 LPA.

**2.34. 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.

**2.35. Progress Reports.** [OMITTED – NOT APPLICABLE.]

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

**2.37. 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 contract may not be longer than the term of the original contract.

**2.38. 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.

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

**2.40. 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.

**2.41. 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 LPA or its contractors as a result of this Agreement.

**2.42. Termination for Convenience.** [OMITTED – NOT APPLICABLE.]

**2.43. Termination for Default.** [OMITTED – NOT APPLICABLE.]

**2.44. Travel.** [OMITTED – NOT APPLICABLE.]

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

**2.46. 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 LPA shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the LPA’s negligent performance of any of the services furnished under this Agreement.

**2.47. Work Standards.** The LPA shall execute its responsibilities by ensuring that its contractors, consultants and employees follow and apply at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and the LPA shall grant such request.

**2.48. General.** The headings are inserted for convenience only and do not constitute part of this Agreement.

[Remainder of Page Intentionally Left Blank]



**Non-Collusion and Acceptance**

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

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

**CITY OF FISHERS**

**Executed By:**

\_\_\_\_\_  
Scott Fadness, Mayor

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

**Attest:**

\_\_\_\_\_

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

**CITY OF NOBLESVILLE**

**Executed By:**

\_\_\_\_\_  
John Ditslear, Mayor

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

**Attest:**

\_\_\_\_\_

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

**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:**

\_\_\_\_\_  
Dawn Coverdale, County Auditor

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

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

**Recommended for approval by:**

\_\_\_\_\_  
Chris Kiefer, Deputy Commissioner and Chief of Staff  
Indiana Department of Transportation

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

**Executed By:**

\_\_\_\_\_  
Brandye Hendrickson, Commissioner  
Indiana Department of Transportation

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

**STATE OF INDIANA APPROVALS**

STATE OF INDIANA  
State Budget Agency

\_\_\_\_\_  
Brian E. Bailey, Director

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

STATE OF INDIANA  
Department of Administration

\_\_\_\_\_  
Jessica A. Robertson, Commissioner

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

**Approved as to Form and Legality:**

\_\_\_\_\_(for)  
Attorney General Gregory F. Zoeller

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

**EXHIBIT A**  
**THE LOCAL PARTIES' RESPONSIBILITIES**

A. The Local Parties' responsibilities shall be generally allocated as follows.

- (i.) The portion of the S.R. 37 to be improved in connection with the Project shall be transferred to Fishers under the Transfer Agreement (see **Exhibit C**). To the extent a portion of S.R. 37 to be improved is outside the corporate boundaries of Fishers, the County and Noblesville hereby recognize and grant Fishers the authority to accept such portion pursuant to the terms of the Transfer Agreement.
- (ii.) The County and Fishers shall jointly approve the selection of all independent engineering and construction management professionals engaged for the Project. The County and Fishers understand and agree that all consultants engaged to work on the Project must be selected/procured using INDOT's approved consultant selection procedures in order for such expenses to be eligible for federal participation or to be used as match in the project.
- (iii.) The Local Parties shall include provisions in all contracts for any work pertaining to the Project requiring that INDOT be listed as an additional insured and/or beneficiary on all bonds, general commercial liability policies and errors and omissions insurance policies.
- (iv.) Prior to the letting of construction contracts for the Project, INDOT, the County, Fishers and Noblesville shall approve the final design of, and any subsequent material changes to the design of, the portions of the Project consisting of improvements at the 146<sup>th</sup> Street intersection. Prior to the letting of construction contracts for the Project, INDOT, the County and Fishers shall approve the final design of, and any subsequent material changes to the design of, the remainder of the Project. Subject to the foregoing approval rights, Fishers shall be responsible for all aspects of design, preliminary engineering, required environmental studies and analyses, acquiring required environmental permits, right-of-way acquisition, utility relocation, construction management, and inspection for the Project, in accordance with the terms of this Agreement and applicable laws. Because INDOT will be responsible to maintain, operate, repair, regulate and reconstruct S.R. 37 after construction of the Project is completed, INDOT shall have the opportunity to review and approve all plans, designs, specifications and other project documents to ensure that applicable standards (including standards applicable to the National Highway System) are met.
- (v.) Fishers or its contractors/consultants shall prepare all required environmental (NEPA) documents for the Project in accordance with INDOT's Environmental Policy Manuals and all applicable state and federal laws and regulations. The Local Parties understand that the required environmental document for the Project is not likely to be a categorical exclusion, but rather an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The Local Parties further understand that the NEPA document must include the entire limits and scope of the Project.

