

PROGRAMMATIC FEDERAL FUNDS EXCHANGE AGREEMENT**Between****INDIANA DEPARTMENT OF TRANSPORTATION****And****THE INDIANAPOLIS METROPOLITAN PLANNING ORGANIZATION****EDS #: A249-21-ON200083**

This Agreement is made and entered into effective as of the date of the Indiana Attorney General approves the Agreement as to form and legality (the “Effective Date”), by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as “INDOT”), and the Indianapolis Metropolitan Planning Organization, a metropolitan planning agency in the State of Indiana (hereinafter referred to as the “IMPO”), and collectively referred to as the PARTIES.

RECITALS

WHEREAS, the IMPO is eligible to receive federal funds as described herein under the sharing agreement INDOT enters into with locals each year upon receiving information as to the total state allocation of federal funds for a federal fiscal year (the “Sharing Agreement”); and

WHEREAS, IMPO has requested an exchange of federal funds for state funds under IC 36-9-42.2 and intends to use state funds instead of federal funds to pay for a number of projects in its urbanized or planning area over the term of this Agreement; and

WHEREAS, the PARTIES have a long history of cooperation and collaboration in planning and delivery of needed transportation projects for the traveling public in Central Indiana; and

WHEREAS, INDOT has agreed to grant the request in accordance with the terms of this Agreement; and

WHEREAS, the PARTIES execute this Agreement pursuant to Indiana Code §§ 8-23-2-6, 8-23-4-7, 36-1-4-7, 36-1-7-3, and 36-9-42.2;

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the IMPO and INDOT agree as follows:

1.1. Purpose of this Agreement; Funding Source.

- A. The purpose of this Agreement is to exchange IMPO federal funds for state funds to complete eligible projects included in the IMPO’s Transportation Improvement Program (the “Program”).
- B. The funds shall be used exclusively in accordance with the provisions contained in this Agreement and in conformance with Indiana Code §36-9-42.2 establishing the authority to make this Agreement, as well as any rules adopted thereunder. The funds received by the IMPO pursuant to this Agreement shall be used only to implement the projects or provide the

services in conformance with the Program referenced in this Agreement and for no other purpose.

- C. INDOT will provide IMPO with state funds in exchange for federal funds at a rate of \$.90 state dollar per \$1.00 federal dollar. This exchange will apply to federal funds that would be allocated to the IMPO under the annual Local Share of Federal Formula Apportionments (“Sharing Agreement”) for the fiscal year (in other words, the obligation limitation for the fiscal year).
- D. INDOT will make FFE funds available to the IMPO for the state fiscal year on or about September 30 of each year. If a continuing resolution is in effect for any part of a state fiscal year during the term of this Agreement, INDOT will provide funds based on the prior federal fiscal year until a federal budget is passed for the current year. Once an updated federal budget is passed and if additional funds would have become available to the IMPO, INDOT will reconcile the amount of the exchange by making additional payment of state funds as soon as practicable.
- E. The IMPO may only exchange federal funds that would have been allocated to the IMPO under the Sharing Agreement for state funds. Funds exchanged through this Agreement are collectively referred to as FFE funds. As of the Effective Date of this Agreement, eligible federal funding types include: Surface Transportation Block Grant Program (STBGP) funds, Highway Safety Improvement Program (HSIP) funds, Congestion Mitigation and Air Quality Improvement (CMAQ) funds, Transportation Alternatives (TA) funds, and Section 164 Penalty funds. Federal stimulus funds, bonus funds or any other funds outside of those listed above are not subject to this agreement without written agreement between the Parties. The Parties acknowledge that when a new federal transportation funding bill is passed – which is likely to occur over the term of this Agreement – the types of federal funding eligible for exchange under the Agreement may change. It is the intent of the Parties that any new federal funding types available to the IMPO under the Sharing Agreement for FY2025 and subsequent fiscal years would be eligible for exchange under this Agreement.
- F. Except as provided under Section 2.17 (Force Majeure) or Section 2.18 (Funding Cancellation) of this Agreement, once State funds transferred to the IMPO have been programmed in the IMPO’s Program, funding transferred to the IMPO under this Agreement may not be withdrawn for any phase of a project or program that has been approved for FFE funds by the IMPO Transportation Policy Committee.
- G. For purposes of clarity and to avoid misunderstanding, except as may be provided under Section 1.2(C) of this Agreement, the PARTIES will not complete an exchange of federal funds under this Agreement until after July 1, 2024.

