

2024-05

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN  
THE CITY OF INDIANAPOLIS  
BY AND THROUGH ITS DEPARTMENT OF PUBLIC WORKS  
AND  
HENDRICKS COUNTY, INDIANA**

This Interlocal Cooperation Agreement ("Agreement") is entered into by and between the Consolidated City of Indianapolis and Marion County, Indiana, by and through its Department of Public Works ("City"), and the Hendricks County, Indiana ("Hendricks County") related to the replacement of Hendricks County Bridge 39 on Raceway Road approximately 0.7 miles north of CR 100 North/10<sup>th</sup> Street ("Project.")

**RECITALS**

WHEREAS, I.C. § 8-17-1-45 provides that each county is responsible for the construction, reconstruction, maintenance, and operation of the roads, including the ditches and signs for those roads, making up its southern and eastern boundaries; and

WHEREAS, Raceway Road forms the boundary between Hendricks County and Marion County, and is Hendricks County's eastern boundary; therefore, Hendricks County is responsible for the construction, reconstruction, maintenance, and operation of Raceway Road including any bridge or culvert structure; and

WHEREAS, pursuant to I.C. § 36-1-3-9(a), Hendricks County has jurisdiction over of those portions of Raceway Road within its borders; and

WHEREAS, Raceway Road is a major roadway which serves and affects the citizens of and the economic well-being of Indianapolis and Hendricks County; and

WHEREAS, Hendricks County Bridge 39 has been determined to be in need of replacement in order to safely serve the users of Raceway Road; and

WHEREAS, in order to construct the Project, it is necessary for Hendricks County to acquire, manage and regulate right-of-way and conduct construction activities within the borders of the City; and

WHEREAS, pursuant to I.C. § 36-1-4-18, Hendricks County may exercise powers granted by I.C. § 36-1-4-5 (power to acquire real and personal property by eminent domain or other means) and I.C. § 36-1-4-6 (power to use, improve, develop, insure, protect, maintain, lease and dispose of interests in property) within four (4) miles outside its boundaries, and pursuant to I.C. § 36-1-3-9(c) Hendricks County may exercise such powers within the boundaries of another municipality, such as the City, pursuant to an interlocal cooperation agreement under I.C. 36-1-7; and

WHEREAS, accordingly, Hendricks County and the City desire to enter into this Agreement pursuant to the authority of I.C. §§ 8-17-1-45(b), 36-1-3-9(c) and 36-1-7-2 to allow for the County to acquire right-of-way, to manage such right-of-way, and to conduct construction activities within the boundaries of the City as necessary for completion of the Project.

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions contained herein, the City and Hendricks County 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 fiscal body as required by I.C. § 36-1-7-4;
- b. Subject to approval by the party's fiscal 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 fiscal 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 Hendricks County. Hendricks County shall be the lead agency on the Project and shall have the following obligations hereunder:

- a. Appoint a representative to act as liaison with the City.
- b. Submit to the City the design and construction plans and specifications for review and approval by the City and cooperate with the City with regard to any comments the City may have regarding the plans and specifications.
- c. Perform all activities necessary to construct the Project, including but not limited to design, engineering, environmental due diligence, testing and remediation, utility relocation, public bidding and contracting, construction, and construction inspection, including within the borders of Indianapolis and Marion County, at its sole cost and expense.
- d. Acquire all right-of-way required to construct the Project, including within the boundaries of Indianapolis and Marion County, by whatever means it deems necessary and appropriate, including through the exercise of eminent domain, at its sole cost and expense. Any such property interests acquired by Hendricks County shall be held in the name of Hendricks County.
- e. Include in any contract pertaining to the Project an appropriate clause indemnifying the City as set forth in Section 9 hereof and cause the Consolidated City of Indianapolis and Marion County to be named as an additional insured on all insurance policies related to construction of the Project, including those policies of insurance carried by design professionals, construction contractors and construction inspectors, at its sole cost and expense.
- f. Comply with all applicable rules, regulations, ordinances, statutes and law concerning the Project, at its sole cost and expense.
- g. Obtain all necessary permits required to construct the Project, at its sole cost and expense.

