

STATE OF INDIANA)	IN THE MARION COUNTY SUPERIOR COURT
)	SS:
COUNTY OF MARION)	CAUSE NO. 49D06-1706-PL-22158
CITY OF INDIANAPOLIS,)	
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF CARMEL,)	
)	
Defendant.)	

MEDIATION RULE 2.7 TENTATIVE SETTLEMENT AGREEMENT

This matter was mediated to a tentative settlement pursuant to the terms set forth below and in the attached Proposed Interlocal Cooperation Agreement Between The City of Indianapolis By And Through Its Department of Public Works (“Indianapolis”) and The City of Carmel (“Carmel”). Indianapolis and Carmel may be referred to herein as “the Parties”. The Parties hereby agree as follows:

- A. Carmel and Indianapolis will submit the Interlocal Cooperation Agreement attached as Exhibit A for approval by both the Indianapolis City-County Council and the Carmel City Council.
 - 1. Terms of the Interlocal will be substantially identical to the December 2016 Interlocal, with the exception that (i) Section 2(b) regarding Carmel’s Obligations will be modified to clarify that intersection plans and specification for Delegates Row, Gray Road, and Hazel Dell Parkway have already been reviewed and approved by Indianapolis. Plans for the sidewalk and crosswalks on the south side of 96th Street will be submitted by Carmel to Indianapolis for review and approval; and (ii) Carmel will be authorized in the Interlocal to complete any work as described in this Settlement Agreement.
 - 2. This Agreement is contingent on councils’ approvals, but Carmel may continue with reversible steps in the interim, which includes securing right-of-way acquisition and construction prep, provided that Carmel will not start any construction inside Indianapolis or close on any acquisitions inside Indianapolis until both councils approve interlocal.
- B. The detour route will be repaved to Indianapolis' standard specifications (base repair + 1 1/2 inch re-surface) at Carmel's expense.
 - 1. River Crossing Blvd (starting from 86th Street) to River Rd, Brandt Rd (96th Street) – approx. 9,000 lft
 - 2. River Ridge Drive – approx. 2,000 lft
(The attached Interlocal contains the specific re-surfacing agreed to.)

- C. In connection with Carmel's current 96th Street improvement project, Carmel will not acquire any right of way outside the current right-of-way lines at the intersection of Randall Drive and 96th Street.
- D. Carmel will move forward with the proposed right-of-way acquisition and reconstruction at Delegates Row, Gray Road, and Hazel Dell Parkway, with the understanding that if the River Ridge Drive leg of Gray Road roundabout falls below service level D during am or pm peak per traffic study by mutually agreed engineering firm, Carmel will at its own expense install a signal for metering traffic during those periods.
- E. Carmel will install sidewalk (5-foot buffer with 5-foot sidewalk, with exception where drainage or right of way or site conditions require a narrower buffer, but Carmel will make reasonable best efforts to acquire sufficient right of way) on south side of 96th Street from Priority Way West Drive to just east of River Ridge Drive to tie into existing sidewalk past Old National Bank.
1. Sidewalk must be completed by substantial completion date for Keystone intersection project.
 2. Carmel will bear all ordinary municipal responsibility for sidewalk maintenance on south side of 96th street consistent with its current statutory obligations with respect to 96th Street.
- F. Once the Interlocal agreement is approved by each city's council and executed, the parties will execute a joint motion to dissolve the injunction and dismiss the lawsuit as moot. Carmel will also dismiss its interlocutory appeal as moot. Neither party will admit liability, and each party will bear its own litigation costs, expenses, and attorneys' fees.
- G. Neither party will make any public statements regarding this agreement before August 28, 2017.



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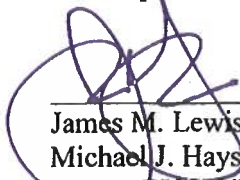
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- E. Carmel will install sidewalk (5-foot buffer with 5-foot sidewalk, with exception where drainage or right of way or site conditions require a narrower buffer, but Carmel will make reasonable best efforts to acquire sufficient right of way) on south side of 96th Street from Priority Way West Drive to just east of River Ridge Drive to tie into existing sidewalk past Old National Bank.
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Exhibit A – Interlocal Agreement

