

**INTERLOCAL AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF
A SANITARY SEWER LINE IN YORKTOWN, INDIANA ON SR32**

This INTERLOCAL AGREEMENT (“AGREEMENT”) is entered into this _____ day of _____, 2013, by and between the Indiana Department of Transportation (“INDOT”) and the Town of Yorktown, Indiana (“Town”) (and collectively referred to as “PARTIES”).

WITNESSETH:

WHEREAS, INDOT has programmed a project in the Town on SR 32 from CR 575W to CR 400W in the Town with a Contract No. of IR 30174 (“The Project”); and

WHEREAS, INDOT acquired certain property rights for The Project; and

WHEREAS, INDOT’s acquisition of those property rights caused an existing sanitary system to become inadequate; and

WHEREAS, the PARTIES wish to remedy the inadequacy of the existing sanitary system by constructing a new sanitary system “New Sanitary System”; and

WHEREAS, INDOT will construct the New Sanitary System as part of the Project at INDOT’s costs; and

WHEREAS, once the New Sanitary System is constructed, the Town will accept jurisdiction over the New Sanitary System and will maintain it as a public utility; and

NOW, THEREFORE, the parties to this AGREEMENT set forth the following terms and conditions:

SECTION I INDOT DUTIES

- A. INDOT will construct the New Sanitary System: a 4 inch line system of approximately 1300 feet with all necessary cleanouts from 6903 Kilgore Ave. (SR 32) in Yorktown to County Road 400W and SR32.
- B. INDOT shall connect the New Sanitary System into an existing sanitary manhole owned by the Town.
- C. INDOT shall construct the system to INDOT’s specifications and shall give the Town the ability to monitor the installation.
- D. INDOT shall pay 100% of the costs of the construction and/or installation of the New Sanitary System as part of the Project. The estimated costs of construction and/or installation of the New Sanitary System is \$ 40,000.00.

SECTION II TOWN DUTIES

- A. The Town shall permit INDOT access and/or to work on Town-owned right-of-way in order to complete construction and connection of the New Sanitary System.
- B. The Town has the right to monitor the construction of the New Sanitary System.

- C. The Town shall accept all jurisdiction, ownership and maintenance of the New Sanitary System once its construction is complete.

SECTION III **TERM**

The Term of this agreement shall be from July 15, 2013 until September 30, 2014 or when the Project is completed, whichever occurs first.

SECTION IV **GENERAL PROVISIONS**

A. **Compliance with Laws.**

1. The TOWN 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 there under, after execution of this Agreement shall be reviewed by INDOT and the TOWN to determine whether the provisions of this Agreement require formal modification.

2. The TOWN 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 there under, and Executive Order 05-12, dated January 12, 2005. If the TOWN is not familiar with these ethical requirements, the TOWN should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>>. If the TOWN or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Agreement immediately upon notice to the TOWN. In addition, the TOWN may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44-1-3 and under any other applicable State or Federal laws.

3. As required by I.C. 5-22-3-7:
 - a. The TOWN and any officials of the TOWN certify that (A) the TOWN, except for de minimis and nonsystematic violations, has not violated the terms of (i) I.C. 24-4.7 [Telephone Solicitation Of Consumers], (ii) I.C. 24-5-12 [Telephone Solicitations] , or (iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by Federal law; and (B) the TOWN will not violate the terms of I.C. 24-4.7 for the duration of the Agreement, even if I.C. 24-4.7 is preempted by Federal law.

 - b. The TOWN and any officials of the TOWN certify that an affiliate or official of the TOWN and any agent acting on behalf of the TOWN or on behalf of an affiliate or official of the TOWN: (A) except for de minimis and

nonsystematic violations, has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by Federal law; and (B) will not violate the terms of I.C. 24-4.7 for the duration of the Agreement, even if I.C. 24-4.7 is preempted by Federal law.

- B. Drug-Free Workplace Certification.** The TOWN hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it shall give written notice to the INDOT and the IDOA within ten (10) days after receiving actual notice that an employee of the TOWN in the State of Indiana has been convicted of a criminal drug violation occurring in the TOWN's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Agreement payments, termination of the 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, TOWN hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the IDOA is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000, shall be valid, unless and until this certification has been fully executed by the TOWN and made a part of the contract or agreement as part of the contract documents.