- h. Maintain the Project improvements, at its sole cost and expense.
- i. Regulate, by ordinance, rule, regulation or otherwise, all uses of the right-of-way acquired for the Project, including within the boundaries of Indianapolis and Marion County.
- j. 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 identity, color, national origin, ancestry, age, disability, or United States military service veteran status.
- k. Within fifteen (15) days of full approval and execution of this Agreement, record this Agreement with the Office of the Hendricks County Recorder and the Office of the Marion County Recorder as required by I.C. § 36-1-7-6.
- l. Within sixty (60) days of the Effective Date of this Agreement (as defined in Section 6 below), file a copy of this Agreement with the Indiana State Board of Accounts as required by I.C. § 36-1-7-6.

3. Obligations of the City. The City shall have the following obligations hereunder:

- a. Appoint a representative to act as liaison with Hendricks County.
- b. Cooperate with Hendricks County in the review of the design and construction plans and specifications for the Project. The City shall respond with its comments and/or approval of the plans and specifications within fifteen (15) days of submittal by Hendricks County. The City's approval shall not be unreasonably withheld. Failure by the City to respond within this timeframe shall be deemed an approval of the plans and specifications by the City.
- c. Consent to Hendricks County's acquisition of right-of-way required to construct the Project within the boundaries of Indianapolis and Marion County, including consent for Hendricks County to exercise eminent domain to acquire such right-of-way. The City hereby acknowledges and agrees that Hendricks County may acquire such right-of-way in Hendricks County's name within the boundaries of Indianapolis and Marion County.
- d. Cooperate with Hendricks County in obtaining any required permits.
- e. Consent to Hendricks County's regulation of the uses of the right-of-way acquired for the Project within the boundaries of Indianapolis and Marion County. The City hereby acknowledges and agrees that Hendricks County may enact ordinances, rules, or regulations regarding the use of right-of-way acquired for the Project within the boundaries of Indianapolis and Marion County.

Notwithstanding any provision in this Agreement to the contrary, the City shall not be financially responsible for any cost associated with the Project.

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 Hendricks County.

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 and the Recorder of Marion County.

7. Term.

a. This Agreement shall be in effect until the later of: (i) completion of the Project; or (ii) four (4) years from the Effective Date; unless this Agreement has been otherwise terminated or the term hereof extended. If the Project is not finally completed within the above-stated four (4) year period, 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 2.i. (Hendricks County's regulation of right-of-way);
- iii. Section 3.e. (City's consent to regulation of right-of-way);
- iv. Section 5 (dispute resolution);
- v. Section 9.a. (indemnification of the City); and
- vi. 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 for review and approval under Sections 2.b. 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 City:**

Department of Public Works  
Attention: Director  
City of Indianapolis  
200 East Washington Street  
Suite 2421  
Indianapolis, IN 46204

**9. Indemnification.**

a. Hendricks County hereby agrees to indemnify, defend, exculpate, and hold harmless the City 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 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 Hendricks County's duties or responsibilities under this Agreement, including construction and maintenance of the Project. Notwithstanding the preceding sentence, the obligation of Hendricks County to indemnify, defend, exculpate, and hold harmless the City 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. Hendricks County 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 Consolidated City of Indianapolis and Marion County.

b. The City agrees to indemnify, defend, exculpate, and hold harmless the Hendricks County 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 the City or those for whom the City is responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of the duties or responsibilities of the City under this Agreement. Notwithstanding the preceding sentence, the obligation of the City to indemnify, defend, exculpate, and hold harmless Hendricks County shall only arise if the City would also be liable under I.C. 34-13-3, as may be amended from time to time. Furthermore, the liability of the City 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 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 City, 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 Boone.