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
THE CITY OF INDIANAPOLIS
BY AND THROUGH ITS DEPARTMENT OF PUBLIC WORKS
AND
THE CITY OF CARMEL
FOR IMPROVEMENTS TO THE 96TH STREET CORRIDOR
FROM PRIORITY WAY DRIVE WEST TO HAZEL DELL PARKWAY**

This Interlocal Cooperation Agreement ("Agreement") is entered into by and between the Consolidated City of Indianapolis and Marion County, Indiana, by and through its Department of Public Works ("Indianapolis"), and the City of Carmel, Indiana, by and through its duly elected Mayor ("Carmel"), related to improvements to the 96th Street corridor between Priority Way Drive West and Hazel Dell Parkway, including the construction of roundabouts at the intersections of 96th Street and Delegates Row, Gray Road and Hazel Dell Parkway (the "Project").

RECITALS

WHEREAS, I.C. § 8-17-1-45 provides that each county is responsible for the construction, reconstruction, maintenance, and operation of the roads, including the ditches and signs for those roads, making up its southern and eastern boundaries; and

WHEREAS, 96th Street forms the boundary between Hamilton County and Marion County, and is Hamilton County's southern boundary; therefore, Hamilton County is responsible for the construction, reconstruction, maintenance and operation of 96th Street; and

WHEREAS, pursuant to I.C. § 36-1-3-9(a), Carmel has jurisdiction over of those portions of 96th Street within its borders; and

WHEREAS, the 96th Street corridor is a major roadway which serves and affects the citizens of and the economic well-being of both Indianapolis and Carmel; and

WHEREAS, recent development in the geographic area of 96th Street has lessened the present level of service of 96th Street corridor; and

WHEREAS, Indianapolis and Carmel, individually and collectively, have determined that the Project will be of public utility and benefit; and

WHEREAS, in order to construct the Project, it is necessary for Carmel to acquire, manage and regulate right-of-way and conduct construction activities within the borders of Indianapolis; and

WHEREAS, pursuant to I.C. § 36-1-4-18, Carmel may exercise powers granted by I.C. § 36-1-4-5 (power to acquire real and personal property by eminent domain or other means) and I.C. § 36-1-4-6 (power to use, improve, develop, insure, protect, maintain, lease and dispose of interests in property) within four (4) miles outside its boundaries, and pursuant to I.C. § 36-1-3-9(c) Carmel may exercise such powers within the boundaries of another municipality, such as Indianapolis, pursuant to an interlocal cooperation agreement under I.C. 36-1-7; and

WHEREAS, Carmel and Indianapolis desire to enter into this Agreement pursuant to I.C. §§ 8-17-1-45(b), 36-1-3-9(c) and 36-1-7-2 to allow for Carmel to acquire right-of-way, to manage

such right-of-way, and to conduct construction activities within the boundaries of Indianapolis as necessary for completion of the Project.

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions contained herein, Indianapolis and Carmel agree as follows:

1. Representations.

a. Each party represents to the other party that:

i. It will submit this Agreement for approval by the party's fiscal body as required by I.C. § 36-1-7-4;

ii. Subject to approval by the party's fiscal body, it has all requisite power, authority and legal right to enter into and carry out the obligations set forth in this Agreement; and

iii. Subject to approval by the party's fiscal body, it will execute this Agreement by an authorized representative, upon which execution this Agreement will constitute a valid, legally binding obligation of the party, enforceable by its terms, and the party is estopped from making a claim based upon the unenforceability of this Agreement.

b. The parties agree to the following additions to the Project as originally designed by Carmel and presented to Indianapolis in June 2017 (collectively, the "Project Additions"):

i. Add sidewalks and associated crosswalks on the south side of 96th Street from Priority Way West Drive to east of River Ridge Drive to connect with an existing sidewalk located to the east of the property located at 4805 East 96th Street (the "Sidewalks"). The Sidewalks shall be constructed in accordance with standard specifications of the Indiana Department of Transportation for sidewalk construction, shall be at minimum five (5) feet in width, and shall be placed such that there is at least five (5) foot buffer from the edge of 96th Street, and Carmel shall make reasonable efforts to acquire the right-of-way necessary therefor; provided, however, where Carmel can demonstrate to the reasonable satisfaction of Indianapolis's Department of Public Works that site conditions require a less than five (5) foot buffer, then a smaller buffer may be allowed.

ii. Resurface the following Project detour routes into Indianapolis in accordance with Indianapolis's standard specifications for road resurfacing (base repair and 1½ inch resurface), specifically:

(a) River Crossing Boulevard from 86th Street north to its intersection with River Road;

(b) River Road from River Crossing Boulevard to Brandt Road;

(c) Brandt Road from River Road to 96th Street; and

- (d) River Ridge Drive from Brandt Road to 96th Street.

