

STATE OF INDIANA
BEFORE THE TOWN COUNCIL OF SELLERSBURG, INDIANA

ORDINANCE NO. 2022 – OR – 003

AN ORDINANCE AUTHORIZING AND APPROVING THE ENTRY INTO AN INTERLOCAL AGREEMENT BY THE SELLERSBURG REDEVELOPMENT COMMISSION CONCERNING A TRAFFIC SIGNAL INSTALLATION AT THE INTERSECTION OF SR 60 AND POINDEXTER LANE.

WHEREAS, pursuant to Ind. Code § 36-5-2 *et seq.*, this Town Council of Sellersburg, Indiana (this “Council”) is the town legislative body and the President of the town council is the town executive; and,

WHEREAS, pursuant to Ind. Code § 36-5-2-9, the legislative body may adopt ordinances and resolutions for the performance of functions for the town; and,

WHEREAS, pursuant to I.C. 36-1-7 *et seq.* the State of Indiana, political subdivisions and state agencies may enter into interlocal cooperation agreements for the joint exercise of powers; and,

WHEREAS, the Indiana Department of Transportation (“INDOT”) and Redevelopment Commission for Sellersburg, Indiana (“RDC”) agreed that if the Town of Sellersburg, Indiana were to construct a roadway to connect with State Road 60 (“SR 60”), INDOT would install a traffic signal at the intersection of SR 60 and Poindexter Lane to improve the safety and mobility of the motoring public, provided the Project could be awarded and funds obligated in fiscal year 2022; and,

WHEREAS, this Council and RDC have caused for said road to be installed; and

WHEREAS, INDOT has agreed to contribute funds for the Project in an amount not to exceed **\$1,479,491.00** (“INDOT’s Contribution”), provided the Project can be awarded and the funds obligated in FY 2022; and,

WHEREAS, this Council, through the RDC, has agreed to be solely financially responsible for all costs which exceed INDOT's Contribution up to twenty percent (20%) of the said contribution, including any and all change orders ("Town's Contribution"); and,

WHEREAS, the Town's Contribution to INDOT shall be made solely with RDC funds; and,

WHEREAS, this Council, now authorizes the president of the RDC to enter into the interlocal agreement attached hereto, for the installation of a traffic signal at the intersection of SR 60 and Poindexter Lane to improve the safety and mobility of the motoring public.

NOW THEREFORE BE IT ORDAINED by this Town Council of Sellersburg, Indiana the following:

1. This Council does hereby authorize the president of the RDC to enter into the aforementioned interlocal agreement for the installation of a traffic signal at the intersection of SR 60 and Poindexter Lane to improve the safety and mobility of the motoring public. *(See Exhibit "A")*.
2. This ordinance shall be in full force and effect upon its passage and promulgation as evidenced by the affirmative signatures of the undersigned as the majority of the duly elected and serving members of this Council.

So Ordained this 29th day of February, 2022.

[Signature page to follow]

“Aye”

“Nay”

Brad J. Amos

Brad Amos
Council President

Brad Amos
Council President

Absent

Scott McVoy
Council Vice President

Scott McVoy
Council Vice President

Terry Langford
Council 2nd Vice President

Terry Langford
Council 2nd Vice President

Matthew J. Czarnecki
Council Member

Matthew Czarnecki
Council Member

Randall Mobley
Council Member

Randall Mobley
Council Member

Michelle D. Miller

Attested by: Michelle Miller
Sellersburg Clerk-Treasurer

FIRST READING

DATE: 2/28/2022

MOTION: Czarnecki

SECOND: Langford

VOTE: 4 AYE 0 NAY 0 ABSTAIN

SECOND READING

DATE: 2/28/2022

MOTION: Czarnecki

SECOND: Langford

VOTE: 4 AYE 0 NAY 0 ABSTAIN

INTERLOCAL COOPERATIVE AGREEMENT
Between
THE INDIANA DEPARTMENT OF TRANSPORTATION
And
THE TOWN OF SELLERSBURG
Concerning
TRAFFIC SIGNAL INSTALLATION

EDS #A249-_____

This Interlocal Agreement (“**Agreement**”) is made by and between the Indiana Department of Transportation (hereinafter referred to as “**INDOT**”), and the Town of Sellersburg through the Sellersburg Redevelopment Commission (hereinafter referred to as “**TOWN**”), collectively referred to as the “**Parties**”, is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the Parties agree as follows:

RECITALS

WHEREAS, the Parties agreed that if the TOWN were to construct its roadway to connect with State Road 60 (“**SR 60**”), INDOT would install a traffic signal at the intersection of SR 60 and Poindexter Lane to improve the safety and mobility of the motoring public, provided the Project could be awarded and funds obligated in fiscal year 2022 (“**FY 2022**”); and

WHEREAS, the TOWN is currently constructing the connection of Poindexter Lane and Camp Run Parkway to SR 60; and

WHEREAS, INDOT has programmed a project to install a traffic signal and related improvements (the “**Signal**”) at the intersection of SR 60, Camp Run Parkway and Poindexter Lane under Des. No. 2100100 (the “**Project**”) in Sellersburg, Clark County, Indiana, as shown in **Exhibit A** attached hereto and incorporated herein by reference; and