1.2. Rights and Responsibilities of INDOT.

- A. INDOT may assign a contact to any project prosecuted under the program to serve as a resource at the IMPO’s or one of its local public agency (LPA) partner’s request. This contact will be available to consult with the IMPO or its local public agency partners on a

project, but will not provide any formal review, approvals, guarantees or assurances, and INDOT will not be responsible for any aspect of work on any project.

- B. Upon request, INDOT or its authorized designee shall have the option to access and to inspect all plans, specifications, special provisions, and relevant documentation for any project utilizing FFE funds regardless of when those plans, specifications, special provisions or other such Project documents were created.
- C. To the extent possible considering other transportation activities and projects requiring state funds, INDOT will allow flexibility in the annual allocation policy for the IMPO to facilitate the transition of projects out of the local federal-aid program and into the federal funds exchange program under this Agreement. To this end, INDOT will allow IMPO to carry over additional federal funds from fiscal year to fiscal year without being subject to the \$.90 state dollar per \$1.00 federal dollar exchange rate or the risk of loss of funds, but otherwise in accordance with all other terms of this Agreement in the maximum amount of:
 - 1. \$5,000,000.00, OR
 - 2. the cost of one (1) project provided that the project cost is within 20% of the \$5,000,000.00 maximum, and subject to funding availability,prior to State Fiscal Year 2025.

1.3. Representations and Warranties of the IMPO.

- A. In accordance with the requirements contained in Indiana Code § 36-9-42.2-1 et seq., the IMPO agrees to the following:
 - 1. The IMPO may use the FFE funds for any projects allowable under federal law eligible for federal funding or are part of an IMPO-approved asset management plan or Program.
 - 2. The exchange rate shall be ninety cents (\$.90) of state funds for each one dollar (\$1) of federal funds.
 - 3. The IMPO agrees to require participating LPAs to provide local matching funds for each project phase being funded by the IMPO in amounts equal to: (i) at least twenty percent (20%) of the project phase cost, or (ii) equal to whatever matching funds percentage would have been required under federal law for the federal funding type for which an individual project would have been eligible, to accomplish the required match per I.C. 36-9-42.2-5(4).
 - 4. The IMPO will award FFE funds to eligible entities for projects through the established IMPO Project Selection Process and will consider the factors listed in I.C. 36-9-42.2-7(b) before awarding exchanged funds to eligible entities for projects. The approval by the IMPO Transportation Policy Committee will constitute the final selection of projects to be funded under this agreement.
- B. The IMPO expressly represents and warrants to INDOT that it is statutorily eligible to receive these FFE funds and that the information set forth in this Agreement is true, complete and accurate. The IMPO expressly agrees to promptly repay all funds paid to it under this Agreement should it

be determined either that it was ineligible to receive the funds, or it made any material misrepresentation in this Agreement.

C. It is the intent of the PARTIES that the IMPO be ultimately responsible for ensuring that its administration of the Program complies with applicable state and local laws and regulations (including I.C. 36-9-42.2).

D. It is the intent of the PARTIES that the IMPO will execute a contract with its constituent local public agencies (LPA) awarded funds under this Agreement before any FFE funds are transferred to the LPA, making the LPA ultimately responsible for all aspects of their project or projects funded under the Program. Moreover, the contract will state that the LPA agrees that it will follow all applicable procedures, guidelines, standards, and specifications as well as sound engineering principles in the design and construction of all projects.

E. In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Agreement, the PARTIES understand that the IMPO will enter into binding contracts with its LPAs to carry out the responsibilities for projects under the Program. LPA contracts will at a minimum enumerate the following:

1. The LPA will prepare or cause to be prepared all required environmental document(s) or studies for each project in accordance with all pertinent state and federal laws, regulations, policies and guidance.
2. The LPA shall ensure that all contracts or procurements for work on all projects funded under the Program comply with all applicable state and local public purchasing laws and competitive bidding requirements (in accordance with I.C. 36-9-42.2-10). Further, in accordance with I.C. 36-9-42.2-5(6) and (7), professional services must be performed by an entity that is prequalified by INDOT, and award of all contracts for professional services that are paid with FFE funds must be made on the basis of competence and qualifications. Reasonable compensation for such contracts must be negotiated by the LPA following selection of project contractor.
3. The LPA shall complete all right-of-way acquisition, utility coordination, railroad coordination, and acquire the necessary permit(s) in accordance with applicable law.
4. The LPA shall let and award construction contracts for all projects funded under the Program according to applicable laws and rules.
5. The LPA shall provide competent and adequate engineering, testing, and inspection services to ensure the performance of work on each project funded under the Program is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders.
6. The LPA shall be responsible for all costs associated with additional provisions and/or expenses in excess of the FFE funds allocated to the projects funded under the Program.
7. The LPA shall certify that it has verified the suspension and debarment status for all contractors and sub-contractors receiving funds under this agreement and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The LPA shall immediately notify the IMPO and the State if any

contractor or subcontractor becomes debarred or suspended, and shall, at the IMPO or State's request, take all steps required by the IMPO or the State to terminate its contractual relationship with the contractor or sub-contractor for work to be performed under this agreement.

