

RESOLUTION NO. 2024-10

**A RESOLUTION OF THE COUNTY COMMISSIONERS OF HENDRICKS COUNTY,
INDIANA APPROVING THE INTERLOCAL COOPERATION AGREEMENT
BETWEEN MORGAN COUNTY, INDIANA AND HENDRICKS COUNTY, INDIANA**

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

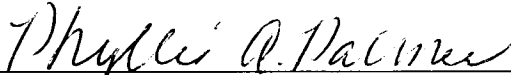
WHEREAS, Morgan County, Indiana (“Morgan County”) and Hendricks County, Indiana (“Hendricks County”) desire to enter into an interlocal agreement related to improvements at the intersection of Hendricks County Road and Old State Road 267; and

WHEREAS, the Hendricks County Board of Commissioners believe it is in the County’s best interest to approve the proposed Interlocal Cooperation Agreement between Hendricks County and Morgan County for said Project.

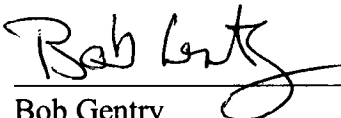
NOW, THEREFORE, BE IT RESOLVED that the Hendricks County Board of Commissioners, Hendricks County, Indiana, hereby approve the Interlocal Cooperation Agreement, attached hereto and made a part hereof, and identified as Exhibit A.

APPROVED AND ADOPTED at a public meeting of the Hendricks County Board of Commissioners after statutory notice given on 12th day of March, 2024.

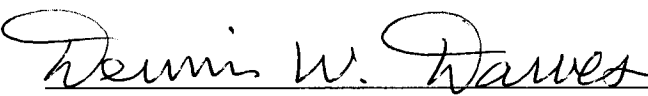
HENDRICKS COUNTY BOARD OF COMMISSIONERS



Phyllis A. Palmer

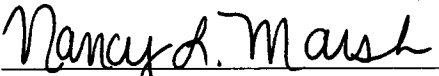


Bob Gentry



Dennis W. Dawes

ATTEST:



Nancy L. Marsh, Auditor

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

This Interlocal Cooperation Agreement ("Agreement") is entered into by and between, Morgan County, Indiana ("Morgan County") and Hendricks County, Indiana ("Hendricks County") related to the Hendricks County intersection improvements at the intersection of Hendricks County Road and Old State Road 267 ("the Project")

RECITALS

WHEREAS, I.C. § 8-17-1-45(a) 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, Hendricks County Road forms the boundary between Hendricks County and Morgan County, and is Hendricks County's southern boundary; therefore, Hendricks County is responsible for the construction, reconstruction, maintenance, and operation of Hendricks County Road pursuant to I.C. § 8-17-1-45; and

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

WHEREAS, the intersection of Hendricks County Road and Old State Road 267 has been determined to be in need of improvements in order to safely serve the users of Hendricks County Road; and

WHEREAS, Morgan County and Hendricks County, individually and collectively, have determined that the financing, design, and construction of intersection improvements (the "Project") will be of public utility and benefit; 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 Morgan County; and

WHEREAS, , 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 the boundaries of another county pursuant to an interlocal cooperation agreement under I.C. 36-1-7; and

WHEREAS, pursuant to I.C. § 36-1-7-2, a power that may be exercised by a political subdivision and by one or more other governmental entities may be exercised (1) by one or more entities on behalf of others, or (2) jointly by the entities, if the executive of the entities enters into a written interlocal cooperation agreement as approved by ordinance or resolution; and

WHEREAS, accordingly, Hendricks County and Morgan County desire to enter into this Agreement pursuant to the authority of I.C. §§ 8-17-1-45(b) and 36-1-7-2 for the purpose to allow Hendricks County to acquire right-of-way, to manage such right-of-way, and to conduct

construction activities within the boundaries of Morgan County as necessary for completion of the Project.