The TOWN certifies and agrees it shall provide a drug-free workplace by:

1. Publishing and providing to all of its employees a Statement notifying their employees the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the TOWN's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
2. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) the TOWN's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties which may be imposed upon an employee for drug abuse violations occurring in the workplace.
3. Notifying all employees in the Statement required by subparagraph (1) above as a condition of continued employment the employee shall (1) abide by the terms of the Statement; and (2) notify the TOWN of any criminal drug statute conviction

for a violation occurring in the workplace no later than five (5) days after such conviction;

4. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;
5. Within thirty (30) days after receiving notice under subdivision (3)(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
6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.

C. Funding Cancellation Clause. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Agreement, this Agreement shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

D. Governing Laws. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

E. No Investment in Iran. As required by IC 5-22-16.5, the TOWN certifies that the TOWN is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Agreement and denial of future state contracts, as well as an imposition of a civil penalty.

F. Non-Discrimination.

1. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the TOWN, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Agreement. Acceptance of this Agreement also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

2. The TOWN understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the TOWN, agrees that if the TOWN employs fifty (50) or more employees and does at least \$50,000 worth of business with the State and is not exempt, the TOWN will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The TOWN 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 Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

3. During the performance of this Agreement, the TOWN, for itself, its assignees and successors in interest (hereinafter referred to as the "TOWN") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
- a. Compliance with Regulations: The TOWN 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.
 - b. Nondiscrimination: The TOWN, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The TOWN 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.
 - c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the TOWN 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 TOWN of the TOWN's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.

- d. Information and Reports: The TOWN 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 TOWN is in the exclusive possession of another who fails or refuses furnish this information, the TOWN 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.
- e. Sanctions for Noncompliance: In the event of the TOWN'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 TOWN under the Agreement until the TOWN complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: The TOWN shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The TOWN 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 TOWN becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the TOWN 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 TOWN may request the United States of America to enter into such litigation to protect the interests of the United States of America.

G. Payment. All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the TOWN 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 I.C. 4-13-2-20.

H. Notice. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following address, unless otherwise specifically advised.

1. Notice to the State, regarding Agreement provisions shall be sent to:

KimberLee Peters, P.E.
INDOT Office of Project Management
N642 Indiana Government Center North
Indianapolis, IN. 46204

2. Notice to the Town shall be sent to:

Robert Ratchford
President—Town Council
9800 West Smith Street
Yorktown, Indiana 47396

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

1. The Town does not knowingly employ an unauthorized alien.
2. The Town shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Town is not required to participate should the E-Verify program cease to exist. Additionally, the Town is not required to participate if the Town is self-employed and does not employ any employees.
3. The Town shall not knowingly employ or contract with an unauthorized alien. The Town shall not retain an employee or contract with a person that the Town subsequently learns is an unauthorized alien.
4. The Town shall require his/her/its subcontractors who perform work under this Agreement to certify to the Town 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 Town agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

J. Indemnification. The Town agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission in conjunction with the maintenance, repair and/or replacement of the New Sanitary System. The State shall not provide such indemnification to the LPA.

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the TOWN, or that he/she is the properly authorized representative, agent, member or officer of the TOWN, that he/she has not, nor has any other member, employee, representative, agent or officer of the TOWN, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

In Witness Whereof, TOWN and the State of Indiana have, through duly authorized representatives, entered into this Agreement. The PARTIES having read and understand the forgoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

IN WITNESS WHEREOF, the undersigned do hereby execute this Agreement as of the date first written above.

TOWN OF YORKTOWN, INDIANA

By: _____
Robert Ratchford
President, Town Council

_____ Daniel Flanagan, Town Council

Date: _____

Date: _____

_____ Laura Vise
Vice President, Town Council

_____ Rich Lee, Town Council

Date: _____

Date: _____

_____ Rick Glaub, Town Council

_____ Lon Fox, Town Council

Date: _____

_____ Robert Flanagan, Town Council

Date: _____

INDIANA DEPARTMENT OF TRANSPORTATION

By: _____
Brandye Hendrickson
District Deputy Commissioner

Date: _____

STATE OF INDIANA
Department of Administration

Approved By: _____
Jessica Robertson, Commissioner

Date: _____

STATE BUDGET AGENCY

Approved By: _____
Brian E. Bailey, Director

Date: _____

Approved as to Legality and Form:

_____(FOR)
Gregory F. Zoeller
Attorney General of Indiana

Date Approved: _____