WHEREAS, INDOT has agreed to contribute funds for the Project in an amount not to exceed **\$1,479,491.00** (“**INDOT’s Contribution**”), provided the Project can be awarded and the funds obligated in FY 2022; and

WHEREAS, the TOWN has agreed to be solely financially responsible for all costs which exceed INDOT’s Contribution up to twenty percent (20%) of the Project’s estimate, including any and all change orders; and

WHEREAS, the Parties agree it is in the mutual interest for the convenience of the safety of the traveling public for the Parties to cooperate regarding construction of the Signal;

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

I. SPECIFIC PROVISIONS

1.1. **Project Description.** The Project shall include preliminary engineering, construction, and inspection of the Signal, as shown in **Exhibit A.**

1.2. **TOWN's Responsibilities.**

1.2.1. **Financial Responsibilities.** The TOWN shall be solely responsible for all costs which exceed INDOT's Contribution up to twenty percent (20%) of the Project's estimate, including any and all change orders (the "**TOWN's Contribution**"). In the event the Project costs exceeds twenty (20%) of the Project estimate, including the change orders, the Parties shall meet to discuss the need for additional funding. The Parties understand and agree that amendment of this Agreement may be necessary if additional funding is needed for the Project.

1.2.2. **Project Responsibilities.** The TOWN shall cooperate with INDOT as needed to ensure successful completion of the Project.

1.3. **INDOT'S Responsibilities.**

1.3.1. **Financial Responsibilities.** INDOT shall be responsible for the costs of the preliminary engineering, construction, and construction inspection for the Project in an amount not to exceed **\$1,479,491.00.**

1.3.2. **Project Responsibilities.**

1.3.2.1. INDOT will complete all work necessary to prepare the Project for letting, including all preliminary engineering, design, utility relocation, permitting, and environmental work. INDOT will let and award the Project for construction through its usual processes.

1.3.2.2. INDOT will manage, administer, and inspect the Project in accordance with applicable laws and INDOT policies, procedures and specifications.

1.5. **Payment of Project Costs.**

1.5.1. **Funding Contribution from the TOWN.** For those Project costs which exceed INDOT's Contribution, including any and all change orders, INDOT shall invoice the TOWN for said costs, and the Town shall pay the invoice within thirty (30) days of receipt.

1.5.2. **Funding Contribution from INDOT.** INDOT agrees to contribute toward the costs of the Project in an amount up to and including **\$1,479,491.00.** The Project must be awarded in FY 2022. If the Project is not awarded or the funds are not obligated in FY 2022, INDOT's financial responsibilities for the Project shall terminate, and the TOWN shall be solely responsible for the costs of the Project.

- 1.5.3. If, at any point in the project development or letting process, it appears that the total project cost (including construction and all other project costs) may exceed \$1,479,491.00, the Project shall be re-scoped with the input and cooperation of the Parties, considering state and local transportation system needs, surrounding infrastructure and economic development interests. However, the final revised project scope shall be determined by INDOT. If it becomes necessary to re-scope the Project, any modifications and/or additions to the current scope, shall be the sole financial responsibility of the TOWN. If re-scoping the Project is required, the Parties understand and agree that amendment of this Agreement may be necessary.
- 1.6. **Duration 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 December 31, 2024, 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. INDOT and the TOWN agree that if the Project is unable to be awarded and obligated in FY 2022, this Agreement shall terminate. INDOT shall be relieved of all obligations under this Agreement, and the TOWN agrees to release, indemnify and hold INDOT harmless for from any liability related to the Project, including any financial responsibility for the Project.
- 1.8. **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.
- 1.9. **Interpretation.** The Recitals recorded above are incorporated by reference into this Agreement.

ARTICLE II. GENERAL PROVISIONS

- 2.1. **Access to Records.** The TOWN 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 designee. Copies shall be furnished free of charge, if requested by INDOT. Copies shall be furnished at no cost to INDOT, if requested.
- 2.2. **Assignment; Successors.** The TOWN binds their successors and assignees to all the terms and conditions of this Agreement. Except as otherwise specifically provided herein, the TOWN shall not assign or subcontract the whole or any part of this Agreement without INDOT's prior written consent.

2.3. Assignment of Antitrust Claims. As part of the consideration for this Agreement, the TOWN assigns to the State all right, title and interest in and to any claims the TOWN 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 TOWN acknowledges that it may be required to submit to an audit of funds paid, if any, through this Agreement. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

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

2.6. Certification for Federal-Aid Contracts Lobbying Activities. The TOWN certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the TOWN 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 TOWN, 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 TOWN 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.

2.7. Compliance with Laws.

A. The TOWN 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 TOWN to determine whether the provisions of this Agreement require formal modification.

EXHIBIT "A"

B. The TOWN 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 TOWN 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 TOWN shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the TOWN is not familiar with these ethical requirements, the TOWN 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 TOWN or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the TOWN. In addition, the TOWN 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 TOWN warrants that the TOWN 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 TOWN and any principals of the TOWN certify that:

(A) the TOWN, 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 TOWN 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 TOWN and any principals of the TOWN certify that an affiliate or principal of the TOWN and any agent acting on behalf of the TOWN or on behalf of an affiliate or principal of the TOWN, 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.

