

**ROAD TRANSFER MEMORANDUM OF AGREEMENT
BETWEEN
THE INDIANA DEPARTMENT OF TRANSPORTION
AND
CITY OF TIPTON, INDIANA
AND
TIPTON COUNTY, INDIANA,
CONCERNING THE TRANSFER OF
STATE ROAD 28 AND STATE ROAD 19
IN TIPTON COUNTY**

EDS No. _____

PREAMBLE

THIS ROAD TRANSFER MEMORANDUM OF AGREEMENT (this "**Agreement**") is made by and between the INDIANA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "**INDOT**") and the CITY OF TIPTON, INDIANA (hereinafter referred to as the "**CITY**") and TIPTON COUNTY, INDIANA (hereinafter referred to as the "**COUNTY**"; the CITY, COUNTY and INDOT are jointly referred to in this Agreement as the "**PARTIES**"), is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the PARTIES agree as follows:

RECITALS

WHEREAS, INDOT currently incurs or will incur the expense for maintaining and regulating the Transferred Roads to the City (hereinafter defined in Section 1.2) (other than the Transferred Roads to INDOT from CITY) (hereinafter defined in Section 1.4) and Transferred Roads to County (hereinafter defined in Section 1.3) (other than the Transferred Roads to INDOT from COUNTY) (hereinafter defined in Section 1.5) within the CITY and COUNTY, including, but not limited to, the maintenance and regulation of all right-of-way, road surface, structures, traffic signals, snow and ice removal, storm water drainage, mowing, other related signs, outdoor advertising structures, and driveways associated with the Transferred Roads to the City and Transferred Roads to County; and

WHEREAS, INDOT plans to establish a new State Road 19 ("**SR 19**") bypass, which will require the CITY and the COUNTY to transfer certain roads to INDOT to make improvements to those roads in connection with the creation of the bypass; and

WHEREAS, as partial consideration for the CITY assuming jurisdiction of the Transferred Roads to City, INDOT will provide funding to the CITY in the amount of \$4,441,125.00; and

WHEREAS, as partial consideration for the COUNTY assuming jurisdiction of the Transferred Roads to County, INDOT will provide funding to the COUNTY in the amount of \$4,441,125.00; and

WHEREAS, the PARTIES agree that the Transferred Roads to City and the Transferred Roads to County will no longer be the most appropriate routes to serve state traffic, but will continue to serve a major local travel function and provide access to businesses; and

WHEREAS, the PARTIES agree that the Transferred Roads to City shall be transferred to the CITY, and the CITY is willing to accept the Transferred Roads to City and assume full responsibility for all future maintenance, liability and regulation, including, but not limited to, the maintenance and regulation of all right-of-way, railroad crossings, structures, traffic signals, snow and ice removal, storm water drainage, mowing, other related signs, outdoor advertising structures and driveways associated therewith in perpetuity according to the terms of this Agreement; and

WHEREAS, the PARTIES agree that the Transferred Roads to County shall be transferred to the COUNTY, and the COUNTY is willing to accept the Transferred Roads to County and assume full responsibility for all future maintenance, liability and regulation, including, but not limited to, the maintenance and regulation of all right-of-way, railroad crossings, structures, traffic signals, storm water drainage, mowing, other related signs, outdoor advertising structures and driveways associated therewith in perpetuity according to the terms of this Agreement; and

WHEREAS, the PARTIES agree, that the Transferred Roads to INDOT from CITY and the Transferred Roads to INDOT from COUNTY shall be transferred to INDOT, and INDOT is willing to accept the Transferred Roads to INDOT from CITY and the Transferred Roads to INDOT from COUNTY and assume full responsibility for all future maintenance, liability and regulation, including, but not limited to, the maintenance and regulation of all right-of-way, railroad crossings, structures, traffic signals, snow and ice removal, storm water drainage, mowing, other related signs, outdoor advertising structures and driveways associated therewith in perpetuity according to the terms of this Agreement; and

WHEREAS, the CITY agrees that if it decides to vacate one of the Transferred Roads to City or if the COUNTY decides to vacate one of the Transferred Roads to County in the future, the CITY and/or COUNTY must obtain prior approval from INDOT before any vacation of the Transferred Roads to City or Transferred Roads to County may take place; and

WHEREAS, I.C. 8-23-4-10, I.C. 8-23-4-11 and I.C. 8-23-4-12 authorize INDOT, the CITY and the COUNTY to enter into this Agreement for the transfer of roads between systems;

