

**INDIANA DEPARTMENT OF TRANSPORTATION
LOCAL PUBLIC AGENCY PROJECT CORRINATION CONTRACT**

EDS # _____

Des. No. 2301274

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This agreement is entered into by and between the State of Indiana, acting by a through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and **Brown County**, a local public agency in the State of Indiana, (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

WITNESSETH

WHEREAS, pursuant to Indiana Code § 8-23-5-7, INDOT is authorized to construct roadside parks and highways that connect a state highway with a state park, reserve, preserve, institution, or recreation area; and

WHEREAS, pursuant to Indiana Code § 8-23-5-7(c), the Indiana Department of Natural Resources, ("IDNR") has requested and the Governor of Indiana has approved the following:

Road rehabilitation of Pumpkin Ridge Road from Hoover Road to Mt. Tea State Forest with the intention of making Pumpkin Ridge Road a "primary access road," (the "PROJECT"); and

WHEREAS, the estimated construction costs of the project is estimated to be **\$6,500,000.00**, which will be funded with 100% State funds through the Cooperative Recreational Access Road fund; and

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

I. INDOT'S RESPONSIBILITIES

1. The term of this agreement is from the Notice to Proceed through final acceptance of construction.

2. INDOT will conduct all necessary studies and prepare all documents, plans, and special provisions for the PROJECT. The PROJECT'S estimated construction letting date is August 11, 2027.
3. INDOT will design the PROJECT in compliance with the design criteria as found in Chapter 5 of the 2018 AASHTO Geometric Design of Highways and Streets: Local Roads and Streets – Recreation Roads, along with all other applicable standards, policies, and guidelines.
4. If requested by LPA, INDOT will forward all documents, plans, and special provisions to LPA for review.
5. INDOT shall review the LPA's request for changes to plans.
6. INDOT shall prepare all utility coordination, right-of-way plans, surveys, legal descriptions, and right-of-way engineering necessary for the PROJECT.
7. INDOT shall provide land acquisition services, which include, but are not limited to appraising, review appraising, buying, property management, relocation assistance, and condemnation.
8. INDOT shall also be responsible for all necessary permitting for the PROJECT.
9. INDOT will advertise for bids for construction of the PROJECT. Upon receipt of an acceptable bid for the PROJECT, less than the Engineer's Estimate, INDOT will award the contract for the PROJECT.
10. INDOT shall construct, reconstruct, or improve the PROJECT, including County Road right-of-way that is or will be under the LPA's jurisdiction.
11. INDOT will provide competent and adequate engineering and inspection services to monitor the contractor's work and ensure that the contractor's work is in accordance with the construction contract plans and specifications.
12. INDOT shall be responsible for 100% of the cost of constructing the PROJECT.
13. INDOT shall acquire any needed additional right-of-way in INDOT's name for the project.

14. INDOT shall provide right-of-way plans to the LPA for their review and input prior to initiating land acquisition services.
15. Upon completion of the PROJECT, INDOT will notify the LPA of the PROJECT's completion. INDOT will not have further duty and/or jurisdiction over the individual county road right-of-way.

II. LPA's RESPONSIBILITIES

1. The LPA shall coordinate with INDOT regarding the PROJECT.
 - a. If the LPA requests changes, additions, improvements or exceptions to the Standard Design criteria as stated above (collectively "Additional Features") for its County Road and INDOT approves the LPA's request(s) for the Additional Features, including, but not limited to changes in design, additional land acquisition, utility relocation, construction, and maintenance of the Additional Features.
 - b. The LPA shall coordinate Maintenance of Traffic, ("MOT") plans with INDOT and permit local traffic detours to other county roads around the work zone as necessary.

III. GENERAL PROVISIONS

1. **Access to Records.** The LPA 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 five (5) 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 LPA 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 LPA 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. **Assignment; Successors.** [OMITTED – NOT APPLICABLE]

3. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Agreement, the LPA assigns to the State, all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Agreement.
4. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds, if any, 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.
5. **Authority to Bind the LPA.** The signatory for the LPA represents that he/she has been duly authorized to execute this Agreement on behalf of the LPA and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the LPA when his/her signature is affixed and accepted by the State.
6. **Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the LPA 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 LPA, 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 LPA 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.

