

WARRICK COUNTY, INDIANA COUNTY COUNCIL
RESOLUTION 2005- 2
A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN
WARRICK COUNTY, INDIANA, AND VANDERBURGH COUNTY, INDIANA

WHEREAS, Warrick County, Indiana and Vanderburgh County, Indiana have concluded that an interlocal cooperative agreement should be entered into to facilitate the financing and construction of the extension of Lynch Road eastward from its present terminus into Warrick County to State Road 62; and

WHEREAS, Indiana Code § 36-1-7-2 provides that a power that may be exercised by a political subdivision and by one or more governmental entities may be exercised jointly by such entities; and

WHEREAS, to jointly exercise such power the entities must enter into a written agreement pursuant to ordinance or resolution; and

WHEREAS, both Warrick County, Indiana and Vanderburgh County, Indiana have the authority to build roads and to enter into contracts;

WHEREAS, the parties have agreed to exercise their respective powers jointly for the benefit of each other;

WHEREAS, the Board of Commissioners of Warrick County, Indiana and the Board of Commissioners of Vanderburgh County, Indiana have approved the interlocal agreement attached hereto as Exhibit A and made a part hereof; and

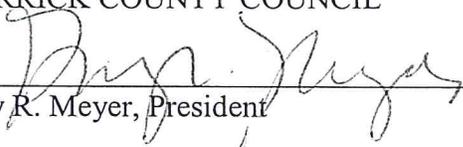
WHEREAS, the interlocal agreement must be approved by either the fiscal body of each party, or the Indiana Attorney General.

NOW THEREFORE, be it ordained that the contract attached hereto made a part hereof and marked as Exhibit A, is hereby approved by the Warrick County Council.

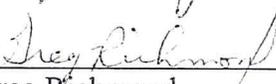
This Resolution shall be in full force and effect from and after its passage and execution by the County Council.

PASSED AND ADOPTED this 7 day of April, 2005.

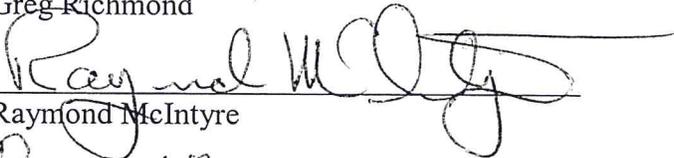
WARRICK COUNTY COUNCIL



Gary R. Meyer, President



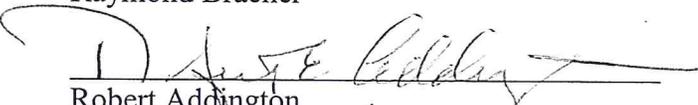
Greg Richmond



Raymond McIntyre



Raymond Bracher



Robert Addington



David Hachmeister



Joe Schitter

ATTEST:



Richard I. Kixmiller, Warrick County Auditor

Vanderburgh County Auditor's Office

Madelyn Grayson, Recording Secretary

Room 208 Civic Center Complex
1 NW Martin Luther King Jr Blvd
Evansville, IN 47708-1880
☎ (812) 435-5471 - Fax (812) 435-534

April 15, 2005

Attn: Ms. Sonya Addington
Warrick County Judicial Center
Auditor's Office
One County Square, Suite 240
Boonville, IN 47601

Dear Sonya::

Enclosed is a fully executed copy of the interlocal agreement between Vanderburgh and Warrick counties for the construction of Lynch Road . If I can be of further assistance, please don't hesitate to call.

Sincerely,



Madelyn Grayson
Vanderburgh County Auditor's Office
Commissioner Recording Secretary

enclosure

**INTERLOCAL AGREEMENT
FOR THE CONSTRUCTION OF LYNCH ROAD**

THIS AGREEMENT is made and entered into by and between Vanderburgh County, Indiana, by and through its Board of County Commissioners (hereinafter referred to as "Vanderburgh County") and Warrick County, Indiana, by and through its Board of County Commissioners (hereinafter referred to as "Warrick County").

WHEREAS, plans and specifications have been prepared for the extension of Lynch Road from Interstate 164 in Vanderburgh County to State Road 62 in Warrick County (hereinafter referred to as "Project")

WHEREAS, Vanderburgh County and Warrick County have each acquired the right of way necessary to construct the Project;

WHEREAS, the Project will involve the use of federal aid funds, so the construction contract will be bid and administered by Indiana Department of Transportation (INDOT) under project numbers STP-9982 and STP-6887, and these two project numbers will consist of INDOT Des. Nos. 0101114, 8020562, and 9710740 which are the Vanderburgh County portion of the road, the Warrick County portion of the road, and a traffic signal at the Lynch – SR 62 intersection;

WHEREAS, it is estimated that the funding split for this project will be 80% federal funds and 20% local funds;

WHEREAS, the Project will necessitate designating one County as the lead agency responsible for administering the State/LPA agreement with the INDOT and the consultant agreement with Bernardin Lochmueller and Associates Inc. (BLA) for the construction inspection for this project;

The parties hereby agree as follows:

1. This agreement shall be administered through a joint board composed of one representative of Vanderburgh County and one representative of Warrick County. However, for the purpose of coordinating the Project with INDOT, Vanderburgh County shall be designated as the lead agency for the Project. Vanderburgh County shall have the duty to receive, disburse, and account for all monies associated with the joint undertaking outlined in this Agreement.
2. Vanderburgh County shall be responsible for entering into the State/LPA agreement with INDOT and the construction inspection agreement with BLA. Draft copies of these agreements are provided in Attachment A and Attachment B.
3. Warrick County agrees to abide by all terms of the INDOT State/LPA agreement and the construction inspection agreement with BLA.
4. The current total construction cost estimate for the Project is \$4,949,939.68 (excluding utility relocation costs) as indicated on Attachment C. Based upon this estimate, the Vanderburgh County portion of the Project cost is \$3,261,217.28, or 66% of the total cost, and the Warrick County portion of the Project cost is \$1,688,722.40, or 34% of the total cost. After INDOT receives bids on the Project, these figures will be revised using the actual bid prices received from the low bidder on the Project. Each County shall then be responsible for paying their respective local share of the low bid received on the

Project. These revised figures received from the low bidder on the Project will also be used to calculate a final percentage of the Project cost for which each County is responsible. This percentage shall then be used to determine the cost sharing for each County's local share of the construction inspection agreement.