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

I. SPECIFIC PROVISIONS

1.1 Agreement Purpose. The purpose of this Agreement is to (a) transfer full responsibility for all operation, construction, maintenance, regulation and liability relating to the Transferred Roads to City from INDOT to the CITY to the fullest extent permitted by applicable law, (b) transfer full responsibility for all operation, construction, maintenance, regulation and liability relating to the Transferred Roads to County from INDOT to the COUNTY to the fullest extent permitted by applicable law, (c) transfer full responsibility for all operation, construction, maintenance, regulation and liability relating to the Transferred Roads to INDOT from the CITY to INDOT to the fullest extent permitted by applicable law, and (d) transfer full responsibility for all operation, construction, maintenance, regulation and liability relating to the Transferred Roads to INDOT from the COUNTY to INDOT to the fullest extent permitted by applicable law. To comply with Indiana law regarding the sale of real estate, the PARTIES agree that INDOT is not transferring title to any real estate by way of this Agreement and that INDOT shall retain legal title of the Transferred Roads to City and the Transferred Roads to County, including, without limitation, any real property underneath existing pavement and the accompanying right of way, as described in the land records of Tipton County, Indiana. The CITY is not transferring title to any real estate by way of this Agreement, and the CITY shall retain legal title of the Transferred Roads to INDOT from CITY, including, without limitation, any real property underneath existing pavement and the accompanying right of way, as described in the land records of Tipton County, Indiana. The COUNTY is not transferring title to any real estate by way of this Agreement, and the COUNTY shall retain legal title of the Transferred Roads to INDOT from COUNTY, including, without limitation, any real property underneath existing pavement and the accompanying right of way, as described in the land records of Tipton County, Indiana. For the purposes of this Agreement and to avoid misunderstanding, the terms “Transferred Roads to City”, “Transferred Roads to County”, “Transferred Roads to INDOT from CITY” and “Transferred Roads to INDOT from COUNTY” are defined in Sections 1.2, 1.3, 1.4 and 1.5 of this Agreement respectively.

1.2. Transferred Roads to City Defined. The term “Transferred Roads to City” is defined as sections of SR 19 and State Road 28 (“**SR 28**”) in Sections 1.2.1 and 1.2.2 below:

1.2.1 INDOT shall transfer to CITY that portion of SR 19 from Park Road to SR 28 East Junction (RP 16.51 to RP 17.44) (a total distance of 0.93 centerline miles), including all roadway, traffic signals, railroad crossings, right of way, signage and lighting described in **Exhibit A**, attached hereto and made part hereof.

1.2.2 INDOT shall transfer to CITY that portion of SR 28 from approximately 1800 feet west of the intersection of Jefferson Street and SR 28 to SR 19 West Junction (RP 83.5 to RP 84.28) (a total distance of 0.78 centerline miles), including all roadway, traffic signals, railroad crossings, right of way, signage and lighting described in **Exhibit A**, attached hereto and made part hereof.

1.3. Transferred Roads to County Defined. The term “Transferred Roads to County” is defined as a section of SR 28 in Section 1.3.1 and the two bridges on SR 28 in Sections 1.3.2 and 1.3.3 and one bridge on SR 19 in Section 1.3.4 below:

1.3.1. INDOT shall transfer to COUNTY that portion of SR 28 from CR 560 W to approximately 1800 feet west of the intersection of Jefferson Street and SR 28 (RP 80.06 to RP 83.5) (a total of 3.44 centerline miles), including all roadway, traffic signals, railroad crossings, right of way, signage and lighting described in Exhibit A, attached hereto and made part hereof.

1.3.2. INDOT shall transfer to COUNTY the bridge located on SR 28 over Campbell Ditch (NBI #007697).

1.3.3. INDOT shall transfer to COUNTY the bridge located on SR 28 over Buck Creek (NBI #00770). This bridge is located within the CITY’s limits.

1.3.4. INDOT shall transfer to COUNTY the bridge located on SR 19 over Cicero Creek (NBI #004960). This bridge is located within the CITY’s limits.

1.4. Transferred Roads to INDOT from CITY Defined. The term “Transferred Roads to INDOT from CITY” is defined as a section of Park Road in Section 1.4.1 below:

1.4.1. CITY transfers to INDOT that portion of Park Road from the intersection of SR 19/Park Road to approximately 125 feet east of Hickory Drive, including all roadway, traffic signals, railroad crossings, right of way, signage and lighting described in Exhibit A, attached hereto and made part hereof.

