

2024-04

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
AVON, INDIANA AND
HENDRICKS COUNTY, INDIANA**

This Interlocal Cooperation Agreement (“Agreement”) is entered into by and between the Town of Avon (“Town”) and Hendricks County, Indiana (“County”) related to a bridge improvement on Bridge 290 on Dan Jones Road over CSX Railroad (herein after referred to as the “Project”).

RECITALS

Whereas, the Town desires have certain design features incorporated into the Project; and

Whereas, the County has jurisdictional authority over the Bridge and has taken the lead in overseeing the Project; and

Whereas, the Town and the County recognize that improvements to Bridge 290 will provide benefits to the residents of the County, the Town, and to the traveling public and that these improvements will enhance roadway safety; and

Whereas, the Town and the County agree that the realization of these mutual benefits are best accomplished through mutual cooperation in the development of the Project; and

Whereas, the Town and the County each have the authority, either separately or jointly with other municipalities or other units of local government, to design and construct roads, bridges, streets, and to complete projects which are the same as the Project contemplated by the parties in this Agreement, and the parties desire to exercise

their powers reciprocally and jointly, under Indiana Code I.C. 36-1-7-2(a) and I.C. 36-1-7-9; and

Whereas, the Town and the County now wish to formalize their agreement regarding the Project and enter into a binding interlocal governmental cooperation agreement which will articulate the terms and conditions of their agreement.

It is, therefore, agreed that the Town and the County will cooperate in the development of the Project, under the following terms and conditions:

1. Project Summary: The Project will entail the reconstruction and widening of existing Bridge 290 over CSX Railroad and approximately 1,660 lineal feet of approach roadway with a typical cross section to include four (4) twelve (12) foot lanes, a four (4) foot median, and pedestrian walkways on both sides.

2. Hendricks County's Obligations: The County agrees to perform the following:

a. Lead Agency: The County will be the lead agency on the Project and be primarily responsible for advancing the Project through contract agreements with professional consultants, including purchasing public rights-of-way and easements necessary for the Project, bidding the Project for construction, providing for construction inspection services, and making all required filing and applications with State and Federal agencies;

b. The County will provide the Town with the opportunity to review and submit written comments regarding the plans, designs, and specifications for the elements applicable to the Town.

c. Funding. The County will fund or secure funding for the design and construction of the new bridge and all other costs associated with the Project except as described in Section 3(c) below.

d. General: The County will use its best efforts to perform its obligations and to otherwise complete the Project. During construction, the

County will be responsible for all traffic safety measures including but not limited to road/lane closures, establishing detours, temporary speed limits, and all other necessary traffic safety measures.

e. The County shall provide in a timely manner to the Town any change orders affecting the costs of the subject items for their review and concurrence.

f. Maintenance After Construction. After the completion of the Project, the County shall control and maintain the bridge pursuant to Indiana Code.

3. The Town's Obligations: The Town agrees to the following:

a. Review Bridge Design. The Town will review all proposed bridge plans, designs, and specifications, and provide the County with comments. The Town shall provide any feedback in a timely manner as to not hinder or delay the Project.

b. The Town will allow the County to construct the bridge as detailed in the County's design and plan. The Town will take no action to prohibit the County or its designees, contractors, officials, or other representees from accessing the property and bridge to complete this work. The Town will execute any and all documents necessary and otherwise assist the County in the design, construction and completion of the bridge.

c. Funding. The Town shall be responsible for funding the items it wishes to be included in the Project as listed in the Addendum attached hereto and incorporated as part of this Agreement. The funding amount will be the actual amount of the construction bids received for those items. Following receipt of the bids, the Town shall have five (5) days to review the bids and agree to funding those items. If the Town does not agree to fund

the items as listed in the bid, the County may award the contract with those items omitted.

d. Payment. The Town will make payment for the subject items to the County as follows: \$750,000 will be paid to the County within 30 days of the award of the construction contract, with the balance to be paid by March 1, 2025. Any increase or decrease in the cost of those items through change orders by the completion of the contract will be either paid by the Town to the County or refunded to the Town by the County at the completion of the Project.

4. Timeline for Project: Construction on the Project is anticipated to commence in 2024, and be completed (final completion) and open for traffic in 2026.