5. As lead agency on the Project, INDOT will notify Vanderburgh County regarding the award of the construction contract for the Project and INDOT will provide Vanderburgh County with an invoice for the local share of the cost of the Project. Upon receipt of the INDOT invoice, Vanderburgh County will notify Warrick County to submit their local share of the cost of the Project to Vanderburgh County. Each County shall issue a check in the name of the Indiana Department of Transportation for their respective local shares of the cost of the Project as calculated by the procedures indicated in provision number four of this agreement. Vanderburgh County will then submit the checks for the local shares of the Project to INDOT.
6. Vanderburgh County will enter into a construction inspection agreement with BLA in accordance with all applicable INDOT and Federal Highway Administration regulations. Vanderburgh County shall be responsible for payments to BLA for the cost of services rendered in accordance with the terms of the construction inspection agreement. Vanderburgh County shall also be responsible for submitting claim vouchers to INDOT to receive reimbursement of the federal share of the construction inspection costs. This federal share is expected to be 80% of the total construction inspection cost. Vanderburgh County will then invoice Warrick County for their share of the local cost of the construction inspection (currently estimated to be 20%) based upon the percentages calculated by the procedures indicated in provision number four of this agreement. Warrick County shall reimburse Vanderburgh County within 30 days from the date of the invoice. If a supplemental agreement or agreements are needed for the construction inspection agreement with BLA, the local cost of all supplemental agreements will be shared as described in this paragraph.
7. If insufficient federal funding exists to provide a funding split of 80% federal funds and 20% local funds for the construction contract awarded by INDOT, each County's local costs will be proportionally adjusted to match the actual funding split.
8. Each County shall be responsible for paying all local costs associated with all reimbursable utility relocations within the Project limits within each County. Each County shall be responsible for issuing payment directly to the applicable utility company for the utility relocation costs in accordance with applicable reimbursable utility relocation agreements. After payments have been submitted to the utility company by Warrick County, Warrick County will provide its claim voucher to Vanderburgh County for submission to INDOT. After payments have been submitted to the utility company by Vanderburgh County, Vanderburgh County will submit its claim voucher and Warrick County's claim voucher to INDOT to request the reimbursement of the federal share of the utility relocation costs. Upon receipt of this reimbursement, Vanderburgh County will provide Warrick County with any reimbursement of Warrick County relocation costs.
9. If site conditions warrant changes to the construction contract, representatives from BLA will discuss the need for contract change orders with the Vanderburgh County Engineer and the Warrick County Engineer. With the concurrence of the appropriate County Engineer, a change order can be issued on the contract for the Project. Each County shall

be responsible for paying the local share of the cost increases of any change orders attributed to construction contract changes that occur within their respective County. Upon receipt of an invoice from INDOT for the increased local share of the change order cost, Vanderburgh County shall either pay the invoice from Vanderburgh County funds for Vanderburgh County change orders, or Vanderburgh County shall invoice Warrick County for their local share of Warrick County change orders. Warrick County shall submit payment to Vanderburgh County within thirty days of the date of the invoice. Upon receipt of the Warrick County share of the change order cost, Vanderburgh County shall submit payment to INDOT.

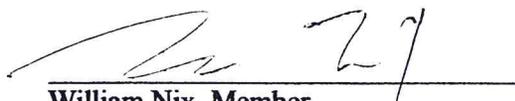
10. Upon completion of the INDOT final audit after completion of the Project, any Project surplus shall be returned to each County on the basis of the final quantities for the construction contract pay items within each County. If the final audit indicates a funding deficit for the Project, each County shall be responsible their respective local share of the deficit based upon the final quantities for the construction contract pay items within each County. Vanderburgh County shall be responsible for issuing payment to INDOT for the local share of any funding deficits for the Vanderburgh County portion of the Project. For funding deficits for the Warrick County portion of the Project, Vanderburgh County shall invoice Warrick County for the local share of the funding deficit. Warrick County shall submit payment to Vanderburgh County within thirty days of the date of the invoice. Upon receipt of the Warrick County payment, Vanderburgh County shall submit payment to INDOT.
11. This agreement supersedes any and all other agreements between Vanderburgh County and Warrick County in regard to the construction phase of the Project.
12. This agreement shall terminate upon acceptance of INDOT's final audit by Warrick County and Vanderburgh County.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates shown below.

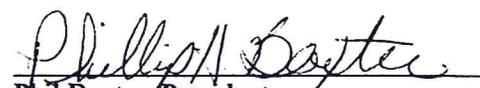
Board of Commissioners
of Vanderburgh County


Suzanne Crouch, President


Cheryl Musgrave, Vice President


William Nix, Member

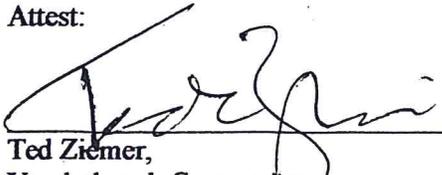
Board of Commissioners
of Warrick County


Phil Baxter, President


Don Williams, Vice President


Carl J. Conner, Member

Attest:



Ted Ziemer,
Vanderburgh County Attorney

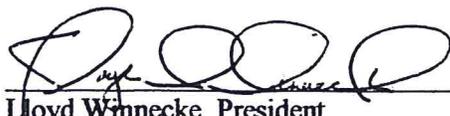
Date: 3/15/05



Douglas Welp,
Warrick County Attorney

Date: 3-16-05

Vanderburgh County Council



Lloyd Winnecke, President

Date: 4.6.05

AGREEMENT

THIS AGREEMENT is made and entered into MARCH 8, 2004⁵, by and between Vanderburgh County, acting by and through its proper officials, hereinafter referred to as the LOCAL PUBLIC AGENCY or LPA, and Bernardin Lochmueller and Associates, Inc. (hereinafter referred to as the "CONSULTANT").

