

**RESOLUTION NO. 2023-40**

**A RESOLUTION OF THE COUNTY COUNCIL OF HENDRICKS COUNTY, INDIANA  
APPROVING THE INTERLOCAL COOPERATION AGREEMENT BETWEEN  
THE TOWN OF PLAINFIELD, INDIANA AND HENDRICKS COUNTY, INDIANA**

WHEREAS, Indiana Code § 36-1-7 permits interlocal agreements by and between governmental entities; and

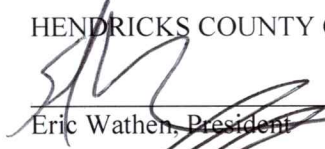
WHEREAS, The Town of Plainfield, Indiana ("Town") and Hendricks County, Indiana ("County") desire to enter into an interlocal agreement related to improvements along CR 300 S, including a new roundabout at the intersection with Avon Avenue (aka SR 267) (the "Project"); and

WHEREAS, the Hendricks County Council believes it is in the County's best interest to approve the proposed Interlocal Cooperation Agreement between the Town and County for said Project.

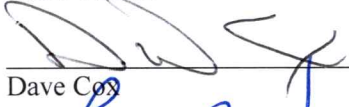
NOW, THEREFORE, BE IT RESOLVED that the Hendricks County Council, Hendricks County, Indiana, hereby approves the Interlocal Cooperation Agreement, attached hereto and made a part hereof, and identified as Exhibit A.

PASSED AND APPROVED by the Hendricks County Council, Hendricks County, Indiana this 8<sup>th</sup> day of November, 2023.

HENDRICKS COUNTY COUNCIL

  
Eric Wathen, President

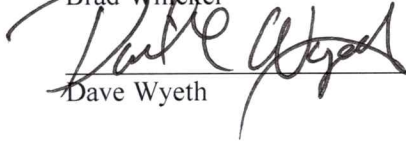
  
Caleb Brown

  
Dave Cox

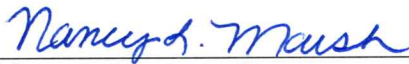
  
Larry Hesson

  
Larry Scott

  
Brad Whicker

  
Dave Wyeth

ATTEST:

  
Nancy L. Marsh, Auditor

## **EXHIBIT A**

### **GENERAL PROJECT ILLUSTRATION**

## **EXHIBIT A**

### **INTERLOCAL COOPERATION AGREEMENT BETWEEN PLAINFIELD, INDIANA AND HENDRICKS COUNTY, INDIANA**

This Interlocal Cooperation Agreement ("Agreement") is entered into by and between the Town of Plainfield ("Town") and Hendricks County, Indiana ("County") related to improvements along CR 300 S, including a new roundabout at the intersection with Avon Avenue (aka SR 267), herein referred to as the "Project".

#### **RECITALS**

WHEREAS, the Town and the County, also herein referred to as the "Parties", previously entered into an Interlocal Agreement with the Indiana Department of Transportation to transfer jurisdiction of Avon Avenue; and

WHEREAS, Avon Avenue falls under the jurisdictional authority of the Town and CR 300 S falls under the jurisdictional authority of the County; and

WHEREAS, the Town and the County share an interest and responsibility for constructing, reconstructing, improving, and maintain streets and roads located within and/or adjacent to their corporate limits; and

WHEREAS, the Town and the County, individually and collectively, have determined that the financing, design, and construction of the Project will be of desirable public utility and benefit; and

WHEREAS, pursuant to I.C. § 8-17-1-1 and I.C. § 8-17-1-2 the Town and the County may agree to assign duties and responsibilities of a joint undertaking to improve streets and roads; and

WHEREAS, accordingly, the Town and the County desire to enter into this Agreement pursuant to the authority of I.C. § 36-1-7-2 to allow for the Town to be the lead local agency for both of the Parties to construct improvements as generally illustrated as Exhibit A,

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions contained herein, the Town of Plainfield and Hendricks County mutually agree as follows:

1. **Representations.** Each party represents to the other party that:
  - a. It will submit this Agreement for approval by the party's executive and fiscal bodies as required by I.C. § 36-1-7-10;
  - b. Subject to approval by the party's executive body, it has all requisite power, authority and legal right to enter into and carry out the obligations set forth in this Agreement; and
  - c. Subject to approval by the party's executive body, it will execute this Agreement by an authorized representative, upon which execution this Agreement will constitute a valid, legally binding obligation of the party, enforceable by its terms, and the party is estopped from making a claim based upon the unenforceability of this Agreement.
2. **Obligations of the Town.** The Town shall be the lead agency on the Project and shall have the following obligations hereunder, all at its sole cost and expense except as otherwise provided for in this Agreement:
  - a. To finance, or to see financed, all improvements including but not limited to design, utility relocation, right-of-way acquisition, construction, and construction inspection to satisfactorily complete and closeout the Project as herein referenced.
  - b. Appoint a representative to act as liaison with the County.
  - c. Submit to the County the design and construction plans and specifications for the Project for review by the County, and cooperate with the County with regard to any comments the County may have regarding the plans and specifications.
  - d. Perform all activities necessary to construct the Project, including but not limited to design, engineering, environmental due diligence, testing and remediation, utility relocation, construction, and construction inspection.
  - e. Acquire all rights-of-way required to construct the Project, including from properties outside the corporate limits of the Town, by whatever means it deems necessary and appropriate, including through the exercise of eminent domain, as authorized under § 3.x of this Agreement.
  - f. Comply with all applicable rules, regulations, ordinances, statutes and law concerning the Project.
  - g. Obtain all necessary permits required to construct the Project.
  - h. Maintain the Project in perpetuity at its sole cost and expense.

- i. Agree not to discriminate, and agree to require each of its contractors on the Project to agree in writing not to discriminate, against any employee or applicant for employment to be employed in the performance of the Project with respect to her or his hire, tenure, terms, conditions, or privilege of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identify, color, national origin, ancestry, age, disability, or United States military service veteran status.
  - j. Before the Agreement takes effect, the Town shall:
    - i. Record the Agreement with the County Recorder;
    - ii. File the Agreement with the County Auditor and the Town Executive;
3. **Obligations of the County.** The County shall have the following obligations hereunder:
  - a. Appoint a representative to act as liaison with the County.
  - b. Review and comment on all Project submissions of design and construction plans and specifications.
  - c. Cooperate with the Town in obtaining any required permits.
  - d. Consent to the Town's acquisition of right-of-way outside the corporate limits of the Town required to construct the Project, including consent for the Town to exercise eminent domain to acquire such right-of-way. The County hereby acknowledges and agrees that the Town may acquire such right-of-way outside the corporate limits of the Town. The County will cooperate in providing the Town any assistance necessary to acquire legal right-of-way property required for the Project.
  - e. The County agrees to make a single payment not to exceed **\$800,409** to the Town, no later than 90 days from the date the Town accepts the improvements from the contractor. Receipt of payment by the Town shall constitute the termination of this Agreement and the Parties acknowledge that the jurisdictional authority of the entire right-of-way wherein the Project improvements are constructed shall forever be considered the responsibility of the Town.
4. **Joint Undertaking.** The parties hereby acknowledge and agree that the purpose and intent of this Agreement is not to undertake the joint exercise of power within the meaning of I.C. § 36-1-7-2(a) and, therefore, this Agreement need not address other matters related to the financing, staffing, budget, administration through a joint board or separate legal entity, or the manner of acquiring, holding and disposing of real and personal property of a joint undertaking. There will be no jointly held property under this Agreement; however, in the event there is other jointly held property, it shall be distributed to the Town.
5. **Dispute Resolution.** Any disputes that may arise under this Agreement shall be resolved by the parties' respective executive officers, or their designees. Failing resolution by the executive officers, the parties shall submit the dispute to mediation. Failing resolution of the dispute by mediation, either party may institute a suit in a court of law as provided for in Section 12 hereof.

6. Effective Date. This Agreement shall be effective upon the latest date of: (a) adoption of appropriate resolutions or ordinances approving this Agreement by the fiscal body of each party; (b) execution by the parties; or (c) recordation of this Agreement with the Recorder of Hendricks County.

7. Term.

- a. This Agreement shall be in effect until the later of: (i) completion of the Project; or (ii) the Town receives payment outlined under § 3e; unless this Agreement has been otherwise terminated or the term hereof extended. If the Project is not finally completed within a four (4) year period from the Effective Date, the parties will cooperate to extend the term hereof.
- b. Section 7.a. notwithstanding, the following Sections shall survive termination or expiration of this Agreement, unless otherwise specifically terminated by written agreement of the parties:
  - i. Section 2.h. (maintenance of the Project);
  - ii. Section 5 (dispute resolution);
  - iii. Section 9.a. (indemnification of Hendricks County); and
  - iv. Section 12 (applicable law; suit).