The Project Additions shall be completed no later than the substantial completion date for Carmel's companion project on 96th Street between Haverstick Road to Priority Way West Drive.

c. The parties agree that, notwithstanding any other term of this Agreement to the contrary, Carmel shall not acquire any right-of-way outside of existing right-of-way at the intersection of 96th Street and Randall Drive as part of the Project, except as may be necessary to construct the Sidewalks and associated buffer.

d. The parties agree that if the River Ridge Drive leg of the roundabout constructed at the intersection of 96th Street and Gray Road as part of the Project falls below service level D during the morning (a.m.) and afternoon (p.m.) peak traffic times as determined by a qualified traffic engineering firm mutually agreed to by the parties, then Carmel agrees to install a signal for metering traffic into that roundabout, at Carmel's sole cost and expense.

2. Obligations of Carmel. Carmel shall be the lead agency on the Project and shall have the following obligations hereunder:

a. Appoint a representative to act as liaison with Indianapolis.

b. Submit to Indianapolis the design and construction plans and specifications for the Project Additions for review and approval by Indianapolis, and cooperate with Indianapolis with regard to any comments Indianapolis may have regarding the plans and specifications. The parties hereby acknowledge and agree that Carmel has previously provided the plans for the Project, and that Indianapolis approves of those plans (except to the extent that the Project plans include construction of a roundabout at the intersection of 96th Street and Randall Drive).

d. Perform all activities reasonably necessary to construct the Project and the Project Additions, including but not limited to design, engineering, environmental due diligence, testing and remediation, utility relocation, public bidding and contracting, construction, and construction inspection, including within the borders of Indianapolis, at its sole cost and expense.

e. Acquire all right-of-way required to construct the Project and the Project Additions, including within the boundaries of Indianapolis, by whatever means it deems necessary and appropriate, including through the exercise of eminent domain, at its sole cost and expense. Any such property interests acquired by Carmel shall be held in the name of Carmel.

f. Include in any contract pertaining to the Project and the Project Additions an appropriate clause indemnifying Indianapolis as set forth in Section 9 hereof, and cause the "Consolidated City of Indianapolis and Marion County" to be named as an additional insured on all insurance policies related to construction of the Project, including those policies of insurance carried by design professionals, construction contractors and construction inspectors, at its sole cost and expense.

- g. Comply with all applicable rules, regulations, ordinances, statutes and law concerning the Project and the Project Additions, at its sole cost and expense.
- h. Obtain all necessary permits required to construct the Project and the Project Additions, at its sole cost and expense.
- i. Maintain the improvements installed as part of the Project, at its sole cost and expense. With respect to the Sidewalks added as part of the Project Additions, Carmel will bear all ordinary municipal responsibility for sidewalk maintenance consistent with its current statutory obligations regarding 96th Street.
- j. Regulate, by ordinance, rule, regulation or otherwise, all uses of the right-of-way acquired for the Project and the Sidewalks, including within the boundaries of the Indianapolis.
- k. Agree not to discriminate, and agree to require each of its contractors working on the Project and the Project Additions to agree in writing not to discriminate, against any employee or applicant for employment to be employed in the performance of the Project with respect to her or his hire, tenure, terms, conditions, or privilege of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identify, color, national origin, ancestry, age, disability, or United States military service veteran status.
- l. Within fifteen (15) days of full approval and execution of this Agreement, record this Agreement with the Office of the Hamilton County Recorder and the Office of the Marion County Recorder as required by I.C. § 36-1-7-6.
- m. Within sixty (60) days of the Effective Date of this Agreement (as defined in Section 6 below), file a copy of this Agreement with the Indiana State Board of Accounts as required by I.C. § 36-1-7-6.