- (vi.) Fishers must complete work on the Project in accordance with INDOT's Design Manual and all pertinent state and federal laws, regulations, policies and guidance, including compliance with the following:
- (1.) Under MAP 21 S.R. 37 is on the NHS and therefore a higher tier of minimum standards for both development and approval applies. (Additional information concerning applicable design standards is available at <http://www.fhwa.dot.gov/programadmin/standards.cfm>.)
  - (2.) Compliance with all Americans with Disabilities Act ("ADA") regulations and requirements (including all requirements for roundabouts).
- (vii.) The Maintenance of Traffic (MOT) plan for the Project shall be designed so as to not cause traffic to back up onto mainline I-69 substantially more than prior to the commencement of the construction of the Project.
- (viii.) Any ancillary work performed on I-69 shall be done in accordance with the latest version of the INDOT highway congestion policy.
- (ix.) All Land Acquisition for the Project shall be in accordance with INDOT's Real Estate Manuals (Uniform Act), and all applicable state and federal laws and regulations prior to advertisement of construction contract. All real property interests acquired for the Project on mainline S.R. 37 shall be acquired in the name of or transferred to the State of Indiana.
- (x.) Fishers agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permits and submit documentation of such to INDOT.
- (xi.) All Utility Coordination shall be in accordance with 105 IAC 13. The Local Parties agree that all utilities which cross or otherwise occupy the Project right of way shall be regulated by the LPA in accordance with INDOT's Utility Accommodation Policy.
- (xii.) The Local Parties agree that to the extent reasonably possible, positive (gravity) drainage will be used for the Project. The maintenance, operation and reconstruction of any lift stations installed in connection with the Project will be the responsibility of the Local Party with jurisdiction over drainage in the location of such lift station. All drainage must be accessible for future maintenance.
- (xiii.) The design year for the Project shall not be less than the greater of 2040 or the open-to-traffic date plus twenty years.
- (xiv.) During the construction of the Project, all ITS fiber, conduit and handholes throughout corridor must be maintained/relocated. During the construction of the Project, Fishers/Hamilton County must maintain/relocate the dynamic message sign for southbound traffic north of 146<sup>th</sup> Street.
- (xv.) Bridge lifecycle costs analysis must be followed.
- (xvi.) Alternative pavement design bidding process is required.

- B.** Fishers shall be solely responsible to coordinate as needed with the Indianapolis Metropolitan Planning Organization (MPO) to ensure that the Project is added to the MPO's Long-range Transportation Plan and TIP. The environmental (NEPA) document for the Project cannot be approved by FHWA until the Project has been included in the MPO's Long-range Plan and TIP and INDOT's STIP.
- C.** Construction of the Project shall be through INDOT's usual procedures for letting of local federal aid projects with certain modifications as provided in this Agreement. The following conditions shall also apply to construction of the Project:
- (i.) All final accurate bid documents must be turned into INDOT 90-120 calendar days prior to INDOT's scheduled construction letting. INDOT will not let the project without the required documentation.
  - (ii.) The Local Parties shall pay the cost of construction work for the Project (minus the INDOT Contribution as described in Section 1.5(B) of this Agreement) within 30 days from the date of INDOT's award of the construction contract. The County and Fishers shall be solely responsible for all costs associated with additional provisions and/or expenses in excess of the INDOT Contribution in the amount of \$100,000,000.
  - (iii.) Fishers shall provide competent and adequate engineering, testing and inspection services to ensure the performance of the work is in accordance with the construction contract, plans and specifications, INDOT materials and testing requirements, and any special provisions or approved change orders.
  - (iv.) INDOT must approve in writing the consultant and all personnel prior to their assignment to and commencement of work on the Project. Fishers shall execute the Construction Engineering (CE) contract. Only costs incurred after INDOT's written Notice to proceed shall be eligible for federal-aid participation.
  - (v.) FHWA will only participate in work performed for activities eligible under Title 23.
  - (vi.) Fishers shall require their contractors/consultants to submit a Construction Quality Assurance / Quality Control (QA/QC) plan.
  - (vii.) Fishers shall ensure that all applicable Pedestrian MOT and ADA requirements are met during construction of the Project.
  - (viii.) Fishers shall ensure that all Buy America/non-propriety materials requirements are met under the Project. Only INDOT approved materials will be allowed.
- D.** Fishers and the County shall each contribute funding from eligible local (non-federal sources) in accordance with Section 1.5(A) of this Agreement. The Parties shall pay costs of project development (including costs of design, preliminary engineering, right of way acquisition, utility relocation, inspection services, etc.) out of the funding contributions of Fishers and the County, and shall account for all such costs as provided in Section 1.5.
- E.** The Local Parties may seek to include any additional improvements outside the Project construction limits (and to any other roads under the Local Party's control and jurisdiction), subject to INDOT and FHWA approval and compatibility with the Project and operation of S.R.



