

**COMMON COUNCIL OF THE CITY OF HOBART, INDIANA**

**Resolution No. 2017-06**

**A Resolution to Adopt and Approve an Interlocal Agreement with the Indiana Department of Transportation to provide for the Resurfacing of State Road 51**

WHEREAS, the Common Council (“Council”) of the City of Hobart, Indiana (“City”) has received a proposed Interlocal Agreement by and between the City and the Indiana Department of Transportation (“INDOT”), an instrumentality of the State of Indiana, to provide for the resurfacing of State Road 51 in the City; and

WHEREAS, said Agreement, which is attached hereto and made a part hereof, allocates duties responsibilities and costs between the City and INDOT with respect to the City’s construction of certain aesthetic improvements to and along State Road 51 within its corporate limits, as part of the Downtown Streetscape Project which aesthetic improvements are being built pursuant to an INDOT – Local Public Agency Project Coordination Agreement (EDS No. A249-14-320769), under Des. No. 0810541, attached as Exhibit B to the Agreement attached; and

WHEREAS, said Agreement will take effect upon its adoption by both governmental entities, and continue in effect until the conclusion of the resurfacing and Streetscape projects; and

WHEREAS, a power that may be exercised by an Indiana political subdivision and by one (1) or more other governmental entities may be exercised by one or more entities on behalf of others; or jointly by the entities pursuant to I.C. §36-1-7-2; and

WHEREAS, the Council, in order to make the proposed Interlocal Agreement effective under the law, desires to enact this Resolution approving and adopting said Agreements and spreading same upon the public record.

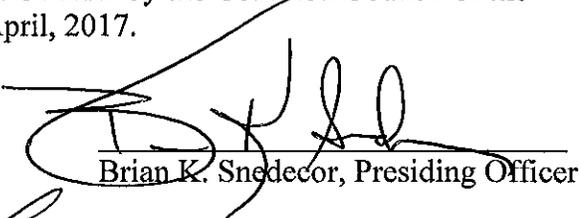
THEREFORE, BE IT RESOLVED by the Common Council of the City of Hobart, Indiana as follows:

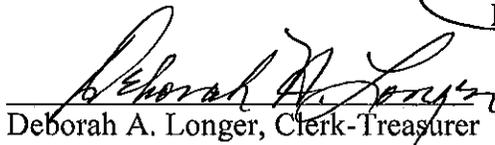
SECTION ONE: The Interlocal Agreement by and between the City and INDOT to provide for the resurfacing of State Road 51 in the City, substantially in accord with the attached Agreement, is hereby approved and adopted in all respects, and the City Executive and Clerk-Treasurer are authorized to execute and attest to same, or one substantially in conformance with it, on behalf of the City; and

SECTION TWO: Upon such execution, the instrument attached hereto shall constitute the valid and subsisting agreement of the City for the uses and purposes stated therein.

SECTION THREE: The provisions of said Agreement in its entirety are specifically incorporated herein by reference as if fully set out as an integral part of this Resolution.

ALL OF WHICH is PASSED and ADOPTED by the Common Council of the City of Hobart, Indiana on this 19th day of April, 2017.

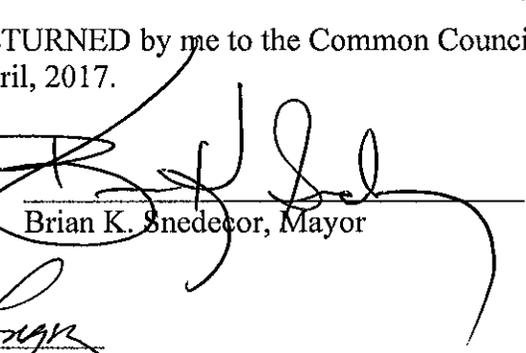
  
Brian K. Snedecor, Presiding Officer

ATTEST:   
Deborah A. Longer, Clerk-Treasurer

PRESENTED by me to the Mayor of the City of Hobart on the 19<sup>th</sup> day of April, 2017 at the hour of 6:45 p.m.

  
Deborah A. Longer, Clerk-Treasurer

APPROVED, EXECUTED and RETURNED by me to the Common Council of the City of Hobart on this 19<sup>th</sup> day of April, 2017.

  
Brian K. Snedecor, Mayor

ATTEST:   
Deborah A. Longer, Clerk-Treasurer

**INTERLOCAL COOPERATIVE AGREEMENT**  
**Between**  
**THE INDIANA DEPARTMENT OF TRANSPORTATION**  
**And**  
**THE CITY OF HOBART**  
**Concerning**  
**THE RESURFACING OF STATE ROAD 51**

EDS # \_\_\_\_\_

This INTERLOCAL COOPERATIVE AGREEMENT (this "Agreement") is made and entered into this 19<sup>th</sup> day of APRIL 2017, by and between the INDIANA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "INDOT"), and the CITY OF HOBART, INDIANA (hereinafter referred to as the "CITY"), and jointly referred to as the "PARTIES".