WITNESSETH

WHEREAS, the LPA desires to contract for Construction Engineering Services

_____ ; and

WHEREAS, the CONSULTANT has expressed a willingness to provide

Construction Engineering Services _____ ; and

WHEREAS, the parties have agreed that the CONSULTANT shall provide the services and documents described herein, in relation to the following described project(s):

Project: Lynch Rd Extension (Phase III)

Project # STP-9982(017) and STP-~~9982~~⁶⁶⁸⁷(002), DES # 0101114 and 8020562

_____ ;
NOW THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

SECTION I SERVICES BY CONSULTANT

The services to be provided by the CONSULTANT under this Agreement are as set out in Appendix "A", attached to this Agreement, and made an integral part hereof.

SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY LPA

The information and services to be furnished by the LOCAL PUBLIC AGENCY are as set out in

Appendix "B", attached to this Agreement, and made an integral part hereof.

SECTION III NOTICE TO PROCEED AND SCHEDULE

The CONSULTANT shall begin the work to be performed under this Agreement upon receipt of the written notice to proceed from the LOCAL PUBLIC AGENCY, and shall deliver the work to the LOCAL PUBLIC AGENCY in accordance with the schedule contained in Appendix "C", attached to this Agreement, and made an integral part hereof. The Consultant shall not begin work prior to the date of the notice to proceed.

SECTION IV COMPENSATION

The CONSULTANT shall receive payment for the work performed under this Agreement as set forth in Appendix "D", attached to this Agreement, and made an integral part hereof.

The cost principles contained in the Federal Acquisition Regulations, 48 CFR Part 31, shall be adhered to for work under this Agreement.

SECTION V GENERAL PROVISIONS

1. **Work Office**

The CONSULTANT shall perform the work under this Agreement at the following office(s):

6200 Vogel Road, Evansville, Indiana, 47715

The CONSULTANT shall notify the LOCAL PUBLIC AGENCY of any change in its mailing address and/or the location(s) of the office(s) where the work is performed.

2. **Employment**

During the period of this Agreement, the CONSULTANT shall not engage, on a full or part time or other basis, any LPA personnel who remain in the employ of the LOCAL PUBLIC AGENCY.

3. Covenant Against Contingent Fees

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the LOCAL PUBLIC AGENCY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

4. Subletting and Assignment

The CONSULTANT and its subcontractors, if any, shall not assign, sublet, subcontract, or otherwise dispose of the whole or any part of the work under this Agreement without prior written consent of the LPA and the Indiana Department of Transportation ("INDOT"). Consent for such assignment shall not relieve the CONSULTANT of any of its duties or responsibilities hereunder.

5. Ownership of Documents

All documents, including tracings, drawings, reports, estimates, specifications, field notes, investigations, studies, etc. ("the documents"), as instruments of service, shall remain the property of the LPA. Neither the LOCAL PUBLIC AGENCY, nor any person, firm or corporation acting on behalf of the LOCAL PUBLIC AGENCY, shall use the documents, or copies of the documents, for any work or project other than the work or project for which the CONSULTANT prepared the documents. The CONSULTANT shall have no liability for personal injury, death, property damage or economic loss, of whatever kind or character, arising out of, or relating to, the use by LOCAL PUBLIC AGENCY or any person, firm or corporation acting on behalf of LOCAL PUBLIC AGENCY, of the documents, or copies of the documents, for any work or project other than the work or project for which the CONSULTANT prepared the documents.

The LOCAL PUBLIC AGENCY may make unlimited copies of the documents furnished by the CONSULTANT.

6. Access to Records

During the Agreement period and for three (3) years from the date of final payment under the terms of this Agreement, the CONSULTANT and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred and shall make such materials available at their respective offices at all reasonable times for inspection or audit by the LOCAL PUBLIC AGENCY, INDOT, the Federal Highway Administration ("FHWA"), or other authorized representatives of the federal government, and copies thereof shall be furnished if requested.

7. Audit Working Papers and Conclusions

The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the LPA, INDOT, FHWA, or other authorized representatives of the federal government may release or make available to the agency any working papers from an audit performed by such agency of the CONSULTANT and its subcontractors 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.

8. Compliance with State and Other Laws

The CONSULTANT agrees to comply with all federal, state and local laws, rules, regulations, or ordinances, that are applicable at the time the CONSULTANT's services pursuant to this Agreement are rendered, and all provisions required thereby to be included herein are hereby incorporated by reference.

9. Responsibility of the CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services if the errors or deficiencies resulted, independently of all other causes, from negligence of the CONSULTANT. The CONSULTANT shall not be

responsible for errors, omissions or deficiencies in the designs, drawings, specifications, reports or other services of the LOCAL PUBLIC AGENCY or other consultants, including, without limitation, surveyors and geotechnical engineers, who have been retained by LOCAL PUBLIC AGENCY. The CONSULTANT shall have no liability for errors or deficiencies in its designs, drawings, specifications and other services that were caused, or contributed to, by errors or deficiencies (unless such errors, omissions or deficiencies were known or should have been known by the CONSULTANT) in the designs, drawings, specifications and other services furnished by the LOCAL PUBLIC AGENCY, INDOT, or other consultants retained by the LOCAL PUBLIC AGENCY.