5. Modification: The terms and conditions of this Agreement may be modified only by the execution of a written agreement of the parties.

6. Approvals and Filings: This Agreement will not take effect and be binding upon the parties until both the Avon Town Council and the Hendricks County Board of Commissioners approve this Agreement by Ordinance or Resolution and, pursuant to I.C. 36-1-7-10, this Agreement is approved by the Hendricks County Council, recorded with the Hendricks County Recorder and a recorded copy is filed with the Avon Town Council President, the Hendricks County Auditor, and the Auditor of the State of Indiana.

7. Term of Agreement: The term of this Agreement will be from the date it is approved as provided for in paragraph six and will end 90 days after the final completion of the Project, however, pursuant to I.C. 36-1-7-9(b)(1), the duration of this Agreement shall not exceed four (4) years.

8. Purpose: The purpose of this Agreement is for the design, construction, and coordination of the Project, as described in this Agreement.

9. Financing and Administration: This Agreement provides that the County will fund or secure funding for all expenses of the Project and this Agreement. The parties do

not intend to provide staffing and supplies for the Project. Each party will provide their own separate staffing and supplies as needed to perform its respective obligations under the terms and conditions of this Agreement. To the extent that each party will perform its own obligations, there will be no budget for the joint undertaking.

10. Property: The parties do not intend to jointly acquire, hold or dispose of real property or personal property as part of this Agreement.

11. Fiscal Officer: The Hendricks County Auditor will serve as the fiscal agent for the undertaking and will be responsible for receiving, disbursing and accounting for all monies of the undertaking.

12. Survival of Covenants: Although this Agreement primarily concerns the construction of the Project, the parties agree that the covenants contained in paragraphs 2, 3, 5, 9, and 13 will survive and be enforceable by either party after the expiration of the term of this Agreement.

13. Breach: In the event that a party breaches this Agreement, the nonbreaching party must provide notice of the breach to the other party. This notice must specifically state the alleged breach and provide the manner in which the alleged breach may be cured. The party receiving the notice of breach must cure the breach within 15 days of receipt of the notice of breach or at such other time as agreed to by the parties. If the party fails to cure the alleged breach, the non-breaching party may enforce this Agreement and is entitled to any and all remedies provided for by Indiana law, including but not limited to damages, injunctive and equitable relief. In addition, the nonbreaching party is entitled to recover from the breaching party reasonable attorney's fees, court costs and the cost of litigation if it files litigation because of the breach. The pursuit of one remedy by a party is not a waiver of the other remedies provided for in this Agreement. No action or inaction on behalf of a nonbreaching party will be deemed a waiver of any breach. A waiver of breach must be in writing and provided to the other party.

14. Governing Law: The laws of the State of Indiana control this Agreement and any dispute regarding the terms and conditions of this Agreement.

15. General: This Agreement contains the parties' entire agreement. No verbal agreements are enforceable. This Agreement is binding upon and will inure to the benefit of the parties. This Agreement may not be assigned.

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

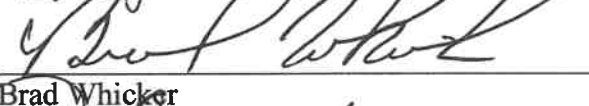
APPROVED by the Hendricks County Council by resolution adopted _____, 2024.

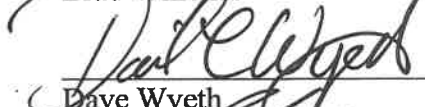
HENDRICKS COUNTY COUNCIL


Eric Wathen, President

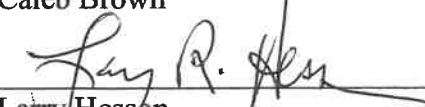

David Cox


Larry Scott

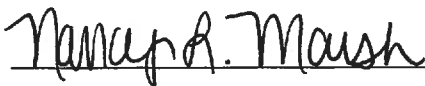

Brad Whicker


Dave Wyeth


Caleb Brown


Larry Hesson

ATTEST:


Nancy A. Marsh

APPROVED by the Hendricks County Commissioners by resolution adopted _____, 2024.

HENDRICKS COUNTY BOARD OF
COMMISSIONERS

Phyllis A. Palmer

Bob Gentry

Dennis W. Dawes

ATTEST:

ADDENDUM