37. However, the Local Party requesting such improvements shall be solely responsible to pay the entire cost of all such additional improvements. Further, if any enhancements are included within the S.R. 37 footprint and on INDOT right-of-way (i.e., decorative lighting, multi-use paths, landscaping, etc.), the Local Party will be solely responsible to maintain such enhancements at its cost, and shall enter into a Joint Use and Maintenance Agreement with INDOT for that purpose.

- F.** In the event that the local funding contributions described in Section 1.5(A) are not entirely expended in or obligated to Project development prior to construction, the balance of local funding contributions shall be paid to INDOT (to be applied and used for Project construction costs) within 30 days from the date of INDOT's award of the construction contract for the first phase of the Project. In the event that the lowest responsive bid price of the contract for construction exceeds the total of INDOT's contribution of \$100,000,000.00 plus the remaining balance of the Local Contribution but is still an awardable bid (under applicable statutes and regulations), the Local Parties shall concur in award of a contract for the Project in writing to INDOT and shall provide the balance of funds required to meet the bid price to INDOT prior to award of a contract for the Project. INDOT shall not be obligated to award a contract for construction of the Project until the Local Parties have provided the balance of funds required to meet the bid price. The Parties may also agree to re-let or re-scope and re-let the Project if the Local Parties cannot or do not wish to provide additional funding.
- G.** In the event that the Local Funding Contribution described in Section 1.5(A) and the INDOT Contribution described in Section 1.5(B) are not entirely expended on the Project, any remaining portion of the Local Funding Contribution and the INDOT Contribution may be expended on the development of the Additional Projects, as defined in paragraph H of this **Exhibit A**.
- H.** Fishers, Noblesville and the County have expressed a desire to enter into a separate agreement among themselves concerning a potential to expand the scope of the Project north on S.R. 37 to include the construction of grade separation intersections at Greenfield Avenue and Pleasant Street and improvements of the intersection at Town & Country Boulevard (the "Additional Projects") and to identify local funds that, in addition to any remaining Local Funding Contribution and INDOT Contribution described under paragraph F of this **Exhibit A**, may be allocated to the Additional Projects. In the event that the Local Parties do execute such an Agreement, the Parties anticipate amending this Agreement and the S.R. 37 Transfer Agreement to provide for the Additional Projects.
- I.** Each of the Local Parties shall cooperate with INDOT and one another as needed to ensure successful completion of the Project, particularly with regard to any utility relocation of utilities owned or operated by the Local Party.
- J.** Fishers, Noblesville and the County have expressed a desire to enter into a separate agreement among themselves concerning a potential to expand the scope of the Project north on S.R. 37 (pending completion and approval of all environmental documents) to include the construction of grade separation intersections at Greenfield Avenue and Pleasant Street and improvements of the intersection at Town & Country Boulevard and to identify additional local funds that may be allocated to the Project. In the event that the Local Parties do execute such an Agreement, the Parties anticipate amending this Agreement and the S.R. 37 Transfer Agreement to provide for an expanded project scope.