8. The LPA shall agree to and shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT, the IMPO and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

- (a) of the State of Indiana, INDOT, the IMPO and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA shall also agree to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT, the IMPO and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA shall also agree to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT, the IMPO and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

- F. If the IMPO (or LPA) is required by the State Board of Accounts or the State Auditor to repay any portion of state funds exchanged under the terms of this Agreement for failure to comply with applicable laws, then the IMPO shall repay (or ensure that the responsible local public agency repays) to INDOT such sums within forty-five (45) days after receipt of a billing from INDOT.

Payment for any and all costs incurred by the IMPO (or a local public agency) which are not eligible for state funding shall be the sole obligation of the IMPO or local public agency.

G. IMPO will allow flexibility to INDOT proposing and completing amendments or modifications to the TIP outside of the current quarterly practice to enable INDOT to more rapidly respond to changing market conditions.

1.4. Implementation of and Reporting on the Project. To ensure compliance with the requirements of I.C. 36-9-42.2-9, the IMPO shall submit an annual report to INDOT by August 1 of each fiscal year, including a list with status on all projects developed or constructed utilizing FFE funds and an accounting of all funding associated with such projects.

1.5. Term.

- A. This Agreement shall be from the Effective Date through October 1, 2026. Unless otherwise provided herein, it may be extended upon the written agreement of the PARTIES and as permitted by state or federal laws governing this Agreement.
- B. The Parties understand that if this Agreement is not extended or renewed prior to expiration, or if some other arrangement isn't made for the IMPO to operate under the auspices of the FFE program, a transition period of up to three years will be needed for the IMPO to develop future projects to be completed as federal-aid projects. The Parties intend that in such circumstances, INDOT and IMPO would cooperate to come to a new agreement concerning the terms of the transition of IMPO's project development pipeline back to a federal-aid supported program. Specifically, the Parties understand and anticipate that some flexibility would be provided to the IMPO under the current INDOT annual allocation policy (subject to then-current fiscal constraints, project commitments and other program needs).

1.6. Project Monitoring by INDOT.

- A. INDOT may conduct on-site or off-site monitoring reviews during the term of this Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The IMPO shall extend its full cooperation and give full access to relevant documentation to INDOT or its authorized designees.
- B. INDOT may assign a contact to any project prosecuted under the program to serve as a resource at the IMPO's or a local public agency's request. This contact will be available to consult with the IMPO or its local public agency partners on a project, but will not provide any formal review, approvals, guarantees or assurances, and INDOT will not be responsible for any aspect of work on any project
- C. Upon request, INDOT shall have the option to access and to inspect all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.

ARTICLE II. GENERAL PROVISIONS.

2.1. Access to Records and Audits.

A. The MPO shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost of administration of the program 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 termination 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.

B. The IMPO acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC §5-11-1, et seq., and audit guidelines specified by the State.

C. The State considers the IMPO to be a “sub-recipient” for purposes of this Agreement. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Agreement the IMPO shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Agreement. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled “Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources,” and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The IMPO is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Agreement and that such audit complies with 2 C.F.R. 200.500 , et seq.

D. For audits conducted pursuant to Indiana Code 5-11-1, and audited by the Indiana State Board of Accounts on the time schedule set forth by the Indiana State Board of Accounts, the IMPO shall provide to the Indiana State Board of Accounts, all requested documentation in its possession necessary to audit the IMPO.

E. If the audit is conducted by an independent public or certified public accountant and not the Indiana State Board of Accounts, the IMPO shall submit the completed audit to the Indiana State Board of Accounts within 10 (ten) days of the completion of the audit.

F. The audit shall be an audit of the actual entity, or distinct portion thereof that is the IMPO, and not of a parent, member, or subsidiary corporation of the IMPO, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State.