1.4.2. The total mileage of the Transferred Roads to INDOT from CITY under this Agreement is approximately 0.5 centerline miles.

1.5. Transferred Roads to INDOT from COUNTY Defined. The term “Transferred Roads to INDOT from COUNTY” is defined as a section of South Ash Street, in Section 1.5.1 and the bridge on Ash Street in Section 1.5.2 below:

1.5.1. COUNTY transfers to INDOT that portion of South Ash Street from 125 feet east of Hickory Drive to the intersection of SR 19/Ash Street and SR 28/Jefferson Street, including all roadway, traffic signals, railroad crossings, right of way, signage and lighting described in Exhibit A, attached hereto and made part hereof.

1.5.2. COUNTY shall transfer to INDOT the bridge located on Ash Street over Cicero Creek (NBI #8000075)

1.5.3. The total mileage of the Transferred Roads to INDOT from COUNTY under this Agreement is approximately 0.5 centerline miles.

1.6. Date of Transfer.

- 1.6.1. Date of Transfer to County.** The “**Date of Transfer to County**” is defined as the date upon which INDOT will transfer the Transferred Roads to County to the COUNTY according to the terms of this Agreement. INDOT will notify the COUNTY by certified letter(s) of the exact date and time of the transfers, which is estimated to be on or about September 30, 2022 (the “**Estimated Date of Transfer to County**”). INDOT, at INDOT’s option, shall have the right to designate a different Date of Transfer to County for one or more of the Transferred Roads to County. In the event that no such letter is sent to the COUNTY, the Date of Transfer to County shall be deemed to be September 30, 2022. INDOT shall have absolutely no liability to the COUNTY if the Date of Transfer to County is before or after the Estimated Date of Transfer to County, even if the Date of Transfer to County is not in close proximity to the Estimated Date of Transfer to County.
- 1.6.2. Date of Transfer to INDOT.** The “**Date of Transfer to INDOT**” is defined as the date upon which the CITY will transfer the Transferred Roads to INDOT from City to INDOT and the date upon with the COUNTY will transfer the Transferred Roads to INDOT from COUNTY according to the terms of this Agreement. INDOT will notify the CITY and COUNTY by certified letter(s) of the exact date and time of the transfers, which is estimated to be on or about September 30, 2022 (the “**Estimated Date of Transfer to INDOT**”). INDOT, at INDOT’s option, shall have the right to designate a different Date of Transfer to INDOT from CITY and Date of Transfer to INDOT from COUNTY for one or more of the Transferred Roads to INDOT from CITY and Transferred Roads to INDOT from COUNTY. In the event that no such letter is sent to the CITY and/or the COUNTY, the Date of Transfer to INDOT shall be deemed to be September 30, 2022. The CITY nor the COUNTY shall have any liability to INDOT if the Date of Transfer to INDOT is before or after the Estimated Date of Transfer to INDOT, even if the Date of Transfer to INDOT is not in close proximity to the Estimated Date of Transfer to INDOT.
- 1.6.3. Date of Transfer to CITY.** The “**Date of Transfer to City**” is defined as the date upon which INDOT will transfer the Transferred Roads to City to the CITY according to the terms of this Agreement. INDOT will notify the CITY by certified letter(s) of the exact date and time of the transfer, which is estimated to be on or about September 30, 2022 (the “**Estimated Date of Transfer to City**”). INDOT, at INDOT’s option, shall have the right to designate a different Date of Transfer to City for one or more of the Transferred Roads to City. In the event that no such letter is sent to the CITY, the Date of Transfer to City shall be deemed to be September 30, 2022. INDOT shall have absolutely no liability to the CITY if the Date of Transfer to City is before or after the Estimated Date of Transfer to City, even if the Date of Transfer to City is not in close proximity to the Estimated Date of Transfer to City.

1.7. Acceptance. The CITY agrees to accept transfer of the Transferred Roads to City, according to the terms of this Agreement on the Date of Transfer. The COUNTY agrees to accept transfer of the Transferred Roads to County, according to the terms of this Agreement on the Date of Transfer. INDOT agrees to accept transfer of the Transferred Roads to INDOT from the CITY and the Transferred Roads to INDOT from the COUNTY, according to the terms of this Agreement on the Date of Transfer.