**EXHIBIT B**  
**INDOT'S RESPONSIBILITIES**

- A. INDOT will review all plans, specifications and other Project documents for which INDOT approval is required as quickly as possible. However, the Local Parties understand and agree that INDOT shall have final approval of all decisions concerning project design, construction, and specifications.
- B. INDOT shall support the Local Parties' efforts to coordinate with the Indianapolis Metropolitan Planning Organization (MPO) to ensure that the Project is added to the MPO's TIP as needed. Further, after the Project is included in the TIP, INDOT will ensure that the Project is also included in to the STIP through INDOT's usual and ordinary processes.
- C. INDOT shall coordinate with the Local Parties in developing plans for construction of the Project, including a development schedule.
- D. INDOT shall take such reasonable actions as are necessary to make appropriate portions of the INDOT Contribution available to fund the first phase of the Project beginning state fiscal year 2018 (beginning July 1, 2017 and ending June 30, 2018). Upon receipt of approved designs, plans, specifications and any other necessary documents, INDOT will let the Project phases for construction as Local Federal Aid projects through its usual processes as soon as possible. The Parties shall take all reasonable actions necessary to provide for the awarding of a contract for construction of Phase I of the Project by October 1, 2017. However, in the event that enhancement projects or elements are added to the Project at the request of a Local Party, INDOT shall not award a contract for the Project before receiving the entire amount of the Local Party's funding contribution as described in Section 1.4.
- E. INDOT shall have unrestricted access to any portion of the Project at any time to inspect construction. If INDOT finds that any element or part of the Project is not being constructed in accordance with applicable laws or any contract requirements or specifications, and INDOT shall immediately notify the Local Parties and their contractor of deficiencies. The Local Parties shall cause such deficiencies to be remedied to INDOT's satisfaction.
- F. Notwithstanding the foregoing provisions of this **Exhibit B**, and pending completion and approval of the environmental document for the Project and acquisition of all required permits, the Parties understand that the design concept for the Project is likely to include the construction of grade-separated interchanges at 126<sup>th</sup> Street, 131<sup>st</sup> Street, 141<sup>st</sup> Street, and 146<sup>th</sup> Street and other improvements including the removal of the traffic signal at 135<sup>th</sup> Street and conversion of the 135<sup>th</sup> Street intersection to a right turn only intersection.

## **EXHIBIT D**

### **Useful Life Requirements**

**(1.) *Residual Life Requirements***

Where a Residual Life at Handback (“Handback” hereinafter used to refer to the “Date of Transfer to INDOT”, as specified under the Road Transfer Agreement (**Exhibit C**)) is specified in Table 1, the Residual Life at Handback shall be equal to or greater than the period set forth therein.

**(2.) *Useful Life Requirements***

Where a Useful Life is specified for any Element in Table 1 in place of a Residual Life at Handback, the Useful Life created at the time of the construction of that Element before the end of the Term shall be equal to or greater than the period set forth in the column entitled “Useful Life”.

**(3.) *Avoiding Construction Damage.***

Heavy/overweight construction traffic will not be permitted on partially completed pavement sections unless the contractor’s pavement engineer can show via calculation that said construction use of the partially constructed pavement shall not cause cracking.

**(4.) *Handback Requirements for Road Pavements***

These pavement criteria are based on assumptions that INDOT will assume responsibilities after construction of the Project in accordance with the terms of the Transfer Agreement. The following requirements apply for all road pavement within the Project Limits.

- A. Pavement Surface Condition – In addition to all other requirements of this **Exhibit D**, the pavement surface, including lanes and shoulders, shall be free of any evidence of structural weakness, pitting, potholes, raveling, segregation, scaling, delamination, localized roughness and all other deficiencies. All cracks and joints shall be sealed in accordance with INDOT Specifications and/or recurring special provisions in effect at the time of letting. The pavement surface shall be free and clear of dirt, sand and other debris.