2.2. Assignment; Successors. [Omitted – Not Applicable.]

2.3. Assignment of Antitrust Claims. [Omitted – Not Applicable.]

2.4. Audits. [Omitted – see Section 2.1.]

2.5. Authority to Bind IMPO. The signatory for the IMPO represents that he/she has been duly authorized to execute this Agreement on behalf of the IMPO and has obtained all necessary or applicable

approvals to make this Agreement fully binding upon the IMPO when his/her signature is affixed, and accepted by the State.

2.6. Changes in Work. [Omitted – Not Applicable.]

2.7. Compliance with Laws.

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

B. The IMPO 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 IMPO 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 IMPO shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Agreement.** If the IMPO is not familiar with these ethical requirements, the IMPO 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 IMPO or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the IMPO. In addition, the IMPO 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 IMPO certifies by entering into this Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The IMPO agrees that any payments currently due to the State may be withheld from payments due to the IMPO. Additionally, payments may be withheld, delayed, or denied and/or this Agreement suspended until the IMPO is current in its payments and has submitted proof of such payment to the State.

D. The IMPO 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 the State of any such actions. During the term of such actions, the IMPO agrees that the State may suspend funding for the Program. If a valid dispute exists as to the IMPO’s liability or guilt in any action initiated by the State or its agencies, and the State decides to suspend funding to the IMPO, the IMPO may submit, in writing, a request for review to the Indiana Department of Administration (IDOA). A determination by IDOA shall be binding on the parties. Any disbursements that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.

E. The IMPO warrants that participating LPAs and any contractors performing work in connection with the Program 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.

F. The IMPO 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.

G. As required by IC § 5-22-3-7:

- (1) The IMPO and any principals of the IMPO certify that:

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

2.8. Condition of Payment. [Omitted – Not Applicable.]

2.9. Confidentiality of State Information. [Omitted – Not Applicable.]

2.10. Continuity of Services. [Omitted – Not Applicable.]

2.11. Debarment and Suspension.

A. The IMPO certifies by entering into this Agreement that it is not 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. 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 IMPO.

B. The IMPO certifies that participating LPAs will verify the suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The LPA shall immediately notify the IMPO and the State if any subcontractor becomes debarred or suspended, and shall, at the IMPO or State’s request, take all steps required by the IMPO or State to terminate its contractual relationship with the subcontractor for work to be performed under this Agreement.

2.12. Default by State. [Omitted – Not Applicable.]

2.13. Disputes. [Omitted – Not Applicable.]

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

has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of \$25,000.00, the IMPO 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 IMPO'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 IMPO'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 IMPO of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

2.15. Employment Eligibility Verification. As required by IC § 22-5-1.7, the IMPO swears or affirms under the penalties of perjury that:

- A. The IMPO has enrolled and is participating in the E-Verify program;
- B. The IMPO has provided documentation to the State that it has enrolled and is participating in the E-Verify program;
- C. The IMPO does not knowingly employ an unauthorized alien.
- D. The IMPO shall require its contractors or LPAS who perform work under this Agreement to certify to IMPO that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The LPA shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

2.16. Employment Option. [Omitted – Not Applicable.]

2.17. 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.

2.18. Funding Cancellation. As required by Financial Management Circular 2007-1 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 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.

2.19. 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.

2.20. HIPAA Compliance. [Omitted – Not Applicable.]

2.21. Indemnification. [Omitted – Not Applicable.]

2.22. Independent IMPO; Workers’ Compensation Insurance. [Omitted – Not Applicable.]

2.23. Indiana Veteran Owned Small Business Enterprise Compliance. [Omitted – Not Applicable.]

2.24. Information Technology Enterprise Architecture Requirements. [Omitted – Not Applicable.]

2.25. Insurance. [Omitted – Not Applicable.]

2.26. Key Person(s). [Omitted – Not Applicable.]

2.27. Licensing Standards. [Omitted – Not Applicable.]

2.28. Merger & Modification. This Agreement constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

2.29. Minority and Women’s Business Enterprises Compliance. [Omitted – Not Applicable.]

2.30. Nondiscrimination.

A. 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, the IMPO 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 IMPO 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 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 IMPO or any subcontractor.

B. INDOT is a recipient of federal funds, and therefore, where applicable, the IMPO 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.