1.8. Transferred Roads Condition. The CITY warrants and represents that it has had sufficient opportunity to inspect the Transferred Roads to City and agrees to accept the Transferred Roads to City in "AS IS" condition on the Date of Transfer in accordance with the terms of this Agreement. The COUNTY warrants and represents that it has had sufficient opportunity to inspect the Transferred Roads to County and agrees to accept the Transferred Roads to County in "AS IS" condition on the Date of Transfer in accordance with the terms of this Agreement. INDOT agrees to accept the Transferred Roads to INDOT from CITY and the Transferred Roads to INDOT from COUNTY in "AS IS" condition on the Date of Transfer in accordance with the terms of this Agreement.

1.9. Limited Access Right of Way. To avoid confusion, the PARTIES agree that according to applicable law, including Federal Highway Administration laws and regulations, INDOT will retain control over (if any) limited access right of way. However, INDOT agrees in good faith to work with the CITY, COUNTY and the Federal Highway Administration with respect to any requests to break the limited access right of way line.

1.10. Change of Transferred Roads Status.

1.10.1. The CITY agrees that the Transferred Roads to City shall remain in the local highway system so long as it continues to serve public access. Any consideration to remove the route from the CITY system must be reviewed and approved by INDOT. The CITY shall notify INDOT at least ninety (90) days prior should the CITY make a finding that any portion of Transferred Roads to City no longer serves a transportation purpose, or should the CITY intend to otherwise cease using any portion of the Transferred Roads to City for road transportation purposes.

1.10.2. The COUNTY agrees that the Transferred Roads to County shall remain in the local highway system so long as it continues to serve public access. Any consideration to remove the route from the COUNTY system must be reviewed and approved by INDOT. The COUNTY shall notify INDOT at least ninety (90) days prior should the COUNTY make a finding that any portion of Transferred Roads to County no longer serves a transportation purpose, or should the COUNTY intend to otherwise cease using any portion of the Transferred Roads to County for road transportation purposes.

1.11. No Cost or Expense to INDOT. The CITY and the COUNTY agree that except as otherwise provided in Section 1.13 of this Agreement, that INDOT shall not be responsible for any costs or expenses in any manner related to Transferred Roads to City and the Transferred Roads to County after 12:01 a.m. on the Date of Transfer to City and Date of Transfer to County, anything in this Agreement to the contrary notwithstanding.

1.12. Permits Issued for the Transferred Roads.

1.12.1. The CITY agrees to indemnify, defend and hold harmless INDOT for all claims or liability arising in relation to any permits issued by the CITY to perform work on the Transferred Roads to City. The CITY shall also be solely responsible for the issuance of any and all permits, including permits for outdoor advertising signs or structures, and CITY understands and agrees that it shall comply with all applicable laws in the issuance and regulation of such permits (including but not limited to the Highway Beautification Act of 1965, 23 U.S.C. §131 et seq., and regulations promulgated thereunder).

1.12.2. The COUNTY agrees to indemnify, defend and hold harmless INDOT for all claims or liability arising in relation to any permits issued by the COUNTY to perform work on the Transferred Roads to County. The COUNTY shall also be solely responsible for the issuance of any and all permits, including permits for outdoor advertising signs or structures, and COUNTY understands and agrees that it shall comply with all applicable laws in the issuance and regulation of such permits (including but not limited to the Highway Beautification Act of 1965, 23 U.S.C. §131 et seq., and regulations promulgated thereunder).

1.13. INDOT's Responsibilities.

1.13.1. Winter Operations. INDOT shall be responsible for winter operations, including snow and ice removal, for SR 28 from the Tipton Subdistrict (2152 W. SR 28) to US 31. INDOT shall not be responsible for any other maintenance or construction activities for this section of the Transferred Road to County along SR 28.

1.13.2. SR 19 Bypass. As partial consideration for the transfer of maintenance responsibilities of the Transferred Roads to City and the Transferred Roads to County, INDOT agrees to establish a SR 19 bypass. INDOT shall be solely responsible for the costs of the bypass.

1.13.3. As partial consideration for the transfer of maintenance responsibilities of the Transferred Roads to City, INDOT agrees to pay the CITY the sum of **\$4,441,125.00**. The CITY shall submit an invoice on or after August 1, 2022. INDOT shall pay the invoice thirty-five (35) days following receipt of the invoice in accordance with state fiscal policies and procedures.

1.13.4. As partial consideration for the transfer of maintenance responsibilities of the Transferred Roads to County, INDOT agrees to pay the COUNTY the sum of **\$4,441,125.00**. The COUNTY shall submit an invoice on or after August 1, 2022. INDOT shall pay the invoice thirty-five (35) days following receipt of the invoice in accordance with state fiscal policies and procedures.