13. Interpretation. The parties hereby acknowledge and agree that this 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.

[The remainder of this page left blank intentionally]

HENDRICKS COUNTY, INDIANA BOARD OF COMMISSIONERS

By: Phyllis A. Palmer  
Phyllis A. Palmer, President

By: Bob Gentry  
Bob Gentry, Vice President

Date: 11-14-2023

Date: 11-14-2023

By: Dennis W. Dawes  
Dennis W. Dawes, Member

Date: 11-14-2023

Approved by the Hendricks County Commissioners by [resolution/ordinance] adopted 11/14/23, 2023.

APPROVED AS TO LEGAL FORM:

Gregory Steuerwald  
Gregory Steuerwald, County Attorney

ATTEST:

Nancy Marsh  
Nancy Marsh  
County Auditor

STATE OF INDIANA )  
COUNTY OF HENDRICKS ) SS:

Before me, the undersigned Notary Public in and for said County and State, personally appeared Phyllis A. Palmer, President, Bob Gentry, Vice President, and Dennis W. Dawes, Member, of the Hendricks County Board of Commissioners, each of whom acknowledged the execution of the foregoing Interlocal Cooperation Agreement for and on behalf of Hendricks County.

Witnesses my hand and Notarial Seal this 14<sup>th</sup> day of November, 2023

May 21, 2029  
Commission Expiration Date

Putnam  
County of Residence

Mila M. Shaffer  
Notary Public Signature

Mila M. Shaffer  
Notary Public Signature



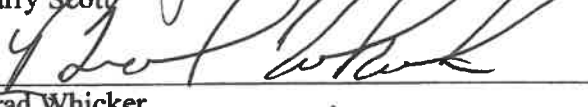
Approved by the Hendricks County Council by [resolution/ordinance] adopted \_\_\_\_\_,  
2023.

HENDRICKS COUNTY COUNCIL


  
Eric Wathen, President

  
David Cox

  
Larry Scott

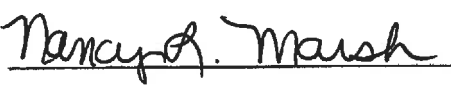
  
Brad Whicker

  
Dave Wyeth

  
Caleb Brown

  
Larry Hesson

ATTEST:

  
Nancy D. Marsh



CONSOLIDATED CITY OF INDIANAPOLIS  
AND MARION COUNTY, by and through its  
DEPARTMENT OF PUBLIC WORKS

By: \_\_\_\_\_  
Brandon Herget, Director

Approved by the City-County Council of the Consolidated City of Indianapolis and Marion  
County by Special Ordinance \_\_\_\_\_, 2023 adopted \_\_\_\_\_, 2023

ATTEST:

\_\_\_\_\_  
Clerk of the City-County Council

APPROVED AS TO LEGAL FORM:

APPROVED FOR EXECUTION:

\_\_\_\_\_  
Robert M. Frye, Asst. Corp. Counsel

\_\_\_\_\_  
Sarah Steele Riordan, City Controller

STATE OF INDIANA                     )  
  ) SS:  
COUNTY OF MARION                 )

Before me, the undersigned Notary Public in and for said County and State, personally  
appeared Brandon Herget, Director of the Department of Public Works, who acknowledged the  
execution of the foregoing Interlocal Cooperation Agreement for and on behalf of the  
Department of Public Works of the Consolidated City of Indianapolis and Marion County.

Witnesses my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Commission Expiration Date

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
County of Residence

\_\_\_\_\_  
Notary Public Signature

This document was prepared by Robert M. Frye, Assistant Corporation Counsel, City of  
Indianapolis, and Gregory Steuerwald, County Attorney for Hendricks County, Indiana.

We affirm, under the penalties for perjury, that I have taken reasonable care to redact each  
Social Security Number in this document, unless required by law. /s/Robert M. Frye and  
Gregory Steuerwald