3. Obligations of Indianapolis. Indianapolis shall have the following obligations hereunder:

- a. Appoint a representative to act as liaison with Carmel.
- b. Cooperate with Carmel in the review of the design and construction plans and specifications for the Project Additions. Indianapolis shall respond with its comments and/or approval of the plans and specifications within ten business (10) days of submittal by Carmel. Indianapolis's approval shall not be unreasonably withheld; provided, however, the failure of the plans to conform to the conditions set forth in Section 1.b. of this Agreement shall be considered a reasonable reason for Indianapolis to disapprove of the plans and specifications.
- c. Consent to Carmel's acquisition of right-of-way required to construct the Project and the Sidewalks within the boundaries of Indianapolis, including consent for Carmel to exercise eminent domain to acquire such right-of-way. Indianapolis hereby acknowledges and agrees that Carmel may acquire such right-of-way in Carmel's name within the boundaries of Indianapolis.

- d. Cooperate with Carmel in obtaining any required permits.
- e. Consent to Carmel's regulation of the uses of the right-of-way acquired for the Project and the Sidewalks within the boundaries of Indianapolis. Indianapolis hereby acknowledges and agrees that Carmel may enact ordinances, rules or regulations regarding the use of right-of-way acquired for the Project and the Sidewalks within the boundaries of Indianapolis.

Notwithstanding any provision in this Agreement to the contrary, Indianapolis shall not be financially responsible for any cost associated with the Project or the Project Additions.

4. Joint Undertaking. The parties hereby acknowledge and agree that the purpose and intent of this Agreement is not to undertake the joint exercise of power within the meaning of I.C. § 36-1-7-2(a) and, therefore, this Agreement need not address other matters related to the financing, staffing, budget, administration through a joint board or separate legal entity, or the manner of acquiring, holding and disposing of real and personal property of a joint undertaking. There will be no jointly held property under this Agreement; however, in the event there is other jointly held property, it shall be distributed to Carmel.

5. Dispute Resolution. Any disputes that may arise under this Agreement shall be resolved by the parties' respective executive officers, or their designees. Failing resolution by the executive officers, the parties shall submit the dispute to mediation. Failing resolution of the dispute by mediation, either party may institute a suit in a court of law as provided for in Section 12 hereof.

6. Effective Date. This Agreement shall be effective upon the latest date of: (a) adoption of appropriate resolutions or ordinances approving this Agreement by the fiscal body of each party; (b) execution by the parties; or (c) recordation of this Agreement with the Recorder of Hamilton County and the Recorder of Marion County.

7. Term.

a. This Agreement shall be in effect until the later of: (i) completion of the Project including the Project Additions; or (ii) four (4) years from the Effective Date; unless this Agreement has been otherwise terminated or the term hereof extended. If the Project and Project Additions are not finally completed within the above-stated four (4) year period, the parties will cooperate to extend the term hereof.

b. Section 7.a. or any other term or condition set forth in this Agreement to the contrary notwithstanding, the following Sections shall survive termination or expiration of this Agreement, unless otherwise specifically terminated by written agreement of the parties:

- i. Section 1.d. (Traffic study of Gray Road intersection);
- ii. Section 2.i. (Maintenance of the Project);
- iii. Section 2.j. (Carmel's regulation of right-of-way);
- iv. Section 3.e. (Indianapolis's consent to regulation of right-of-way);
- v. Section 5 (Dispute resolution);
- vi. Section 9.a. (Indemnification of Indianapolis);
- vii. Section 9.b. (Indemnification of Carmel); and
- viii. Section 12 (Applicable law; suit).

8. Notice.

a. With regard to routine communications concerning the Project and communications regarding review and approval of Project plans and specifications under Sections 2. and 3, above, the parties' respective authorized representatives may communicate directly by whatever means they deem most effective and efficient.

b. Any other type of formal notice required to be provided under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To Carmel:

Department of Engineering
Attention: Director
City of Carmel
One Civic Square
Carmel, IN 46032

With a copy to:

Douglas C. Haney
Corporation Counsel
City of Carmel
One Civic Square
Carmel, IN 46032

To Indianapolis:

Department of Public Works
Attention: Director
City of Indianapolis
200 East Washington Street, Suite 2460
Indianapolis, IN 46204

With a copy to:

Office of Corporation Counsel
Attention: Corporation Counsel
City of Indianapolis
200 East Washington Street, Suite 1601
Indianapolis, IN 46204