- B. Neither the LOCAL PUBLIC AGENCY's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the LOCAL PUBLIC AGENCY in accordance with applicable law for all damages to the LOCAL PUBLIC AGENCY caused by the CONSULTANT's negligent performance of any of the services furnished under this contract.
- C. The CONSULTANT shall be responsible for all damage to life and property caused by errors or omissions of the CONSULTANT, its subcontractors, agents, or employees in connection with the services rendered by the CONSULTANT pursuant to this contract. The CONSULTANT shall indemnify, defend, and hold harmless the LOCAL PUBLIC AGENCY, INDOT and the State of Indiana, their officials and employees, from any liability due to loss, damage, injuries, or other casualties of whatever kind, which, directly and independently of all other causes, arise out of, or result from, the negligence of the CONSULTANT, its agents or employees, in performing the services that are required of the CONSULTANT by this contract.
- D. The CONSULTANT shall have no responsibility for supervising, directing or controlling the work of contractors or other consultants retained by the LOCAL PUBLIC AGENCY, nor shall the CONSULTANT have authority over, or responsibility for, the means, methods, techniques, sequences or procedures of construction (except those required by the contract plans, specifications, special provisions, etc. prepared by the CONSULTANT) selected by contractors. The CONSULTANT shall have no responsibility for the safety of persons on or off the job site, and whether or not engaged in the work, for safety precautions and programs incident to the work of contractors, or for any failure of contractors or others to exercise care for the safety of any person, including employees of contractors, or to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractors' performance of the work.
- E. The rights and remedies of the LOCAL PUBLIC AGENCY provided for under this contract are in addition to any other rights and remedies provided by law.
- F. The CONSULTANT shall have an affirmative duty to advise the LOCAL PUBLIC AGENCY of any known or obvious errors, omissions, or deficiencies in the designs, drawings, specifications, reports, or other services of the LOCAL PUBLIC AGENCY or consultants retained by the LOCAL PUBLIC AGENCY.

10. Status of Claims

The CONSULTANT shall be responsible for keeping the LOCAL PUBLIC AGENCY and INDOT currently advised as to the status of any claims made for damages against the CONSULTANT resulting from services performed under this Agreement. The CONSULTANT shall send notice of claims related to work under this Agreement to Chief Counsel, Indiana Department of Transportation, 100 North Senate Avenue, Room N730, Indianapolis, IN 46204-2249.

11. Workman's Compensation and Liability Insurance

The CONSULTANT shall procure and maintain insurance covering all operations under this Agreement, whether performed by the CONSULTANT or its subcontractor, from insurance companies licensed to do business in the State of Indiana, of the kinds and in the amounts hereinafter provided, until final payment by the LPA for the services covered in this Agreement. The CONSULTANT shall not be given notice to proceed until it has furnished certificates in a form satisfactory to the LPA, showing compliance with this section. During the life of this Agreement, the CONSULTANT shall provide the LPA with certificates showing that the required insurance has been maintained, at the request of the LPA. The certificates shall provide that the policies shall not be changed or canceled without ten (10) days prior written notice to the LPA. If such notice is given, the LPA, at its sole option, may terminate this Agreement. In such event, the CONSULTANT shall not be entitled to any further compensation under this Agreement.

The kinds and amounts of insurance required are as follows:

- A. Policies covering the obligations of the CONSULTANT pursuant to the provisions of the Workers' Compensation laws. This Agreement shall be void and of no effect unless the CONSULTANT procures and maintains such policies until final acceptance of the work.
- B. Comprehensive occurrence policies for bodily injury liability and property damage liability insurance including owners' or contractors' protective coverage with a save and hold harmless endorsement for the types herein specified each with limits of \$1,000,000.00 per occurrence for bodily injury or property damage with a \$2,000,000.00 annual aggregate. Such policies shall have no deductibles or self-insured retentions.
- C. Automobile policies for bodily injury and property damage liability insurance for the types herein specified with limits of \$1,000,000.00 per person and \$3,000,000.00 per accident and

\$1,000,000.00 for property damage, including hired and non-owned vehicles. Such policies shall have no deductibles or self-insured retentions.

12. Progress Reports

The CONSULTANT shall submit a progress report to the LPA on or before the tenth (10th) day of each month, showing progress to the first of the month. The report shall consist of a progress chart with the initial schedule on which shall be superimposed the current status of the work.

13. Changes in Work

In the event the LPA requires a material change in scope, character or complexity of the work after the work has progressed as directed by the LOCAL PUBLIC AGENCY, adjustments in compensation to the CONSULTANT and in time for performance of the work as modified shall be determined by the LPA, subject to the CONSULTANT's approval. The CONSULTANT shall not commence the additional work or the change of the scope of the work until a supplemental contract is executed and the CONSULTANT has received written authorization from the LPA and INDOT to proceed with the work.

14. Delays and Extensions

The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Any such delays shall be compensated for by an extension of time for such period as may be determined by the LPA, subject to the CONSULTANT's approval. However, it being understood, that the permitting of the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the LPA of any of its rights herein.

15. Abandonment and Termination

The LOCAL PUBLIC AGENCY reserves the right to terminate or suspend this Agreement upon thirty (30) days written notice.