1.13.5. Truck Route Signs. INDOT shall provide the truck route signs for the truck route along SR 19, SR 28 and US 31 for Division Road and maintain those signs located within INDOT's jurisdiction.

1.14. COUNTY's Responsibilities. The COUNTY shall declare and establish Division Road as a truck route for SR 28. The COUNTY shall be responsible for maintaining Division Road as a truck route. The COUNTY shall be responsible for maintaining the signs in the COUNTY's jurisdiction, including those signs on Division Road.

1.15. CITY's Responsibilities. The CITY shall pass an ordinance to restrict truck traffic on SR 28 to assist the COUNTY's efforts in establishing Division Road as the designated truck route.

1.16. Interpretation. The Preamble and Recitals recorded above are incorporated by reference into this Agreement. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Agreement.

II. GENERAL PROVISIONS

2.1. Access to Records. The CITY and COUNTY 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 and COUNTY agree that, upon request by any agency participating in federally-assisted programs with whom the CITY and COUNTY have agreed to or seeks to agree to, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CITY and COUNTY 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. Audit. The CITY and COUNTY acknowledge 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 (including applicable provisions of the Office of Management and Budget Circulars A-133, Audits of States, Local Governments, and Non-Profit Organizations) specified by the State of Indiana (the "State") and/or in accordance with audit requirements specified elsewhere in this Agreement.

2.3. Authority to Bind CITY and COUNTY. The signatory for the CITY and the signatory for the COUNTY warrant that he/she has the necessary authority to enter into this Agreement. The signatory for the CITY and the signatory for the COUNTY represents that he/she has been duly authorized to execute this Agreement on behalf of the CITY and on behalf of the COUNTY, and has obtained all necessary or applicable approval to make this Agreement fully binding upon the CITY or COUNTY when his/her signature is affixed to this Agreement.

2.4. Certification for Federal-Aid Contracts Lobbying Activities. The CITY and COUNTY certify, by signing and submitting this Agreement, to the best of its knowledge and belief that the CITY and COUNTY have 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 and COUNTY, 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 and COUNTY also agree by signing this Agreement that they 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.

2.5. Compliance with Laws.

A. The CITY and COUNTY 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 of any state or federal statute, or the promulgation of regulations there under after execution of this Agreement, shall be reviewed by INDOT to determine whether formal modifications are required to the provisions of this Agreement.

B. The CITY and COUNTY 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 Indiana Code § 4-2-6, et seq., Indiana Code § 4-2-7, et. seq., the regulations promulgated thereunder. **If the CITY and/or COUNTY 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 and/or COUNTY shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Agreement.** If the CITY and COUNTY are not familiar with these ethical requirements, the CITY and COUNTY 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 and/or COUNTY or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the CITY and/or COUNTY. In addition, the CITY and/or COUNTY 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 and COUNTY warrant that the CITY and COUNTY and its contractors 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 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 COUNTY and any principals of the CITY and COUNTY certify that (A) the CITY and COUNTY, 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 and COUNTY 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 COUNTY and any principals of the CITY and COUNTY certify that an affiliate or principal of the CITY and COUNTY and any agent acting on behalf of the CITY and COUNTY or on behalf of an affiliate or principal of the CITY and COUNTY, 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.

2.6. Drug-Free Workplace Certification. As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, the CITY and COUNTY hereby covenant and agree to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the State within ten (10) days after receiving actual notice that the CITY and/or COUNTY, or an employee of the CITY and/or COUNTY, in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Agreement payments, termination of this Agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Agreement amount set forth in this Agreement is in excess of \$25,000.00, the CITY and COUNTY certify and agree that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled

substance is prohibited in the CITY and COUNTY '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 and COUNTY'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 and COUNTY of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State 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) take appropriate personnel action against the employee, up to and including termination; or (2) require 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.

2.7. Employment Eligibility Verification.

- A. The CITY and COUNTY affirm under the penalties of perjury that they do not knowingly employ an unauthorized alien.
- B. The CITY and COUNTY shall enroll in and verify the work eligibility status of all their newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The CITY and COUNTY are not required to participate should the E-Verify program cease to exist. Additionally, the CITY and COUNTY are not required to participate if the CITY and/or COUNTY is self-employed and do not employ any employees.
- C. The CITY and COUNTY shall not knowingly employ or contract with an unauthorized alien. The CITY and COUNTY shall not retain an employee or contract with a person that the CITY and/or COUNTY subsequently learn is an unauthorized alien.
- D. The CITY and COUNTY shall require their subcontractors, who perform work under this contract, to certify to the CITY and/or COUNTY 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 and COUNTY agree to maintain this certification throughout the duration of the term of a contract with a subcontractor.