7. **Changes in Work.** The LPA shall not commence any additional work or change the scope of the work until authorized in writing by the State. This Agreement may only be amended, supplemented, or modified by a written document executed in the same manner as this Agreement.
8. **Compliance with Laws.**
 - A. The LPA 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 LPA to determine whether the provisions of this Agreement require formal modification.
 - B. The LPA 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 LPA 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 LPA shall ensure compliance with the disclosure requirements in IC §4-2-6-10.5 prior to the execution of this Agreement.** If the LPA is not familiar with these ethical requirements, the LPA 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 LPA or its agents violate any applicable ethical standards, the State may, at its sole discretion, terminate this Agreement immediately upon notice to the LPA. In addition, the LPA 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. The LPA certifies by entering into this Agreement that neither it nor its principals are presently in arrears in payment of taxes, permit fees or other statutory regulatory, or judicially required payments to the State of Indiana. The LPA agrees that any payments currently due to the State of Indiana may be withheld from payments due to the LPA,

Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the LPA is current in its payments and has submitted proof of such payment to the State.

- D. The LPA warrants that it has no current, pending, or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, the LPA agrees that INDOT may delay, withhold, or deny work under any supplement, amendment, change order, or other contractual device issued pursuant to this Agreement.
- E. If a valid dispute exists as to the LPA's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the LPA, the LPA may request that it be allowed to continue, or receive work, without delay. The LPA must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.
- F. The LPA warrants that the LPA and its contractors and subcontractors, if any, shall obtain and maintain 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 for the State. 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. The LPA affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC §5-22-3-7:
 - (1) The LPA and any principals of the LPA certify that:
 - (A) The LPA, 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 365 days, even if IC §24-4.7 is preempted by federal law; and

(B) The LPA 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 LPA and any principals of the LPA certify that an affiliate or principal of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or principal of the LPA, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous 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.

9. Condition of Payment. [OMITTED – NOT APPLICABLE].

10. Confidentiality of State Information. [OMITTED – NOT APPLICABLE]

11. Continuity of Services. [OMITTED – NOT APPLICABLE]

12. Debarment and Suspension.

A. The LPA certifies by entering into this Agreement that neither it nor its principals nor any of its contractors are presently debarred, suspended, proposed for 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 an 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 LPA.

B. The LPA certifies that it has verified the state and federal suspension and debarment status for all contractors 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. The LPA shall immediately notify INDOT if any contractor becomes debarred or suspended, and shall, at INDOT’s request, take all steps required by INDOT to terminate its contractual relationship with the contractor for work to be performed under this Agreement.

13. Default by State. [OMITTED – NOT APPLICABLE]

14. Disputes. [OMITTED – NOT APPLICABLE]

15. Drug Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LPA hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LPA will give written notice to the State within 10 days after receiving actual notice that the LPA, or an employee of the LPA 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 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 LPA 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 LPA'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 LPA'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 LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- D. Notifying the State in writing within 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.

16. Employment Eligibility Verification. As a condition precedent to entering this contract, and as required by IC § 22-5-1.7 and Executive Order 25-29, the LPA swears or affirms under the penalties of perjury that the LPA has not knowingly employed, and will not knowingly employ, an unauthorized alien. The LPA further affirms that: ~~As required by IC §22-5-1.7, the LPA swears or affirms under the penalties of perjury that the LPA does not knowingly employ an unauthorized alien. The LPA further agrees that:~~

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

~~B.~~A. The LPA shall not knowingly employ or contract with an unauthorized alien. The LPA shall not retain an employee or contract with a person that the LPA subsequently learns is an unauthorized alien. has not employed or contracted with, and shall not knowingly employ or contract with, an unauthorized alien. The LPA has not retained, and shall not retain, an employee, and has not contracted and shall not contract with a person who the LPA subsequently learned or learns is an unauthorized alien.