- A. If the LOCAL PUBLIC AGENCY shall abandon the services herein mentioned, the CONSULTANT shall deliver to the LOCAL PUBLIC AGENCY all data, reports, drawings, specifications and estimates completed or partially completed, which shall become the property of the LPA. The earned value of the work performed shall be based upon an estimate of the portion of the total services that have been rendered by the CONSULTANT to the date of the abandonment and which estimate shall be made by the LOCAL PUBLIC AGENCY in the exercise of its honest and reasonable judgment for services to be paid on a lump sum basis, and it shall be based upon an audit for those services to be paid for on a cost basis or a cost plus fixed fee basis. The audit shall be performed by the Indiana Department of Transportation's Division of Accounting and Control in accordance with generally accepted auditing standards and the cost principles contained in the Federal Acquisition Regulations, 48 CFR Part 31. The payment made to the CONSULTANT shall be paid as the final payment in full settlement for its services hereunder.
- B. If, at any time, for any cause whatsoever, the CONSULTANT shall abandon or fail to timely perform any of its duties hereunder, including the preparation and completion of plans and specifications within the time specified, or within such further extension or extensions of time as may be agreed upon, the LOCAL PUBLIC AGENCY may give written notice that if the CONSULTANT has not complied with the requirements of this Agreement within twenty (20) calendar days from the date of such notice, then the Agreement is deemed terminated. Upon the mailing or delivery of such notice or personal delivery thereof to the CONSULTANT, and the failure of the CONSULTANT within the twenty (20) day period to fully comply with each and all requirements of this Agreement, this Agreement shall terminate and the LOCAL PUBLIC AGENCY may by any method it deems to be necessary designate and employ other consultants, by contract or otherwise, to perform and complete the services herein described. When written notice is referred to herein, it shall be deemed given when deposited in the mail addressed to the CONSULTANT at its last known address.
- C. If the LOCAL PUBLIC AGENCY shall act under the preceding paragraph, then all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Agreement, shall be delivered within twenty (20) days to LOCAL PUBLIC AGENCY. If the CONSULTANT fails to make such delivery upon demand, then the CONSULTANT shall pay to LOCAL PUBLIC AGENCY any damage it may sustain by reason thereof.

16. Non-Discrimination

- A. Pursuant to I.C. 22-9-1-10, the CONSULTANT and its subcontractors, if any, 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 or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.
- B. The CONSULTANT, and any agent of the CONSULTANT, in the performance of the work under this Agreement, shall comply with 42 U.S.C. §2000e, provided the CONSULTANT has fifteen or more employees for each working day in each of twenty or more calendar

weeks in the current or preceding calendar year. 42 U.S.C. §2000e states in part that it shall be unlawful for the CONSULTANT to:

1. fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
2. to limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex or national origin.

The CONSULTANT shall comply with 42 U.S.C. §2000e, the terms of which are incorporated by reference and made a part of this Agreement. Breach of this covenant may be regarded as a material breach of the Agreement.

- C. The CONSULTANT agrees to comply with the regulations of the U.S. Department of Transportation relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation. Title 49, Code of Federal Regulations, Part 21, effectuates 42 U.S.C. §2000e above, and is incorporated by reference and made a part of this Agreement. Pursuant to 49 CFR Part 21, the CONSULTANT agrees as follows:

1. Nondiscrimination: The CONSULTANT, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONSULTANT will not participate, either directly or indirectly in the discrimination prohibited by Section 21.5 of the regulations, including employment practices when the contract covers a program set forth in Appendix "A" of the regulations.
2. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement and the regulations relative to non-discrimination.
3. Information and Reports: The CONSULTANT will provide all information and reports required by the regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by the LOCAL PUBLIC AGENCY or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this

information, the CONSULTANT shall so certify to the LOCAL PUBLIC AGENCY, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

4. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Agreement, the LOCAL PUBLIC AGENCY shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to, suspension or termination or refusal to grant or to continue federal financial assistance or by any other means authorized by law.

5. Incorporation of Provisions: The CONSULTANT will 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 CONSULTANT will take such action with respect to any subcontract or procurement as the LOCAL PUBLIC AGENCY or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the LOCAL PUBLIC AGENCY to enter into such litigation to protect the interests of the LOCAL PUBLIC AGENCY and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

17. Successors and Assignees

In so far as authorized by law, the parties bind their successors, executors, administrators and assignees to all covenants of this Agreement. Except as above set forth, neither the CONSULTANT nor the LOCAL PUBLIC AGENCY shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

18. Disadvantaged Business Enterprise Program

A. General

1. Notice is hereby given to the CONSULTANT or subcontractor that failure to carry out the requirements set forth in 49 CFR Sec. 23.43(a) shall constitute a breach of contract and, after notification, may result in termination of the contract or such remedy as the LOCAL PUBLIC AGENCY deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise (DBE) obligation to be included in all subsequent contracts between the CONSULTANT and any subcontractor:

- (a) It is the policy of the Indiana Department of Transportation that disadvantaged business enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently the DBE requirements of 49 CFR Part 23 apply to this Agreement.
 - (b) The CONSULTANT agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the CONSULTANT shall take all necessary and reasonable steps, in accordance with 49 CFR Part 23, to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of federally assisted contracts.
2. As part of the CONSULTANT's equal opportunity affirmative action program, it is required that the CONSULTANT shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise subcontractors, vendors or suppliers.

B. Definitions

1. "Disadvantaged business enterprise" means a small business concern:
 - (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. "Small business concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$2.5 million over the previous three fiscal years.
3. "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, native Americans,

Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

4. "Certified disadvantaged business enterprise" means the business has completed and filed with the Indiana Department of Transportation a request for certification, and that the business has been reviewed and determined to comply with the guidelines established in 49 CFR Part 23. A business which is determined to be eligible will be certified as a disadvantaged business enterprise (DBE).

C. Subcontracts

1. If the CONSULTANT intends to subcontract a portion of the work, the CONSULTANT is required to take affirmative actions to seek out and consider DBEs as potential subcontractors prior to any subcontractual commitment.
2. The contacts made with potential DBE subcontractors and the results thereof shall be documented and made available to the LOCAL PUBLIC AGENCY and the Federal Highway Administration (FHWA) when requested.
3. A request to sublet a portion of the work to a firm that is not a DBE shall include Form DBE-2 and documentation evidencing contacts and the results thereof made with potential DBEs for the specific work to be subcontracted, in compliance with C.1 and C.2.
4. If a portion of the work under this Agreement is subcontracted to a DBE firm, then upon completion of the project, a Disadvantaged Business Enterprise Utilization Affidavit, Form DBE-3, shall be completed by the CONSULTANT and returned to the LOCAL PUBLIC AGENCY. The contractor and the subcontractor/lessor/supplier shall certify on the DBE-3 form that specific amounts have been paid and received.

