

ROAD TRANSFER AGREEMENT
Among
THE INDIANA DEPARTMENT OF TRANSPORTATION,
THE CITY OF FISHERS, INDIANA,
THE CITY OF NOBLESVILLE, INDIANA
and
HAMILTON COUNTY, INDIANA
Concerning
THE TRANSFER OF STATE ROAD 37

EDS No. A249-16-_____

PREAMBLE

This Agreement is made and entered into this _____ day of _____, 2015 (hereinafter referred to as “Effective Date”) by and among the Indiana Department of Transportation (“INDOT”), the City of Fishers, Indiana (“Fishers”), the City of Noblesville, Indiana (“Noblesville”), and the Hamilton County, Indiana (the “COUNTY”) and jointly referred to as the “PARTIES.”

RECITALS

WHEREAS, INDOT currently incurs the expense for maintaining and regulating State Road 37 (“S.R. 37”), including but not limited to all right-of-way, small structures, road surface, bridges, snow and ice removal, storm water drainage, mowing, traffic signals and other related signs, lighting and outdoor advertising structures and driveways; and

WHEREAS, S.R. 37 in Hamilton County 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 (hereinafter referred to collectively as the “Local Parties”), 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, the Local Parties 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 have entered into an Interlocal Cooperative Agreement (the “ICA”, attached as **Exhibit A** and herein incorporated by reference) to cooperate in funding, design and construction a project to improve S.R. 37 at the intersections with 126th Street, 131st Street, 141st Street, and 146st Street, and to construct other improvements on S.R. 37 (the “Project”); and

WHEREAS, in accordance with Section 1.2(C) of the ICA and all terms of this Agreement, INDOT plans to temporarily transfer S.R. 37 commencing at the south terminus of S.R. 37 continuing north to the northern right of way limit of the S.R. 37 intersection with 146th Street (the “Transferred Road”), as further described in Section 1.2 of this Agreement and as shown on **Exhibit B** (attached and herein incorporated by reference); and

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

WHEREAS, to facilitate development and construction of the Project, each of Noblesville and the County wishes to assign its rights and responsibilities (including all maintenance, operation, regulation, and construction) for its respective portion of the Transferred Road beginning on the Date of Transfer (as defined herein) and continuing through the Final Transfer Date (as defined herein); and

WHEREAS, the Local Parties desire to accept the Transferred Road under the terms and conditions set forth in this Agreement and the ICA, and to assume responsibility for all future maintenance, liability and regulation of the Transferred Road, until the Final Transfer Date (as defined herein); and

WHEREAS, I.C. 8-23-4-10 and I.C. 8-23-4-12 authorize INDOT and the Local Parties to execute this Agreement;

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

ARTICLE I.
SPECIFIC PROVISIONS

1.1 Agreement Purpose. The purpose of this Agreement is to transfer full responsibility for all operation, construction, maintenance, regulation and liability relating to the Transferred Road to the Local Parties from INDOT, and following successful completion of the Project (as provided in the ICA and this Agreement) from the Local Parties back to INDOT, to the fullest extent permitted by applicable law. To comply with Indiana law regarding the sale of real estate, the PARTIES agree that INDOT is not transferring title to any real estate by way of this Agreement and that INDOT shall retain legal title of the Transferred Road, including without limitation any real property underneath existing pavement and the accompanying right of way, as described in the land records of Hamilton County, Indiana. For the purposes of this Agreement and to avoid misunderstanding, the terms “Transferred Road”, “Date of Transfer to Local Parties” and “Date of Transfer to INDOT” are defined in Sections 1.2, 1.3 and 1.4 of this Agreement, respectively.

1.2. Transferred Road Defined. Subject to the other terms and conditions of this Agreement and the ICA, the Parties agree as follows.

- A. INDOT shall transfer to Fishers that portion of S.R. 37 from the south right-of-way setback of 126th street (~RP 169+1.56) and continuing north to the northern right of way setback of 141st Street (~RP 171+0.35), including all roadway, right of way, culverts, signage, traffic signals, and lighting, as shown on **Exhibit B** (attached hereto and made part hereof).
- B. INDOT shall transfer to Noblesville and the County that portion of S.R. 37 from the northern right of way setback at 141st Street (~R.P. 171.+035) and continuing north to the northern right of way setback at 146th Street (~R.P. 171+0.84), including all roadway, right of way, culverts, signage, traffic signals and lighting, as shown on **Exhibit B**.
- C. In order to facilitate design, preliminary engineering, environmental, utility relocation, right of way acquisition and construction of the Project as provided under the ICA, Noblesville and the County hereby transfer and assign their rights and responsibilities to operate, maintain, and regulate their respective portions of the Transferred Road (as described in 1.2 (B) above) to Fishers.

D. The total mileage of the Transferred Road under this Agreement is approximately 2.05 centerline miles.

1.3. Date of Transfer to Local Parties. The “**Date of Transfer to Local Parties**” is defined as the date upon which INDOT will transfer the Transferred Road to the Local Parties in accordance with Section 1.2 and all other terms of this Agreement. Fishers, on behalf of the Local Parties, will notify INDOT in writing of the exact date and time of transfer, which is expected to occur after the approval of the Federal Highway Administration environmental processes, but prior to the award of a contract for construction of the Project.