9. Indemnification.

a. To the extent allowed by law, Carmel hereby agrees to indemnify, defend, exculpate, and hold harmless Indianapolis and its officers, employees and agents, from and against any and all claims, suits and liabilities of any kind or character, including reasonable attorneys' fees ("Tort Claims"), which result or arise from any negligent acts or omissions of Carmel or those for whom Carmel is responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of Carmel's duties or responsibilities under this Agreement, including construction and maintenance of the Project and the Project Additions. Notwithstanding the preceding sentence, the obligation of Carmel to indemnify, defend, exculpate, and hold harmless Indianapolis shall only arise if Carmel would also be liable under I.C. 34-13-3, as may be amended from time to time. Furthermore, the liability of Carmel to indemnify Indianapolis shall be limited by the provisions of I.C. 34-13-3, as may be amended from time. Carmel shall include in any contracts pertaining to the Project and the Project Additions appropriate clauses to extend any indemnification and hold harmless obligation of its contractors in favor of the Consolidated City of Indianapolis and Marion County.

b. To the extent allowed by law, Indianapolis agrees to indemnify, defend, exculpate, and hold harmless Carmel and its respective officers, employees and agents, from and against Tort Claims, including reasonable attorneys' fees, which result or arise

from any negligent acts or omissions of Indianapolis or those for whom Indianapolis is responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of the duties or responsibilities of Indianapolis under this Agreement. Notwithstanding the preceding sentence, the obligation of Indianapolis to indemnify, defend, exculpate, and hold harmless Carmel shall only arise if Indianapolis would also be liable under I.C. 34-13-3, as may be amended from time to time. Furthermore, the liability of Indianapolis to indemnify Carmel shall be limited by the provisions of I.C. 34-13-3, as may be amended from time to time.

10. Modification. The parties may alter, change or amend the terms and conditions of this Agreement only by mutual written agreement approved by the fiscal body of each party.

11. Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties with respect to its subject matter, supersedes any prior discussions, negotiations, and understandings between them – other than the Mediation Rule 2.7 Tentative Settlement Agreement dated August 23, 2017, which survives – and cannot be altered, changed or amended except as provided for in Section 10 hereof. The parties acknowledge that neither Carmel or Indianapolis, nor any of their respective officers, employees, or agents have made any representations relied upon by any other party other than the agreements contained herein.

12. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Indiana. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency. Suit, if any, shall be brought in the State of Indiana, County of Hendricks.

13. Interpretation. The parties hereby acknowledge and agree that this Agreement is the result of negotiations between the parties and their respective legal counsel, and no party shall be deemed to be the drafter of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against either party.

14. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates specified below.

[The remainder of this page left blank intentionally]

CITY OF CARMEL

By:

James Brainard, Mayor

Date: _____

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned Notary Public in and for said County and State, personally appeared James Brainard, Mayor of the City of Carmel, who acknowledged the execution of the foregoing Interlocal Cooperation Agreement for and on behalf of the City of Carmel.

Witnesses my hand and Notarial Seal this ____ day of _____, 2017.

Commission Expiration Date

Notary Public Name

County of Residence

Notary Public Signature

Approved by the Common Council for the City of Carmel by Resolution _____,
adopted _____, 2017.

ATTEST:

Christine S. Pauley, Clerk-Treasurer

CONSOLIDATED CITY OF INDIANAPOLIS
AND MARION COUNTY, by and through its
DEPARTMENT OF PUBLIC WORKS

By: _____
Daniel J. Parker, Director

Approved by the City-County Council of the Consolidated City of Indianapolis and Marion
County by Special Ordinance _____, 2017 adopted _____, 2017.

ATTEST:

Clerk of the City-County Council

APPROVED AS TO LEGAL FORM:

APPROVED FOR EXECUTION:

Robert M. Frye, Asst. Corp. Counsel

Fady Qaddoura, City Controller

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, the undersigned Notary Public in and for said County and State, personally
appeared Daniel J. Parker, the Director of the Department of Public Works of the Consolidated
City of Indianapolis and Marion County, who acknowledged the execution of the foregoing
Interlocal Cooperation Agreement for and on behalf of the Department of Public Works.

Witnesses my hand and Notarial Seal this ____ day of _____, 2017.

Commission Expiration Date

Notary Public Signature

County of Residence

Notary Public Signature

This document was prepared by Robert M. Frye, Legal Counsel, City of Indianapolis, and by
_____, City of Carmel.

I/we affirm, under the penalties for perjury, that I/we have taken reasonable care to redact each
Social Security Number in this document, unless required by law. /s/Robert M. Frye and
_____.