**RECITALS**

WHEREAS, INDOT planned to resurface State Road 51 within the corporate limits of the CITY and do certain other work in connection therewith (the "Resurfacing Project"), as shown in Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the CITY intends to make certain aesthetic improvements (the "Aesthetic Improvements") to and along State Road 51 within its corporate limits, which Aesthetic Improvements are being built pursuant to an INDOT – Local Public Agency Project Coordination Agreement (EDS No. A249-14-320769) ("Coordination Agreement"), under Des. No. 0810541, attached as Exhibit B and herein incorporated to this agreement by reference; and

WHEREAS, in order to accommodate the CITY's desire to make the Aesthetic Improvements and to coordinate construction of the Resurfacing Project and the construction of the Aesthetic Improvements, INDOT and the CITY desire to cooperate in the construction of the Aesthetic Improvements and the construction of the Resurfacing Project, subject to the terms and conditions of this Agreement;

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

**I. SPECIFIC PROVISIONS**

**1.1. Aesthetic Improvements Description.** The Aesthetic Improvements are described and shown on Exhibit A. All of the Aesthetic Improvements shall be constructed within the right-of-way for State Road 51 and on the CITY's local streets.

**1.2. CITY's Responsibilities.**

**A.** The CITY will construct the Aesthetic Improvements, through an INDOT letting, in accordance with Exhibits A and B. The CITY agrees to include INDOT's Resurfacing Project as part of the CITY's project. INDOT shall have the right to inspect the construction of the Aesthetic Improvements and Resurfacing Project and shall have the right to have its engineer or other representative on-site at any time during the construction of the Aesthetic Improvements and Resurfacing Project. Any inspection of the Aesthetic Improvements and Resurfacing Project shall be solely for the benefit of INDOT and the CITY shall not have the right to rely upon (i) the results of INDOT's inspection or (ii) INDOT's approval or failure to object to any condition associated with the construction of the Aesthetic Improvements or the Resurfacing Project.

**B.** The CITY shall coordinate with INDOT in developing plans for construction of the Aesthetic Improvements and the Resurfacing Project. The CITY shall submit plans and specifications for the Aesthetic Improvements and Resurfacing Project to INDOT for review and comment prior to letting. INDOT shall submit any comments that it may have regarding such plans and specifications within ninety (90) days of receiving the same. The CITY shall not proceed with the construction of the Aesthetic Improvements or the Resurfacing Project without INDOT's written approval.

**C.** Subject to section 1.3, the CITY, at its sole cost and expense, has or will complete work necessary for construction to begin on the Aesthetic Improvements, including, without limitation, all preliminary engineering, design, and utility relocation, if any.

**D.** The CITY shall, at its sole cost and expense, construct the Aesthetic Improvements according to the plans and specifications approved by INDOT. Additionally after completion of the Aesthetic Improvements, the CITY shall maintain and repair the Aesthetic Improvements, in accordance with the Joint Use and Maintenance Agreement previously executed by the Parties on March 16, 2016, as shown in **Exhibit C**, attached hereto and made a part hereof (the "Maintenance Agreement").

**1.3. INDOT'S Responsibilities.** INDOT will let and award the Aesthetic Improvements and the Resurfacing Project as part of its local public agency program on or about February 8, 2017, using its then-usual procedures applicable to the local public agency program. The letting of the Aesthetic Improvements and Resurfacing Project and INDOT's obligations under the local public agency program shall be governed by the Coordination Agreement and not this Agreement.

**1.4. Payment of Costs.** The CITY shall bear all costs associated with the construction of the Aesthetic Improvements. INDOT shall bear the costs of the Resurfacing Project, **not to exceed \$207,040.00** ("INDOT Contribution"). The CITY shall be responsible for any costs related to the Resurfacing Project in excess of the INDOT Contribution. The INDOT Contribution shall be applied to the CITY's project upon letting of the contract.

**1.5. Term and Renewal of Agreement.** The term of this Agreement shall be from the date upon which the Agreement is fully executed by the Office of the Indiana Attorney General through May 15, 2019, or upon completion of final audit of the Aesthetic Improvements 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.

**1.6. Public Statements or Disclosures.** The PARTIES shall consult with each other and must agree as to the timing, content, and form before (1) issuing any press release or other public statements or disclosures related to the Aesthetic Improvements, the Resurfacing Project, or this Agreement or (2) disclosing this Agreement, all or part of its contents, or any matter related to the Aesthetic Improvements or the Resurfacing Project, except that a Party may disclose this Agreement to its lawyers, accountants, and engineers, so long as such parties agree to be subject to the terms of this Section 1.6.