B. The LPA has required and shall require its contractor and/or subcontractors, if any, who perform work under this Agreement to certify to the LPA that the contractor or subcontractor does not knowingly employ or contract with an unauthorized alien and that the contractor or subcontractor has enrolled and is participating in the E-Verify program. ~~The LPA shall require its contractors and subcontractors, who perform work under~~

~~this Agreement, to certify to the LPA that the contractor or subcontractor does not knowingly employ or contract with an unauthorized alien and that the contractor or subcontractor has enrolled and is participating in the E-Verify program.~~ The LPA agrees to maintain this certification throughout the duration of the term of a contract with a contractor or subcontractor.

The State may terminate for default if the LPA fails to cure a breach of this provision no later than thirty 30 days after being notified by the State.

17. Employment Option. [OMITTED – NOT APPLICABLE]

18. Force Majeure. In the event that either 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 Party 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.

19. Funding Cancellation. As required by Financial Management Circular 3.3 and IC §5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the 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.

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.

21. HIPAA Compliance. [OMITTED – NOT APPLICABLE]

22. Indemnification. The LPA agrees to indemnify, defend, 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 LPA, 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 LPA. The LPA 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 LPA shall default under the provisions of this Section. This provision shall survive the termination of this Agreement.

23. Independent Entity; Workers' Compensation Insurance. The LPA 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, contractors or subcontractors of the other Party. The LPA shall provide all necessary unemployment and workers' compensation insurance for the LPA's employees and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

24. Indiana Veteran Owned Small Business Enterprise Compliance. [OMITTED – NOT APPLICABLE]

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

26. Insurance. A. The LPA, its contractors, and its subcontractors (if any) shall secure and keep in force during the term of this Agreement the following insurance coverages (if applicable) covering the LPA for any and all claims of any nature which may in any manner arise out of or result from LPA's performance under this Agreement:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
 3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Agreement.
 4. Fiduciary liability if the LPA is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.
 5. Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.
 6. Surety or Fidelity Bond(s) if required by statute or by the agency.
 7. Cyber Liability addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$700,000 per occurrence and \$5,000,000 in the aggregate.
- A. The LPA shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Agreement and proof of workers' compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Agreement involve work outside of Indiana.
- B. The LPA's insurance coverage must meet the following additional requirements:
1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
 2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the LPA.
 3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the LPA in excess of the minimum requirements set forth above. The duty to indemnify the State under this Agreement shall not be limited by the insurance required in this Agreement.

4. The insurance required in this Agreement, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

5. The LPA waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Agreement may be deemed a material breach of contract entitling the State to immediately terminate this Agreement. The LPA shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Agreement.

27. Key Persons. [OMITTED – NOT APPLICABLE]

28. Licensing Standards. The LPA, its employees, contractors and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the LPA pursuant to this Agreement. The State will not approve any study, plans or work performed by the LPA when the LPA, its employees, contractors or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the LPA shall notify the State immediately and the State, at its option, may immediately terminate this Agreement.

29. 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 Parties.

30. Minority and Women's Business Enterprises Compliance. [OMITTED – NOT APPLICABLE]

31. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act:

~~A. The LPA 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, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The LPA certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this subparagraph may be regarded as a material breach of this Agreement, including for purposes of Indiana Code § 5-11-5.5-2, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any contractor or subcontractor.

~~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, the Age Discrimination in Employment Act, and the Americans with Disabilities Act ("ADA"), the LPA 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 or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The LPA certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. 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 LPA or any subcontractor.~~

- ~~B.~~ LPA covenants that it does not and shall not operate any programs or engage in any practices promoting Diversity, Equity, and Inclusion (DEI), or other similar goals, that violate Indiana or Federal Civil Rights Laws by treating a person differently on the basis of race or sex, such as by considering race or sex when making recruitment, hiring, disciplinary, promotion, or employment decisions;