2.8. **Condition of Payment. [OMITTED – NOT APPLICABLE.]**

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- 2.9. **Confidentiality of State Information.** [OMITTED – NOT APPLICABLE.]
- 2.10. **Continuity of Services.** [OMITTED – NOT APPLICABLE.]
- 2.11. **Debarment and Suspension.** [OMITTED – NOT APPLICABLE.]
- 2.12. **Default by State.** [OMITTED – NOT APPLICABLE.]
- 2.13. **Disputes.** [OMITTED – NOT APPLICABLE.]
- 2.14. **Drug-Free Workplace Certification.**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the TOWN hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The TOWN will give written notice to the State within ten (10) days after receiving actual notice that the TOWN, or an employee of the TOWN 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 TOWN 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 TOWN'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 TOWN'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 TOWN 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

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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.

2.15. Employment Eligibility Verification.

The TOWN affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien. The TOWN further agrees that:

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

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

C. The TOWN shall require its subcontractors, who perform work under this Agreement, to certify to The TOWN 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 TOWN 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 TOWN fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

2.16. 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.

2.17. 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 the 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.

2.18. 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.

2.19. Indemnification. The TOWN agrees to indemnify, defend, exculpate and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, to the person or property of anyone arising out of, or resulting from the performance of this Agreement or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent such liability is caused by the negligence of the TOWN, 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 TOWN. The TOWN 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 TOWN shall default under the provisions of this Section.

2.20. 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.

2.21. Non-Discrimination.

A. 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, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the TOWN covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The TOWN certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the TOWN or any subcontractor.

B. INDOT is a recipient of federal funds, and therefore, where applicable, the TOWN and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

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

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, income status, limited English proficiency, or status as a veteran.)

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

1. Compliance with Regulations: The TOWN shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: The TOWN, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The TOWN shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the TOWN 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 TOWN of the TOWN's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.
4. Information and Reports: The TOWN 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 TOWN is in the exclusive possession of another who fails or refuses furnish this information, the TOWN shall so certify to the Indiana Department of

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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 TOWN's noncompliance with the nondiscrimination provisions of this Agreement, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the TOWN under the Agreement until the TOWN complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions: The TOWN 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 TOWN 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 TOWN becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the TOWN 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 TOWN may request the United States of America to enter into such litigation to protect the interests of the United States of America.

2.22. 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: Seymour Capital Program Manager
INDOT Seymour District
185 Agrico Lane
Seymour, IN 47274

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

B. For TOWN: Mike Hostetler
Sellersburg Redevelopment Commission
316 East Utica Street
Sellersburg, IN 47172

With Copy to: Jacob C. Elder
Town Attorney
316 East Utica Street
Sellersburg, IN 47172

2.23. Payments.

A. All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the TOWN 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 TOWN has any outstanding balances on any Agreement with INDOT (including any repayment to INDOT owed under this Agreement), and such outstanding balances due to INDOT are at least sixty (60) calendar days past the due date, INDOT may proceed in accordance with IC §8-14-1-9 to invoke the powers of the Auditor of the State of Indiana to make a mandatory transfer of funds from the TOWN'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 TOWN 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 TOWN.

2.24. 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.

2.25. 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.

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

2.27. Termination for Convenience. This Agreement may be terminated, in whole or in part, by INDOT whenever, for any reason, INDOT determines that such termination is in its best interest. Termination shall be effected by delivery to the TOWN of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective.

2.28. General. This Agreement represents the entire understanding between the Parties relating to the subject matter, and supersedes any and all prior oral and/or written communications, understandings or agreements relating to the subject matter. Any amendment or modification to this Agreement must be in writing and be signed by duly authorized representatives of the Parties.). Neither this Agreement nor any portions of it may be assigned, licensed or otherwise transferred by the TOWN without the prior written consent of INDOT. This Agreement will be binding upon the Parties and their permitted successors or assigns. Failure of either Party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to

EXHIBIT "A"

enforce such provision. The headings are inserted for convenience only and do not constitute part of this Agreement.



Non-Collusion and Acceptance

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

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

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

**TOWN OF SELLERSBURG, INDIANA
REDEVELOPMENT COMMISSION**

Mike Hostetler, President

Date: _____

Date: _____

Date: _____

ATTEST:

**STATE OF INDIANA
Indiana Department of Transportation
Recommended for approval by:**

_____ (for)
Michael Smith, Commissioner
Indiana Department of Transportation

Date: _____

APPROVALS

STATE OF INDIANA
Budget Agency

By: _____ (FOR)
Zachary Q. Jackson, Director

Date: _____

STATE OF INDIANA
Department of Administration

By: _____ (FOR)
Rebecca Holwerda, Commissioner

Date: _____

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

By: _____ (FOR)
Theodore E. Rokita
Attorney General of Indiana

Date : _____

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

Marjorie A. Millman, Attorney No. 21748-36