2.31. 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. Notices to the State shall be sent to:

Office of IMPO/MPO and Grant Administration
Attention: Director of IMPO/MPO and Grant Administration
100 North Senate Avenue, Room N955
Indianapolis, Indiana 46204
E-mail: KEATON-McKALIP@indot.IN.gov

B. Notices to the IMPO shall be sent to:

Indianapolis Metropolitan Planning Organization
Attention: Executive Director
200 East Washington Street, Suite 2322
Indianapolis, Indiana 46204
E-mail: Anna.Gremling@IndyMPO.org

2.32. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or state law, below, (2) this Agreement, (3) Exhibits prepared by the State, and (4) Exhibits prepared by IMPO. All of the foregoing are incorporated fully herein by reference.

2.33. Ownership of Documents and Materials. [Omitted – Not Applicable.]

2.34. Payments.

A. All payments 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 IMPO 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 IMPO is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the IMPO agrees that if it fails to fully provide or perform under this Agreement, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

2.35. Penalties/Interest/Attorney’s Fees. The State 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 permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State’s failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

2.36. Progress Reports. [Omitted – Not Applicable.]

2.37. Public Record. The IMPO acknowledges that the State will not treat this Agreement as containing confidential information, and will post this Agreement on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Agreement shall not be considered an act of the State.

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

2.39. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

2.40. Substantial Performance. [Omitted – Not Applicable.]

2.41. 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 IMPO as a result of this Agreement.

2.42. Termination for Convenience. Unless prohibited by a statute or regulation relating to the Agreement, this Agreement may be terminated, by either party upon 180 days written notice if:

- A. Adequate state funds will not be available under Federal Funds Exchange Program in a given state fiscal year; or
- B. If a change in state or federal law would make continued performance of this Agreement unlawful; or
- C. If the Governor finds that continued performance of this Agreement is not in the best interest of the State of Indiana.

Except as provided under Section 2.18 above, once programmed, funding under this Agreement may not be withdrawn for any phase of a project that has entered the IMPO’s project development process (Program) as an FFE-funded project under this Agreement.

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 INDOT and the IMPO and either party may determine in their sole discretion whether the provisions of this Agreement require formal modification or termination by either or both parties, and in such event, INDOT and IMPO may terminate this Agreement upon 180 days written notice and the parties will cooperate as the other party may reasonably request to assure an orderly wind-down or transition of this Agreement.

2.43. Termination for Default. [Omitted – Not Applicable.]

2.44. Travel. [Omitted – Not Applicable.]

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

2.46. Work Standards. [Omitted – Not Applicable.]

2.47. Certification for Federal-Aid Contracts Lobbying Activities. [Omitted – Not Applicable.]

2.48. Recitals Incorporated. The Recitals above are hereby made an integral part and specifically incorporated into this Contract.

2.49. Information Technology Accessibility Standards. Any information technology related products or services purchased, used or maintained through this Agreement must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. §794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at: <http://www.access-board.gov/508.htm>.

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Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the IMPO, or that the undersigned is the properly authorized representative, agent, member or officer of the IMPO. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the IMPO, 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 IMPO attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**

In Witness Whereof, the IMPO and the State 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.

**INDIANAPOLIS METROPOLITAN
PLANNING ORGANIZATION**

**STATE OF INDIANA
Department of Transportation**

Anna M. Gremling

Anna Gremling, Executive Director

Travis J. Underhill

Travis Underhill, Deputy Commissioner for Districts

Date: 7/24/2020

Date: 7-28-2020

Approved by:

Approved by:

Indiana Department of Administration

State Budget Agency

By: _____ (for)
Lesley A. Crane, Commissioner

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

Date: _____

Date: _____

APPROVED as to Form and Legality:

Office of the Attorney General

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

Date: _____

Agency Fiscal Approval

STIND/000000000000000000000000000044608:Approved

Agency Fiscal Approval

Approved



Michael Hopper-00800

Agency Fiscal Approval for SCM
07/30/20 - 3:58 PM

IDOA Approval

STIND/000000000000000000000000000044608:Approved

IDOA Legal Approval

Approved



John D Snethen

IDOA Legal3 Approval for SCM
07/31/20 - 11:09 AM

SBA Approval

STIND/000000000000000000000000000044608:Approved

SBA Approval

Approved



Sharp, Cara-00057

SBA Analyst Approval for SCM
08/11/20 - 12:48 PM



Approved



Olusola Egunyomi - 00057

SBA Asst Director for SCM Appr
08/26/20 - 12:42 PM

Attorney General Approval

STIND/000000000000000000000000000044608:Approved

Attorney General Approval

Approved



Molly H Skarbeck

Deputy Atty General Appr SCM
08/26/20 - 3:08 PM



Approved



Zanna Claire Dyer-00046

Inserted Approver
08/28/20 - 2:55 PM