All pavements shall be free of any evidence of faulting and other pavement distresses (including fatigue (alligator) cracking, map cracking, corner breaks, spalling, pavement bleeding, pot holes, segregation, slippage, shoving and other disintegrated areas). Cracking (transverse & longitudinal) shall not be more than 1/8 inch wide.

- B. Design Structural Requirements – All reconstructed portions of the Project (including shoulders) shall have a 30 year structural design life in accordance with all applicable standards, specifications and design requirements. (Shoulders structural life shall assume 25% of mainline loading.) All rehabilitated portions of the Project (including shoulders, as applicable) shall have a reasonable structural design life that takes into account existing pavement conditions and in accordance with all applicable standards,

specifications and design requirements. Further, the functional life of pavements shall be at least 15 years for asphalt (HMA) and 20 years for concrete (PCCP).

If necessary, pavement strength testing to determine the structural capacity and the rehabilitation needed for the requirement above will be completed by an independent consultant retained and paid for by INDOT. The Local Parties shall be responsible for providing all traffic maintenance accommodations to allow pavement strength testing or other testing (either destructive or non-destructive), as required.

- C. Cross-slope and superelevation shall deviate by no more than 0.5 percent from the design rate. Percentage refers to a numeric deviation from the designed percentage and not to a percentage deviation. For example, if the designed percentage is 2 percent, the allowable cross-slope would be between 1.5 and 2.5 percent.
- D. Pavement surface width shall be not less than the design width at any location.
- E. IRI should be rated “good” or better per INDOT’s GASB-34 at the time of handback. Pavement friction shall not be less than 35 on average, and shall not be less than 25 for any single location on the Project. Rutting shall be less than 1/8 inch average for both right and left wheel paths.

**Table 1. Roadway and Bridges Asset Handback Criteria**

Element Category	Residual Life at Handback (Yrs)	Useful Life (Yrs)	Inspection Requirements	Residual Life Methodology (RLM) Requirement
<b>1) ROADWAY</b>				
Curbs and gutters	-	10	Inspections of all curbs and gutters shall be undertaken by personnel having adequate training on modes of failure, risk assessment and observational skills.	RLM shall draw on historical asset maintenance records, inspection and test histories for each Element.
<b>2) NEW STRUCTURES</b>				
Reinforced concrete deck	-	15	Inspections of structures shall be undertaken by independent testing organizations. Inspections shall follow the latest inspection guidelines (as they apply at the relevant date that the testing is undertaken) recognized by INDOT.	RLM shall:  Draw on historical asset maintenance records, inspection and test histories for each structure.  Take account of INDOT and FHWA records of other structures
Pre-stressed concrete	40	-		
Structural steelwork	40	-		
Weathering steel	40	-		

<b>Element Category</b>	<b>Residual Life at Handback (Yrs)</b>	<b>Useful Life (Yrs)</b>	<b>Inspection Requirements</b>	<b>Residual Life Methodology (RLM) Requirement</b>
Corrugated steel	40	-	A close examination shall be made of all parts of each structure.	<p>on the network with similar characteristics.</p> <p>Include an assessment of load carrying capacity based on the original structural design calculations, the as built drawings and results of load deflection tests where appropriate.</p> <p>Take account of any trends in asset deterioration to determine the rate of deterioration and to predict the future condition of individual Elements and the entire structure.</p>
Corrosion Protection for structural steelwork	-	10	Non-destructive tests shall be undertaken appropriate to the type of structure. These shall include the measurement of structural deflection under calibrated load, the identification and measurement of de-lamination in bridge decks, the measurement of chloride and carbonation profiles from surface to reinforcement and/or tendon level, and the in-situ strength testing of concrete Elements.	
Deck wearing surface	-	10		
Deck joints	-	5		
Bearings	-	30		
Barrier railings	40	-		
Reinforced concrete substructure	40	-		
Sign/signal gantries (structural Elements)	15	-	Testing of steel structures shall include the depth of corrosion and/or the measurement of remaining structural thickness for hidden and exposed parts.	
Retaining Walls	40	-		
Sound Barriers	40	-	All lengths of weld shall be tested for cracking at key areas of structural steelwork (residual life first inspection only).	
Traffic signal poles	-	10		
High mast lighting poles	-	15		
<b>3) REHABILITATED/MODIFIED STRUCTURES</b>				
Reinforced concrete deck	-	15	Inspections of structures shall be undertaken by independent testing organizations.	<p>RLM shall:</p> <p>Draw on historical asset maintenance records, inspection and test histories for each structure.</p> <p>Take account of INDOT and FHWA records of other structures on the network with similar characteristics.</p> <p>Include an assessment of load carrying capacity based on the original structural design calculations, the as built drawings</p>
Pre-stressed concrete	15	-	Inspections shall follow the latest inspection guidelines (as they apply at the relevant date that the testing is undertaken) recognized by INDOT.	
Structural steelwork	15	-		
Weathering steel	15	-		
Corrugated steel	15	-	A close examination shall be made of all parts of each structure.	
Corrosion Protection for structural steelwork	-	10	Non-destructive tests shall be undertaken appropriate to the type of structure. These shall	