D. Affirmative Actions

The CONSULTANT shall, as a minimum, develop an affirmative action plan for a Disadvantaged Business Enterprise Program which includes:

1. Appointment of a representative with authority to administer the CONSULTANT's Disadvantaged Business Enterprise Program.
2. Documentation of affirmative action methods and procedures intended to be used in seeking out and considering certified DBEs as subcontractors or suppliers.
3. Maintenance of a list of certified DBEs to be contacted prior to the selection of a potential subcontractor for the particular items, within the capabilities of the DBEs. This list shall include but not be limited to:
 - (a) the name of each subcontractor or supplier and a notation as to their DBE

certification status; and

- (b) the potential type of work or services to be performed by each subcontractor or supplier.

E. Records and Reports

1. The CONSULTANT shall keep such records as are necessary to determine compliance with this contract. The records kept by the CONSULTANT shall show, as a minimum:
 - (a) the number of disadvantaged and non-minority subcontractors and suppliers and type and dollar value of work, materials or services being performed on or incorporated in this project;
 - (b) the progress and efforts made in seeking out disadvantaged contractor organizations and individual disadvantaged contractors for work on this project;
 - (c) documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of DBEs on this Agreement.
2. The CONSULTANT shall submit reports, as required by the LOCAL PUBLIC AGENCY, of those contracts and other business agreements executed with DBEs with respect to the records referred to in paragraph E.1.
3. All such records must be maintained for a period of three years following acceptance of final payment and shall be available for inspection by The LOCAL PUBLIC AGENCY and the Federal Highway Administration.

F. Leases and Rentals

The CONSULTANT shall notify the LOCAL PUBLIC AGENCY when purchases or rental of equipment are made with disadvantaged businesses. The information submitted shall include the name of the business, the dollar amount of the transaction, and the type of purchases made or type of equipment rented.

G. DBE Program

Unless otherwise specified in this Agreement, the DBE Program developed by the LOCAL PUBLIC AGENCY and approved by the Federal Highway Administration applies to this Agreement.

19. Supplements

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

20. Pollution Control Requirements

If this Agreement is for \$100,000 or more, the CONSULTANT:

- A. stipulates that any facility to be utilized in performance under or to benefit from this Agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
- B. agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
- C. stipulates that, as a condition of federal-aid pursuant to this Agreement, it shall notify the LPA and the Federal Highway Administration of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Agreement is under consideration to be listed on the EPA Listing of Violating Facilities.

20. 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.

21. Independent Contractor

The parties hereto, in the performance of this Agreement, will be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be employees or agents of the other party for any purpose whatsoever.

22. Certification for Federal-Aid Contracts

The CONSULTANT certifies, by signing and submitting this Agreement, to the best of its knowledge and belief, that the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 contract,

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 contract, 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 this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. This form is available through the Indiana Department of Transportation.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed 31 U.S.C. sec. 1352.

The CONSULTANT also agrees by signing this Agreement that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such subrecipients 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.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement.

CONSULTANT

Signature

Keith Lochmueller, President
(Print or type name and title)

ATTEST:

Signature

David L. Isley, Secretary
(Print or type name and title)

LOCAL PUBLIC AGENCY

Signature

Suzanne M. Crouch, President
(Print or type name and title)

Signature

Cheryl A.W. Musgrave, Vice President
(Print or type name and title)

Signature

Bill Nix, Member
(Print or type name and title)

Signature

(Print or type name and title)

ATTEST:

Signature

William J. Fluty Jr
(Print or type name and title)

Auditor

ACKNOWLEDGMENT

STATE OF Indiana), COUNTY OF Vanderburgh) SS:

Before me, the undersigned Notary Public in an for said County personally appeared

Keith Lochmueller, President David L. Isley, Secretary

(name of signers, their official capacity and agency name)

and each acknowledged the execution of the foregoing contract on this _____ day of _____

_____, 2003, and each acknowledged and stated that he/she is the party authorized by the said agency

to execute the foregoing contract.

My Commission Expires

April 27, 2008

Vanderburgh

County of Residence

Notary Public

Rebecca L. Zimmer

Print or type name

ACKNOWLEDGMENT

STATE OF Indiana), COUNTY OF Vanderburgh) SS:

Before me, the undersigned Notary Public in an for said County personally appeared

Suzanne Crouch, Cheryl Musgrave, Bill Nix

(name of signers, their official capacity and agency name)

and each acknowledged the execution of the foregoing contract on this 8th day of March

_____, 2005 and each acknowledged and stated that he/she is the party authorized by the said agency

to execute the foregoing contract.

My Commission Expires

2-16-2007

Vanderburgh

County of Residence

Madelyn A. Grayson
Notary Public

Madelyn A. Grayson

Print or type name

CERTIFICATE OF CONSULTANT

I hereby certify that I am the President and duly authorized representative of the firm of Bernardin Lochmueller and Assoc. Inc. whose address is 6200 Vogel Road
Evansville, Indiana, 47715, and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

except as herein expressly stated (if any): _____

I further certify that no employee, officer or agent or partner or any member of their immediate families of this firm is employed or retained either full or part-time, in any manner by the Indiana Department of Transportation; except as herein expressly stated (if any): _____

I acknowledge that this certificate is to be furnished to the Indiana Department of Transportation and/or the Federal Highway Administration - Department of Transportation in connection, with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal Laws, both criminal and civil.