- E. The State may terminate for default if the CITY and/or COUNTY fail to cure a breach of this provision no later than thirty (30) days after being notified by the State.

2.8. 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.

2.9. Funding Cancellation Clause. 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.

2.10. 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.

2.11. HIPAA Compliance. [OMITTED – NOT APPLICABLE.]

2.12 Indemnification. The CITY and COUNTY agree 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 CITY and/or COUNTY, 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 and COUNTY. The CITY and/or COUNTY agree 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 and/or COUNTY shall default under the provisions of this Section.

2.13. Independent Entity; Workers' Compensation Insurance. The CITY and COUNTY are 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 and COUNTY shall provide all necessary unemployment and workers' compensation insurance for the CITY and/or COUNTY's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

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

2.15. Insurance. [OMITTED – NOT APPLICABLE.]

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

2.17. Licensing Standards. [OMITTED – NOT APPLICABLE.]

2.18. 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.

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

2.20. Non-Discrimination.

A. 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, the CITY and COUNTY covenant that they 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 CITY and COUNTY certify compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Agreement, 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 CITY and/or COUNTY or any subcontractor.

B. INDOT is a recipient of federal funds, and therefore, where applicable, the CITY and COUNTY and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

The CITY and COUNTY agree that if the CITY and COUNTY employ fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CITY and COUNTY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CITY and COUNTY 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 Contract.

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

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

1. Compliance with Regulations: The CITY and COUNTY 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 CITY and COUNTY, 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, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CITY and COUNTY 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 CITY and/or COUNTY 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 and/or COUNTY of the CITY and/or COUNTY'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.

4. Information and Reports: The CITY and COUNTY 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 and COUNTY is in the exclusive possession of another who fails or refuses furnish this information, the CITY and COUNTY 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.
5. Sanctions for Noncompliance: In the event of the CITY's and/or COUNTY'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 and/or COUNTY under the Agreement until the CITY and/or COUNTY complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions: The CITY and COUNTY 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 and COUNTY 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 and/or COUNTY becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CITY and/or COUNTY 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 and/or COUNTY may request the United States of America to enter into such litigation to protect the interests of the United States of America.

2.21. 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: Nathan Sturdevant
Special Projects Engineer – Greenfield District
Indiana Department of Transportation
32 South Broadway
Greenfield, IN 46140
nsturdevant@indot.in.gov
(317) 467-3445

With a copy to: Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

B. For CITY: Tom Dolezal, Mayor
City of Tipton
216 South Main Street
Tipton, Indiana 46072
Tom.Dolezal@ffbt.com
(765) 675-7561

C. For COUNTY: Dennis Henderson, President
Tipton County Board of Commissioners
101 East Jefferson Street
Tipton, Indiana 46072
henderso@ccrtc.com
(765) 675-2794

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

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

4.34. 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 and/or COUNTY 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 and/or COUNTY 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 and/or COUNTY'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 and/or COUNTY 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 and/or COUNTY.

4.35. 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, and IC §34-13-1. 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.

4.36. Progress Reports. [OMITTED – NOT APPLICABLE.]

4.37. Public Record. The CITY and COUNTY acknowledge 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.

4.38. Renewal Option. [OMITTED – NOT APPLICABLE.]

4.39. 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.

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

4.41. 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.

4.42. 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 and/or COUNTY or its contractors as a result of this Agreement.

4.43. 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 and/or COUNTY 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.

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

4.45. Travel. [OMITTED – NOT APPLICABLE.]

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

4.47. 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 and/or COUNTY shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the CITY's and/or COUNTY's negligent performance of any of the services furnished under this Agreement.

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

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the CITY and COUNTY, or that the undersigned is the properly authorized representative, agent, member or officer of the CITY and COUNTY. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the CITY and COUNTY, 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 CITY and COUNTY 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 TIPTON, INDIANA

By: Tom Dolezal, Mayor

Date: _____

TIPTON COUNTY COMMISSIONERS

Dennis Henderson, President

Tracy Powell, Commissioner

Nancy Cline, Commissioner

ATTEST:

By: _____

STATE OF INDIANA
Indiana Department of Transportation

Recommended for approval by:

Clark W. Packer
District Deputy Commissioner

Date: _____

Executed By:

_____ (for)
Michael Smith, Commissioner
Indiana Department of Transportation

Date: _____

APPROVALS

STATE OF INDIANA

Office of Management and Budget

By: _____ (FOR)
Zachary Q. Jackson, Director

Date: _____

STATE OF INDIANA

Department of Administration

By: _____ (FOR)
Rebecca Holwerda, Commissioner

Date: _____

Approved as to Form and Legality:
Office of the Attorney General

By: _____ (FOR)
Theodore E. Rokita
Attorney General of Indiana

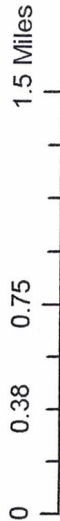
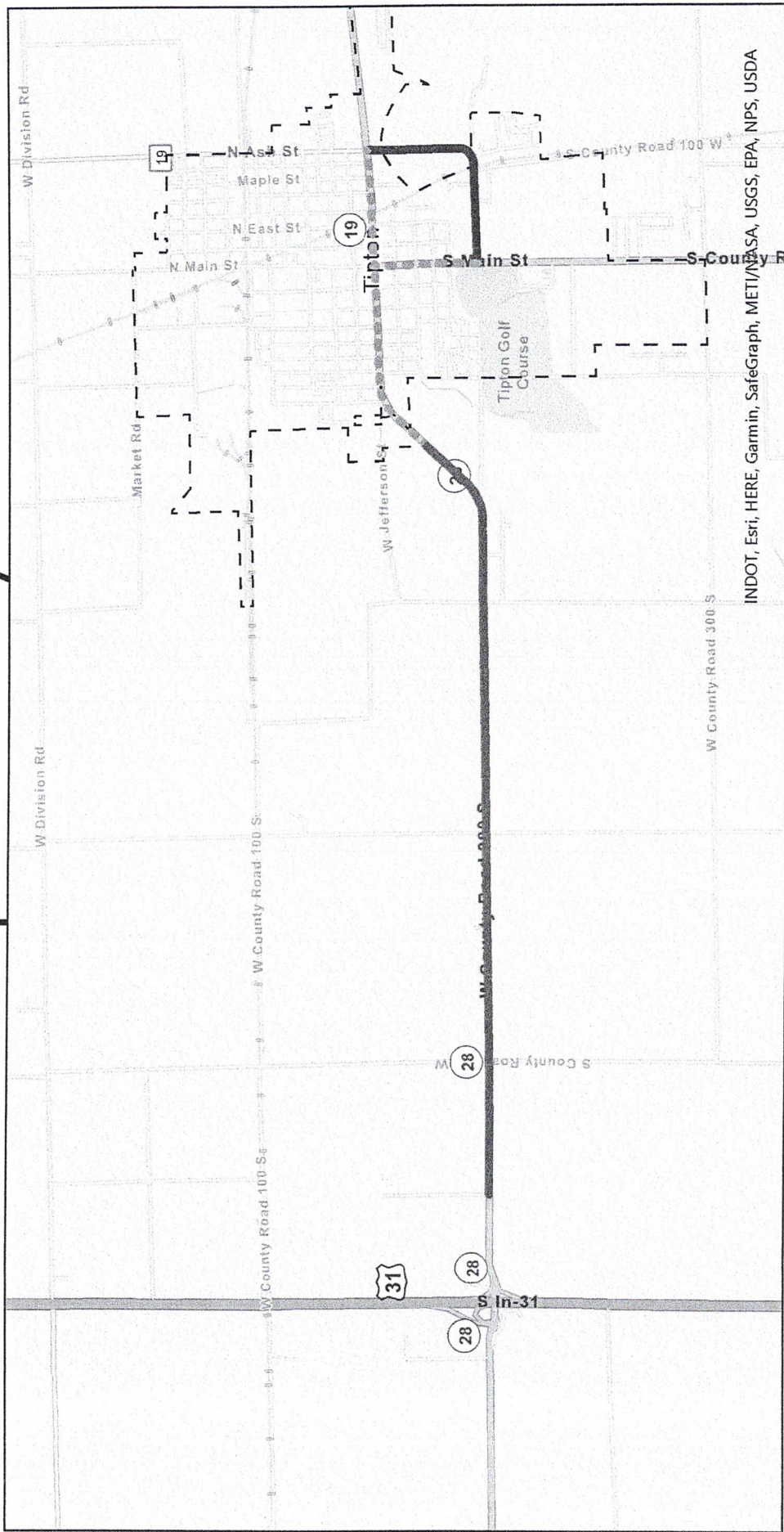
Date : _____