Element Category		Residual Life at Handback (Yrs)	Useful Life (Yrs)	Inspection Requirements	Residual Life Methodology (RLM) Requirement
Element Description					
Deck wearing surface		-	10	include the measurement of structural deflection under calibrated load, the identification and measurement of delamination in bridge decks, the measurement of chloride and carbonation profiles from surface to reinforcement and/or tendon level, and the in-situ strength testing of concrete Elements.	and results of load deflection tests where appropriate.  Take account of any trends in asset deterioration to determine the rate of deterioration and to predict the future condition of individual Elements and the entire structure.
Deck joints		-	5		
Bearings		-	15		
Barrier railings		15	-	Testing of steel structures shall include the depth of corrosion and/or the measurement of remaining structural thickness for hidden and exposed parts.  All lengths of weld shall be tested for cracking at key areas of structural steelwork (residual life first inspection only).	
Reinforced concrete substructure		15	-		
<b>4) DRAINAGE</b>					
Underground storm sewer systems		40	-	Inspection of storm sewer systems shall include closed circuit TV inspection of all buried pipe work.	RLM shall draw on historical asset maintenance records, inspection and test histories for each Element of the drainage system.
Culverts		40	-		
Ditches		-	10	Groundwater level monitoring at selected locations will be required to provide assurance through the RLM of a 10 year Residual Life for groundwater interceptor drains.	Local Parties shall include a methodology to determine the Residual Life of filter drains designed to intercept groundwater.
Inlets		25	-		
Outfalls		-	10		
<b>5) TRAFFIC AND SAFETY</b>					
Guardrail		-	10	Inspections of all traffic and safety items shall be undertaken by personnel having adequate training on modes of failure, risk assessment and observational skills.	RLM shall draw on historical asset maintenance records, inspection and test histories for each traffic and safety Element.
Concrete barrier		-	20		
Attenuators		-	20		
Overhead signs		-	5		
Roadside traffic signs		-	5		

<b>Element Category</b>	<b>Residual Life at Handback (Yrs)</b>	<b>Useful Life (Yrs)</b>	<b>Inspection Requirements</b>	<b>Residual Life Methodology (RLM) Requirement</b>
Traffic signal housings & mountings	-	8		
Pavement markings	-	3		
Delineators	-	5		
<b>6) ELECTRICAL</b>				
Luminaires	-	5	Inspections of all electrical items shall be undertaken by personnel having adequate training on modes of failure, risk assessment and observational skills.	RLM shall draw on historical asset maintenance records, inspection and test histories for each electrical Element.
<b>7) ANCILLARY</b>				
Earthwork slopes	50	-	For embankment and cut slopes a risk based inspection procedure shall be adopted following Good Industry Practice.  Deformation monitoring will be required to provide assurance through the RLM of a 50-year Residual Life.	RLM shall draw on historical asset maintenance records, inspection and test histories for each ancillary Element.
Lighting poles	-	10	Inspections of all traffic and safety items shall be undertaken by personnel having adequate training on modes of failure, risk assessment and observational skills.	
Fences	-	10		
Manhole covers, gratings, frames and boxes	50	-		