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions contained herein, Morgan County 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, either before or after the agreement is entered into by the executive of each party, per I.C. § 36-1-7-4 (a)(2); and

b. Subject to approval by the party's executive, by ordinance or resolution, and 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 executive, it will execute this Agreement by an authorized representative, upon which execution of this Agreement and approval by the fiscal body, 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 Morgan County.

b. Submit to Morgan County the design and construction plans, specifications, and schedule of work for review and approval by Morgan County and cooperate with Morgan County with regard to any comments Morgan County 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 Morgan County, at its sole cost and expense.

d. Acquire all right-of-way required to construct the Project, including within the boundaries of Morgan 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 Morgan County as set forth in Section 9 hereof and cause Morgan 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 Morgan 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 Morgan 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.
- m. The Hendricks County Auditor shall serve as the disbursing officer to receive, disburse, and account for all monies related to the Project.

3. Obligations of Morgan County. Morgan County 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, specifications and schedule of work for the Project. Morgan County shall respond with its comments and/or approval of the plans and specifications within fifteen (15) days of submittal by Hendricks County. Morgan County's approval shall not be unreasonably withheld. Failure by Morgan County to respond within this timeframe shall be deemed an approval of the plans and specifications by Morgan County.
- c. Consent to Hendricks County's acquisition of right-of-way required to construct the Project within the boundaries of Morgan County, including consent for Hendricks County to exercise eminent domain to acquire such right-of-way. Morgan County hereby acknowledges and agrees that Hendricks County may acquire such right-of-way in Hendricks County's name within the boundaries of Morgan 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 Morgan County. Morgan County 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 Morgan County.

Notwithstanding any provision in this Agreement to the contrary, Morgan County 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. All real estate interests acquired by Hendricks County for the Project pursuant to this Agreement shall be acquired and held in the name of 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 executive of each party; (b) approval by the fiscal body of each party; (c) execution of the Agreement by the parties; or (d) recordation of this Agreement with the Recorder of Hendricks County and the Recorder of Morgan County.

7. Term and Termination.

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 by written agreement of the parties. 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. Notice by either party to terminate this Agreement shall be given in writing, sixty (60) days in advance, as provided in Section 8.b.

c. 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. (Morgan County's consent to regulation of right-of-way);

- iv. Section 5 (dispute resolution);
- v. Section 9.a. and 9.b. (indemnification of both Counties); 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 Suite G20
Danville, IN 46122

To Morgan County:

Justin Schneck, P.E.
Morgan County Engineer
5400 Blue Bluff Road
Martinsville, IN 46151

9. Indemnification.

a. Hendricks County hereby agrees to indemnify, defend, exculpate, and hold harmless Morgan 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 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 Morgan County 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 Morgan County.

b. Morgan County 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 Morgan County or those for whom Morgan 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 Morgan County under this Agreement. Notwithstanding the preceding sentence, the obligation of Morgan County to indemnify, defend, exculpate, and hold harmless Hendricks County

shall only arise if Morgan County would also be liable under I.C. 34-13-3, as may be amended from time to time. Furthermore, the liability of Morgan 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 and fiscal bodies of each party. Hendricks County shall record the revised Agreement with the Recorders in Hendricks County and Morgan County and file the revised Agreement with the State Board of Accounts as required by I.C. § 36-1-7-6.

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 Morgan County, 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.

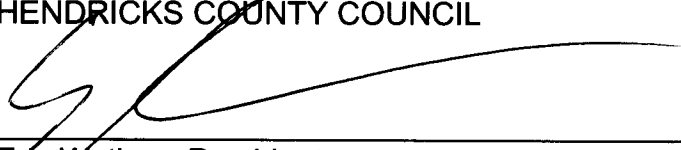
14. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.


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

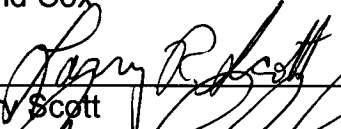
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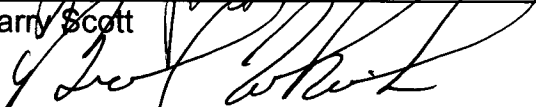
Approved by the Hendricks County Council by on March 19, 2024.

HENDRICKS COUNTY COUNCIL



Eric Wathen, President


David Cox


Larry Scott

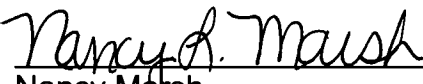

Brad Whicker


Dave Wyeth


Caleb Brown


Larry Hesson

ATTEST:


Nancy Marsh
County Auditor