(Date)

(Signature)

CERTIFICATE OF LOCAL PUBLIC AGENCY

I hereby certify that (I am) (we are) the _____ (title) of the _____ (LPA), and the above Consultant or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind

except as herein expressly stated (if any): _____

(I) (We) further certify that no employee, officer, agent, or partner, or any member of their immediate families of the Consultant is employed or retained either in a full-time or part-time basis in any manner by the LPA except as herein expressly stated (if any): _____

I acknowledge that this certificate is to be furnished to the Federal Highway Administration and the Indiana, Department of Transportation, in connection with this Agreement involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date)

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
) SS:
COUNTY OF Vanderburgh)

The undersigned, being duly sworn on oath, says that he/she is the contracting party, or, that he/she is the representative, agent, member, or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, entered into or offered to enter into any combination, collusion or contract to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of the annexed Agreement other than that which appears upon the face of the Agreement.

Signature

Keith Lochmueller

Printed Name

President

Title

Bernardin Lochmueller
and Associates, Inc.

Company

Before me, a Notary Public in and for said County and State personally appeared

Keith Lochmueller, who acknowledged the truth of the statements in the

foregoing affidavit on this _____ day of _____, 2003.

My Commission Expires

April 27, 2008

Vanderburgh
County of Residence

Notary Public

Rebecca L. Zimmer

Print or type name

DEBARMENT CERTIFICATION

This certification applies to the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of Federal funds.

Instructions for Certification

1. By signing and submitting this Agreement, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this Agreement is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this Agreement is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this Agreement that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension and other Responsibility Matters - - Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this proposal.

(Signature)
Keith Lochmueller

(Printed or Typed)
Bernardin Lochmueller and Associates, Inc.
(Company)

President
(Title)

Before me, a Notary Public in and for said County and State personally appeared

Keith Lochmueller, who swore to and acknowledged the truth of the statements in the foregoing

Certification on this _____ day of _____, 2003.

My Commission Expires
April 27, 2008

Vanderburgh
County of Residence

Notary Public
Rebecca L. Zimmer
Print or type name

APPENDIX "A"

SERVICES BY CONSULTANT

A. ENGINEERING PERSONNEL

For the fulfillment of all services outlined in Section B below, the CONSULTANT will provide one (1) full-time Resident Project Representative, and Inspectors and clerical and secretarial personnel as required for a period of time necessary to complete the construction project and final construction report.

The qualifications and experiences of personnel provided by the CONSULTANT are subject to approval by the LOCAL PUBLIC AGENCY and the Indiana Department of Transportation and no personnel will be assigned to the project until LOCAL PUBLIC AGENCY and Indiana Department of Transportation approval is obtained.

The full-time Resident Project Representative will take directions from and report to the Indiana Department of Transportation Area Engineer on all matters concerning contract compliance and administration.

The full-time Resident Project Representative will coordinate project activities with the LOCAL PUBLIC AGENCY's Project Coordinator and Indiana Department of Transportation Area Engineer.

B. DESCRIPTION OF SERVICES

1. Construction Schedule: Review the construction schedule prepared by the Contractor for compliance with the Contract, and give to the LOCAL PUBLIC AGENCY detailed documentation concerning its acceptability.
2. Conferences: Attend pre-construction conferences as directed by the LOCAL PUBLIC

AGENCY, arrange a schedule of progress meetings, and such other job conferences as required for the timely and acceptable conduct of the job, and submit such schedules prepared, to the LOCAL PUBLIC AGENCY for notification to those who are expected to attend. Record for the LOCAL PUBLIC AGENCY, as directed, minutes of such meetings.

The CONSULTANT shall be available for conferences as requested by the LOCAL PUBLIC AGENCY, State, and Federal Highway Administration to review working details of the project. The LOCAL PUBLIC AGENCY, State and Federal Highway Administration may review and inspect the activities whenever desired during the life of the Agreement.

3. Liaison: Serve as the LOCAL PUBLIC AGENCY's liaison with the contractor, working principally through the Contractor's field superintendent or such other person in authority as designated by the Contractor. Acting in liaison capacity, the full-time Resident Project Representative shall be thoroughly familiar with the plans and specifications applicable to the project to insure that all provisions therein are complied with. Any deviation observed shall be reported to the LOCAL PUBLIC AGENCY and Indiana Department of Transportation by the full-time Resident Project Representative.
4. Cooperate with the LOCAL PUBLIC AGENCY in dealing with the various Federal, State and Local Agencies having jurisdiction over the project.
5. Assist the LOCAL PUBLIC AGENCY and Indiana Department of Transportation in obtaining from the Contractor a list of his proposed suppliers and subcontractors.
6. Assist the LOCAL PUBLIC AGENCY and Indiana Department of Transportation in obtaining from the Contractor additional details or information when needed at the job site for proper execution of work.

7. Equipment - Furnish all equipment necessary to sample and test materials in accordance with Indiana Department of Transportation procedures.
8. Samples - Obtain field samples of materials delivered to the site as required by the State and deliver such samples to the appropriate Indiana Department of Transportation laboratory office.
9. Shop Drawings:
 - a. Receive shop drawings and falsework drawings. Check completeness, and then forward to INDOT personnel for approval.
 - b. Review approved shop and falsework drawings, specifications and other submissions, record receipt of this data, maintain a file of all drawings and submissions, and check construction for compliance in accordance with the Contract Documents.
 - c. Alert the Contractor's field superintendent when it is observed that materials or equipment are being or about to be used or installed before approval of shop drawings or samples, where such are required, and advise the LOCAL PUBLIC AGENCY and Indiana Department of Transportation when he believes it is necessary to disapprove work as failing to conform to the Contract Documents.
10. Review of Work, Inspection and Tests:
 - a. Conduct on-site inspections for the LOCAL PUBLIC AGENCY of the work in progress as a basis for determining that the project is proceeding in accordance with the Contract Documents.
 - b. Provide on-site acceptance testing of materials in the manner and extent prescribed by the latest edition of the Indiana State Highway Commission Construction Manual and in accordance with current accepted practices.
 - c. Accompany visiting inspectors, representing Local, State or Federal Agencies having