However, this Section does not prohibit either of the PARTIES from making a public statement or disclosure regarding this Agreement, the Resurfacing Project, or the Aesthetic Improvements 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.

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## II. GENERAL PROVISIONS

**2.1. Access to Records.** The CITY 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 representative, and copies thereof shall be furnished free of charge, if requested by INDOT. The CITY agrees that, upon request by any Party or state or federal agency, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CITY in connection with this Agreement, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

**2.2. Assignment; Successors.** The CITY binds its successors and assignees to all the terms and conditions of this Agreement. Except as otherwise specifically provided herein, the CITY shall not assign or subcontract the whole or any part of this Agreement without INDOT's prior written consent. The CITY may assign its right to receive payments, if any, to such third parties as the CITY may desire without the prior written consent of INDOT, provided that the CITY gives written notice (including evidence of such assignment) to INDOT thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

**2.3. Assignment of Antitrust Claims.** As part of the consideration for this Agreement, the CITY assigns to the State all right, title and interest in and to any claims the CITY 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 CITY acknowledges that it may be required to submit to an audit of funds paid 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 CITY.** The signatory for the CITY represents that he/she has been duly authorized to execute this Agreement on behalf of the CITY and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the CITY when his/her signature is affixed, and accepted by the State.

**2.6. Changes in Work. [OMITTED – NOT APPLICABLE.]**

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

**2.8. Compliance with Laws.**

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

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

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

**2.9. Condition of Payment.** All services provided by the CITY under this Agreement must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Agreement, or performed in violation of any federal, state, or local statute, ordinance, rule, or regulation.

**2.10. Confidentiality of State Information. [OMITTED – NOT APPLICABLE.]**

**2.11. Continuity of Services. [OMITTED – NOT APPLICABLE.]**

**2.12. Debarment and Suspension.**

A. The CITY certifies by entering into this Agreement that neither it nor its principals nor any of its contractors or subcontractors are presently debarred, suspended, proposed from debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means any officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CITY.

B. The CITY certifies that it has verified the state and federal suspension and debarment status for all contractors and subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties, or costs that might arise from use of a suspended or debarred contractor or subcontractor. The CITY shall immediately notify the State if any contractor or subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the contractor or subcontractor for work to be performed under this Agreement.

**2.13. Default by State. [OMITTED – NOT APPLICABLE.]**

**2.14. Disputes.**

A. Should any disputes arise with respect to this Agreement, the CITY and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The CITY agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Agreement that are not affected by the dispute. Should the CITY fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the CITY as a result of such failure to proceed shall be borne by the CITY, and the CITY shall make no claim against INDOT for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within 30 business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within 30 business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional payment by INDOT to the CITY of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for the CITY to terminate this Agreement, and the CITY may bring suit to collect these amounts without following the disputes procedures contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of INDOT as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.

#### **2.15. Drug-Free Workplace Certification.**

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

**2.16. Employment Eligibility Verification.** As required by IC §22-5-1.7, the CITY swears or affirms under the penalties of perjury that the CITY does not knowingly employ an unauthorized alien. The CITY further agrees that:

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

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

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

**2.17. Employment Option. [OMITTED – NOT APPLICABLE.]**

**2.18. 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.

**2.19. 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 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.

**2.20. 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.

**2.21. HIPAA Compliance. [OMITTED – NOT APPLICABLE.]**

**2.22. Indemnification.** The CITY agrees to 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 CITY, 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 CITY. The CITY 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 CITY shall default under the provisions of this Section.

**2.23. Independent Entity; Workers' Compensation Insurance.** The CITY is performing as an independent entity under this Agreement. No part of this Agreement shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the Parties. Neither Party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other Party. The CITY shall provide all necessary unemployment and workers' compensation insurance for the CITY's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

**2.24. Information Technology Enterprise Architecture Requirements. [OMITTED – NOT APPLICABLE.]**

**2.25. Insurance. [OMITTED – NOT APPLICABLE.]**

**2.26. Key Person(s). [OMITTED – NOT APPLICABLE.]**

**2.27. Licensing Standards. [OMITTED – NOT APPLICABLE.]**

**2.28. 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.

**2.29. Minority and Women's Business Enterprises Compliance. [OMITTED - NOT APPLICABLE.]**

**2.30. Non-Discrimination.**

A. This Agreement is enacted 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 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Agreement, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the CITY or any subcontractor.

Under IC 22-9-1-10 the CITY 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, or status as a veteran.

B. The CITY understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the CITY agrees that if the CITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CITY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CITY 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 Agreement.

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, religion, disability, income status, limited English proficiency, or status as a veteran.)