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

Marjorie A. Millman, Attorney No. 21748-36

Location Map for Proposed Relinquishments

Tipton County



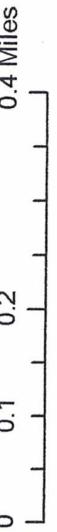
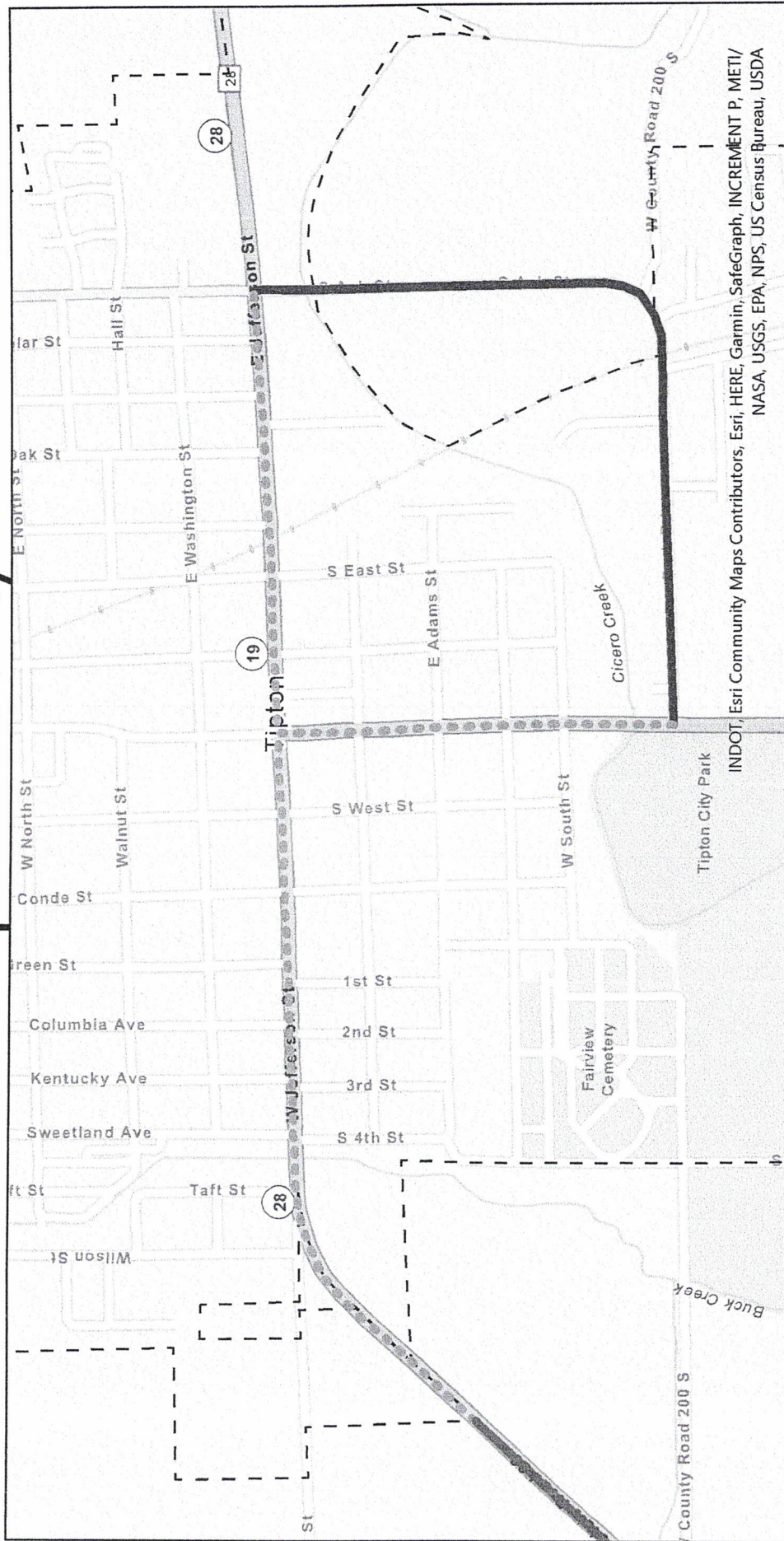
Legend

Category

- To be acquired by INDOT
- To be relinquished to city
- To be relinquished to county
- Tipton_Boundaries

Location Map for Proposed Relinquishments

Tipton County



Legend

Category

-  To be acquired by INDOT
-  To be relinquished to city
-  To be relinquished to county
-  Tipton_Boundaries