8. Notice.

- a. With regard to routine communications concerning the Project and communications regarding review and approval of Project plans and specifications acknowledged under Sections 2.c and 3.b, the Parties' respective authorized representatives may communicate directly by whatever means they deem most effective and efficient.
- b. Any other type of formal notice required to be provided under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To Hendricks County:

John E. Ayers, P.E.  
Hendricks County Engineer  
355 S. Washington Street #209  
Danville, IN 46122

To the Town of Plainfield:

Scott Singleton  
Transportation Director  
206 W. Main Street  
Plainfield, IN 46168

9. Indemnification.

- a. The Town of Plainfield hereby agrees to indemnify, defend, exculpate, and hold harmless Hendricks County and its officers, employees and agents, from and against any and all claims, suits and liabilities of any kind or character, including reasonable attorneys' fees ("Claims") which result or arise from any negligent acts or omissions of the Town or those for whom the Town is responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of the Town's duties

or responsibilities under this Agreement, including construction and maintenance of the Project. Notwithstanding the preceding sentence, the obligation of the Town to indemnify, defend, exculpate, and hold harmless Hendricks County shall only arise if the Town would also be liable under I.C. 34-13-3, as may be amended from time to time. Furthermore, the liability of the Town shall be limited by the provisions of I.C. 34-13-3, as may be amended from time to time. The Town shall include in any contracts pertaining to the Project appropriate clauses to extend any indemnification and hold harmless obligation of its contractors in favor of the Hendricks County.


- b. Hendricks County agrees to indemnify, defend, exculpate, and hold harmless the Town and its respective officers, employees and agents, from and against Claims, including reasonable attorneys' fees, which result or arise from any negligent acts or omissions of Hendricks County or those for whom Hendricks County is responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of the duties or responsibilities of Hendricks County under this Agreement. Notwithstanding the preceding sentence, the obligation of Hendricks County to indemnify, defend, exculpate, and hold harmless the Town shall only arise if Hendricks County would also be liable under I.C. 34-13-3, as may be amended from time to time. Furthermore, the liability of Hendricks County shall be limited by the provisions of I.C. 34-13-3, as may be amended from time to time.
10. Modification. The parties may alter, change or amend the terms and conditions of this Agreement only by mutual written agreement approved by the executive of the County and the fiscal body of each party.
11. Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties with respect to its subject matter, supersedes any prior discussions, negotiations, and understandings between them, and cannot be altered, changed or amended except as provided for in Section 10 hereof. The parties acknowledge that neither Hendricks County or the Town of Plainfield, nor any of their respective officers, employees, or agents have made any representations relied upon by any other party other than the agreements contained herein.
12. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Indiana. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency. Suit, if any, shall be brought in the State of Indiana, County of Hendricks.
13. Interpretation. The parties hereby acknowledge and agree that is Agreement is the result of negotiations between the parties and their respective legal counsel, and no party shall be deemed to be the drafter of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against either party.
14. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates specified below.

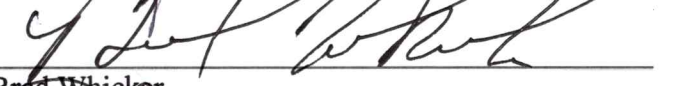
APPROVED by the Hendricks County Council by [resolution/ordinance] adopted Nov 8, 2023.  
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HENDRICKS COUNTY COUNCIL

  
Eric Wathen, President

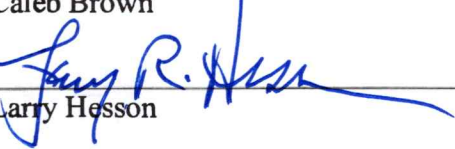
  
David Cox

  
Larry Scott

  
Brad Whicker

  
Dave Wyeth

  
Caleb Brown

  
Larry Hesson

ATTEST:

Nancy L. Maush



APPROVED by the Hendricks County Commissioners by resolution adopted \_\_\_\_\_, 2023.

HENDRICKS COUNTY BOARD OF  
COMMISSIONERS

\_\_\_\_\_  
Phyllis A. Palmer

\_\_\_\_\_  
Bob Gentry

\_\_\_\_\_  
Dennis W. Dawes

ATTEST:

*Nancy L. Maush*

APPROVED by the Plainfield Town Council by [resolution/ordinance] adopted \_\_\_\_\_, 2023

TOWN COUNCIL, TOWN OF PLAINFIELD  
HENDRICKS COUNTY, INDIANA

\_\_\_\_\_  
Robin G. Brandgard, President

\_\_\_\_\_  
Bill Kirchoff, Vice-President

\_\_\_\_\_  
Kent McPhail

\_\_\_\_\_  
Dan Bridget

\_\_\_\_\_  
Lance K. Angle

ATTEST:

\_\_\_\_\_  
Mark J. Todisco  
Clerk-Treasurer, Town of Plainfield

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
This document was prepared by Melvin R. Daniel, Town Attorney for Plainfield, Indiana, Taft Stettinius & Hollister LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204.