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

- i. Compliance with Regulations: The CITY 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.
- ii. Nondiscrimination: The CITY, 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, income status, limited English proficiency, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CITY 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.
- iii. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CITY 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 CITY of the CITY'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.
- iv. Information and Reports: The CITY 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 CITY is in the exclusive possession of another who fails or refuses furnish this information, the CITY shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- v. Sanctions for Noncompliance: In the event of the CITY'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 CITY under the Agreement until the CITY complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- vi. Incorporation of Provisions: The CITY 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 CITY 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 CITY becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CITY 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 CITY may request the United States of America to enter into such litigation to protect the interests of the United States of America.

**2.31. 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: Capital Program Director  
INDOT LaPorte District  
315 E. Boyd Blvd.  
LaPorte, IN 46350
- With Copy To: Chief Legal Counsel and Deputy Commissioner  
Indiana Department of Transportation  
100 North Senate Avenue, IGCN 758  
Indianapolis, IN 46204
- For CITY: Phil Gralik  
City of Hobart  
414 Main Street  
Hobart, IN 46342

**2.32. Order of Precedence; Incorporation by Reference. [OMITTED – NOT APPLICABLE.]**

**2.33. Ownership of Documents and Materials. [OMITTED – NOT APPLICABLE.]**

**2.34. 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 CITY 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 CITY 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 CITY'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 CITY 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 CITY.

**2.35. 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, IC §34-13-1, and IC 34-52-2-3.

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.

**2.36. Progress Reports. [OMITTED – NOT APPLICABLE.]**

**2.37. Public Record.** The CITY acknowledges that the State will not treat this Agreement as containing confidential information, and will post this Agreement on its website as required by Executive Order 05-07. Use by the public of the information contained in this Agreement shall not be considered an act of the State.

**2.38. Renewal Option.** This Agreement may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

**2.39. 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.

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

**2.41. Substantial Performance.** This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**2.42. Taxes.** The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the CITY or its contractors as a result of this Agreement.

**2.43. 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 CITY 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.

**2.44. Termination for Default. [OMITTED – NOT APPLICABLE.]**

2.45. Travel. [OMITTED – NOT APPLICABLE.]

2.46. Indiana Veteran’s Business Enterprise Compliance. [OMITTED – NOT APPLICABLE.]

2.47. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State’s review, approval or acceptance of, nor payment for, the work performed under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the CITY shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the CITY’s negligent performance of any of the services furnished under this Agreement.

2.48. Work Standards. [OMITTED – NOT APPLICABLE.]

2.49. State Boilerplate Affirmation Clause. [OMITTED – NOT APPLICABLE.]

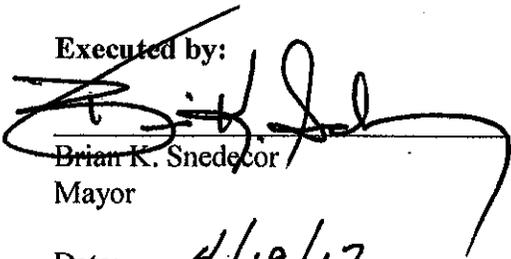
**Non-Collusion and Acceptance**

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.

**CITY OF HOBART**

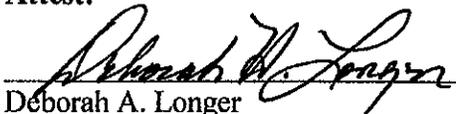
Executed by:

  
\_\_\_\_\_

Brian K. Snedecor  
Mayor

Date: 4/19/17

Attest:

  
\_\_\_\_\_

Deborah A. Longer  
City Clerk/Treasurer

Date: 4/19/17

**STATE OF INDIANA**  
**Indiana Department of Transportation**

**Recommended for approval by:**

\_\_\_\_\_  
Rick Powers  
LaPorte District Deputy Commissioner  
Indiana Department of Transportation

Date: \_\_\_\_\_

**Executed By:**

\_\_\_\_\_ (for) Joseph McGuinness, Commissioner  
Michael Smith  
Deputy Commissioner for Operations  
Indiana Department of Transportation

Date: \_\_\_\_\_

**STATE OF INDIANA APPROVALS**

STATE OF INDIANA  
State Budget Agency

\_\_\_\_\_(for)  
Jason D. Dudich, Director

Date: \_\_\_\_\_

STATE OF INDIANA  
Department of Administration

\_\_\_\_\_(for)  
Jessica A. Robertson, Commissioner

Date: \_\_\_\_\_

**Approved as to Form and Legality:**

\_\_\_\_\_(for)  
Attorney General Curtis T. Hill, Jr.

Date Approved: \_\_\_\_\_

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

\_\_\_\_\_  
Laura A. Turner, Attorney  
Indiana Department of Transportation  
100 N. Senate Ave., IGCN N730  
Indianapolis, IN 46204  
317-233-5744

\_\_\_\_\_  
Attorney No.