1.4. Date of Transfer to INDOT. The “**Date of Transfer to INDOT**” is defined as the date upon which the Local Parties will transfer the Transferred Road back to INDOT in accordance with the terms of the ICA and all terms of this Agreement. Fishers, on behalf of the Local Parties, will notify INDOT by certified letter(s) of the exact date and time of the transfer. However, in addition to the terms of Section 1.8 to the ICA (outlining maintenance and handback requirements), the Project will not be considered “complete” and the Transfer to INDOT will not occur until INDOT (i) has had an opportunity to inspect the Transferred Road after substantial completion on the Project and (ii) agrees that the Transferred Road was constructed as provided under the ICA, and in accordance with all applicable laws, specifications, standards, and all approved project plans.

1.5. Responsibility for Transferred Roads. The Parties agree that: (i) prior to the Date of Transfer to Local Parties and on and after the Date of Transfer to INDOT, INDOT shall be solely responsible for any and all expenses related to the Transferred Road, including all maintenance, operation, reconstruction and repair of the Transferred Road and related right of way; and (ii) for the period of time commencing on the Date of Transfer to Local Parties and ending on the Date of Transfer to INDOT, the Local Parties shall be solely responsible for any and all expenses related to their respective portions of the Transferred Road, including all maintenance, operation, reconstruction and repair of the Transferred Roads and related right of way (except as otherwise provided in Section 1.2(C) of this Agreement).

1.6. Acceptance. The Local Parties agree to accept transfer of the Transferred Road in accordance with all the terms of this Agreement and the ICA on the Date of Transfer. INDOT agrees to accept transfer of the Transferred Road back to INDOT following construction and acceptance of the Project, in accordance with all terms of this Agreement and the ICA on the Date of Transfer to INDOT.

1.7. Transferred Roads Condition. The Local Parties respectively warrant and represent that each has had sufficient opportunity to inspect the Transferred Road and that each agrees to accept the Transferred Road in “AS IS” condition on the Date of Transfer to Local Parties in accordance with the terms of this Agreement.

1.8. Limited Access Right of Way. To avoid confusion, the PARTIES agree that according to applicable law, including Federal Highway Administration laws and regulations, INDOT will retain control over (if any) limited access right of way. No breaks in the limited access right of way line will be permitted.

1.9. Change of Transferred Road Status. The Local Parties agree that the Transferred Road shall remain in the local highway system(s) from the Date of Transfer to Local Parties until the Date of Transfer to INDOT.

1.10. No Cost or Expense to INDOT. The Local Parties agree that except as otherwise specifically provided in the ICA or in this Agreement, INDOT shall not be responsible for any costs or expenses in any manner related to the Transferred Road after the Date of Transfer to Local Parties and continuing until the

Date of Transfer to INDOT.

1.11. Permits Issued for the Transferred Road. For the sake of clarity and to avoid misunderstanding, the Local Parties respectively agree to indemnify, defend and hold harmless INDOT for all claims or liability arising in relation to any permits issued by the Local Parties to perform work on the Transferred Road. The Local Parties shall also be solely responsible for the issuance of any and all permits, including permits for outdoor advertising signs or structures, and the Local Parties understand and agree that each shall comply with all applicable laws in the issuance and regulation of such permits (including but not limited to the Highway Beautification Act of 1965, 23 U.S.C. §131 et seq., and regulations promulgated thereunder).

1.12. Interpretation. The Preamble and Recitals recorded above are incorporated by reference into this Agreement. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Agreement. As used herein, singular shall include the plural and *vice versa* and the masculine shall include the feminine and neuter (as applicable) and *vice versa*.

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. [OMITTED – NOT APPLICABLE.]

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
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 10th Street, Noblesville, Indiana 46060

D. For the County: Board of Commissioners of Hamilton County c/o Hamilton County Auditor, 33 North 9th 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.

[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, INDIANA

Executed by:

Scott Fadness, Mayor

Date: _____

Attest:

Jennifer Kehl, Clerk

Date: _____

STATE OF INDIANA)
)SS:

COUNTY OF: _____)

*Before me, a Notary Public in and for said County and State personally appeared _____,
_____ of Fishers, Indiana, who acknowledged the execution of the foregoing
road transfer agreement on this _____ day of _____, 2015.*

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence is: _____

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)

)SS:

COUNTY OF: _____)

*Before me, a Notary Public in and for said County and State personally appeared _____,
_____ of Hamilton County, Indiana, who acknowledged the execution of the
foregoing road transfer agreement on this _____ day of _____, 20__.*

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence is: _____

STATE OF INDIANA
Indiana Department of Transportation

Recommended for approval by:

Ryan Gallagher
Deputy Commissioner for Operations
Indiana Department of Transportation

Date: _____

Mike Smith
Greenfield District Deputy Commissioner
Indiana Department of Transportation

Date: _____

Dan Brassard
Chief Financial Officer and Deputy Commissioner
Indiana Department of Transportation

Date: _____

Jason S. Wasson
Deputy Commissioner of Engineering & Asset Management
Indiana Department of Transportation

Date: _____

Executed By:

Brandye Hendrickson, Commissioner
Indiana Department of Transportation

Date: _____

STATE OF INDIANA)

)SS:

COUNTY OF: _____)

Before me, a Notary Public in and for said County and State personally appeared

_____, _____ of the
Indiana Department of Transportation, who acknowledged the execution of the foregoing Road Transfer Agreement on
this _____ day of _____, 2015.

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence is: _____

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: _____

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

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

Jennifer L. Jansen, Managing Attorney
Indiana Department of Transportation
100 N. Senate Ave., IGCN N730
Indianapolis, IN 46204
317-234-5402

Attorney No.