~~requiring employees to participate in training or educational programs that employ racial or sex stereotypes; or attempting to achieve racial or sex balancing in the LPA's workforce. The Parties agree that a breach of this subparagraph is a material breach of this Agreement, including for purposes of Indiana Code § 5-11-5.5-2, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any contractor or subcontractor. INDOT is a recipient of federal funds, and therefore, INDOT requires full compliance with all rules, regulations and statutes concerning nondiscrimination requirements and applications. Breach of this section may be regarded as a material breach of this 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 all 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).~~

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

- ~~1. Compliance with Regulations: The LPA 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.~~
- ~~2. Nondiscrimination: The LPA, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of~~

subcontractors, including procurements of materials and leases of equipment. The LPA 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.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA 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 LPA of the LPA's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.

4. Information and Reports: The LPA 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 INDOT and the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA shall so certify to INDOT or the Federal Highway Administration as appropriate and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Agreement, INDOT 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 LPA under the Agreement until the LPA complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions: The LPA 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 LPA shall take such action with respect to any subcontract or procurement as INDOT 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 LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request INDOT to enter into such litigation to protect the interests of INDOT, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.~~

32. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it will be sent by E-mail or first-class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. For INDOT:
Maricor Colglazier
Project Manager
185 Agrico Lane
Seymour, IN 47274
Cell Phone: 812-524-3968
Email: mcolglazier@indot.IN.gov

With copy to:
Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, IN 46204
Email: agrand@indot.in.gov

B. For the LPA:
Mr. Kevin Patrick
Commissioner
201 Locust Lane, 2nd Floor
Nashville, Indiana 47448
Phone Number: 812-929-5631
Email: patrickk@browncounty-in.gov

Mr. Arec Burton
Highway Superintendent
711 Greasy Creek Road
Nashville, Indiana 47448
Phone Number 812-929-5631
Email: burtona@browncounty-in.gov

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

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

35. Payments.

- A. All payments, if any, shall be made 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 LPA 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. [OMITTED – NOT APPLICABLE]

36. 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, if any, 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.

37. Progress Reports. [OMITTED – NOT APPLICABLE]

38. Public Record. The LPA 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.

39. Renewal Option. [OMITTED – NOT APPLICABLE]

40. 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.

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

42. 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.

43. 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 LPA or its contractors or subcontractors as a result of this Agreement.

44. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be affected by delivery to the Contractor 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. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

45. Termination for Default. [OMITTED – NOT APPLICABLE]

46. Travel. [OMITTED – NOT APPLICABLE]

47. Indiana Veteran's Business Enterprise Compliance. [OMITTED – NOT APPLICABLE]

48. 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 services required 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 LPA shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the LPA's negligent performance of any of the services furnished under this Agreement.

49. Work Standards. The LPA shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards (or by ensuring that its contractors and subcontractors do the same). If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and the LPA shall grant such request.

50. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the most current *State of Indiana SCM Template*) in any way except as follows: N/A Multiple Changes Were Made.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DRAFT

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.

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Agreement by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Agreement to the State of Indiana. I understand that my signing and submitting this Agreement in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Agreement and this affirmation. I understand and agree that by electronically signing and submitting this Agreement in this fashion I am affirming to the truth of the information contained therein. I understand that this Agreement will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: <https://secure.in.gov/apps/idoa/contractsearch/>

In Witness Whereof, the Parties, 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.

LPA OF BROWN COUNTY

COUNTY COUNCIL

Executed by:

Mr. Tim Clark, Commissioner - President
Brown County

Date: _____

Mr. Ron Sanders, Commissioner – Vice President
Brown County

Date: _____

Mr. Kevin Patrick, Commissioner
Brown County

Date: _____

INDIANA DEPARTMENT OF TRANSPORTATION

Executed by:

_____(for)
Lyndsay Quist, Commissioner

Date: _____

DRAFT

APPROVALS

[State approvals are electronic – see attached confirmation page.]

STATE OF INDIANA

State Budget Agency

Chad Ranney, State Budget Director

Date: _____

Department of Administration

Brandon Clifton, Commissioner

Date: _____

Approved as to Form and Legality:

Theodore E. Rokita, Attorney General

Date: _____