- jurisdiction over the project, and report details of such inspection to the LOCAL PUBLIC AGENCY and Indiana Department of Transportation.
- d. Verify that required testing has been accomplished.
11. Modification: Consider and evaluate the Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to the LOCAL PUBLIC AGENCY and Indiana Department of Transportation.
12. Records:
- a. Prepare and maintain at the job site orderly files of correspondence, reports of job conferences, shop drawings and other submissions, reproductions of original Contract Documents, including all addenda, change orders and additional drawings subsequent to the award of the Contract, progress reports and other project related documents.
- b. Keep a diary or logbook, recording hours on the job site, weather conditions, list of visiting officials, decisions, general observations, and specific observations with regard to test procedures. Upon request, furnish copies of such a diary or logbook to the LOCAL PUBLIC AGENCY.
- c. Maintain for the LOCAL PUBLIC AGENCY, a record of names, addresses and telephone numbers of all subcontractors and major material suppliers.
- d. Maintain a set of drawings on which authorized changes are noted, and deliver to the LOCAL PUBLIC AGENCY upon request, but in any event at the completion of the project.
- e. Prepare the Final Construction Record and Final Estimate as required by the Indiana Department of Transportation and the LOCAL PUBLIC AGENCY.
13. Reports: Furnish to the Indiana Department of Transportation and the LOCAL PUBLIC AGENCY at periodic intervals, as required, progress reports of the project, including the

Contractor's compliance with the approved construction schedule.

14. Progress Estimates: Prepare progress estimates for periodic partial payments to the Contractor and deliver to the LOCAL PUBLIC AGENCY and Indiana Department of Transportation for review and processing. The payments to the Contractor will be based on estimates of the value of work performed and materials complete in place in accordance with the contract.
15. Project Responsibility: The Resident Project Representative will be responsible for the documentation of pay quantities and estimates, and the maintenance of appropriate records related to the construction of this project.
16. Work Schedule and Suspension: The CONSULTANT'S crew will be required to regulate their work week to conform to the contractor's hours in accordance with the directions of the Indiana Department of Transportation Area Engineer. If work on the construction project is suspended and all matters concerning contract compliance and administration are complete, the services of the CONSULTANT may also be suspended without cost to the project.
17. Contract Administration: The CONSULTANT will administer the contract in accordance with Indiana Department of Transportation procedures.
18. Conflict of Interest: The CONSULTANT acknowledges and agrees that the CONSULTANT, a firm associated with the CONSULTANT or an individual associated with the CONSULTANT cannot accept or perform any work (including but not limited to construction engineering, production staking, falsework drawings, shop drawings) for the contractor, material supplier of the contractor or for any of the contractor's subcontractors on this project. For purposes of this section a firm is associated with the CONSULTANT if the firm and CONSULTANT have a common director, common officer or a common owner. For purposes of this section an individual is associated with the CONSULTANT if the individual is an employee of the CONSULTANT or an employee of a firm associated with the

CONSULTANT. For purposes of this section the following definitions shall be used:

Director - Any member of the board of directors of a corporation.

Officer - The president, secretary, treasurer, or such other officers as may be prescribed by the corporation bylaws.

Owner - A sole proprietor, any partner in a partnership, or any shareholder of a corporation.

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY LOCAL PUBLIC AGENCY

The LOCAL PUBLIC AGENCY shall furnish the CONSULTANT with the following:

1. LOCAL PUBLIC AGENCY shall designate an employee as Project Coordinator to coordinate activities between Consultant, INDOT and the LOCAL PUBLIC AGENCY.
2. Assistance to the CONSULTANT by placing at his disposal all available information pertinent to the project.

APPENDIX "C"

SCHEDULE

The CONSULTANT will be prepared to begin the work under this Agreement within five (5) days after a Letter of Notification to proceed is received from the LOCAL PUBLIC AGENCY. The CONSULTANT shall complete and deliver the final construction record and final estimate to the District Director within forty-five (45) calendar days after the contractor's last day of work.

APPENDIX "D"

COMPENSATION

A. AMOUNT OF PAYMENT

The CONSULTANT will receive as payment for the work performed under this Agreement, as follows, unless a modification of the Agreement is approved in writing by the LOCAL PUBLIC AGENCY and the INDOT.

1. For those services performed by the CONSULTANT, the CONSULTANT will be paid on the basis of actual hours of work performed by essential personnel exclusively on this Agreement at the direct salary and wages of each employee, PLUS a provisional overhead rate thereof of 161.68 percent plus a facilities capital cost of money of 2.23 percent, PLUS direct non-salary costs (the actual costs of such out-of-pocket expenses directly attributable to this Agreement such as fares, subsistence, mileage, long distance calls, equipment rentals, reproductions, etc.) as approved by the LOCAL PUBLIC AGENCY, PLUS a fixed fee.

The CONSULTANT shall adjust the provisional overhead rate on the invoice subsequent to receipt of a new overhead rate from the INDOT's Division of Accounting and Control. The overhead rate shall be determined by the Indiana Department of Transportation's Division of Accounting and Control in accordance with generally accepted auditing standards and the cost principles contained in the Federal Acquisition Regulations, 48 CFR Subpart 31.2.

2. For those services performed by other than the CONSULTANT, the CONSULTANT will be reimbursed for the actual invoice for the services performed by other than the CONSULTANT, provided that each such invoice shall be subject to approval as reasonable by the LOCAL PUBLIC AGENCY prior to any reimbursement therefore.
3. The total amount of the fixed fee is \$70,360.
4. The total compensation for Section A(1), (2) and (3) of this Appendix "D" shall not exceed \$574,156 unless approved in writing by the LOCAL PUBLIC AGENCY, Indiana Department of Transportation and Federal Highway Administration.

5. A breakdown of the estimated costs for the project as follows:

	<u>Vanderburgh Co.</u>	<u>Warrick Co.</u>	<u>Warrick Co.</u>	<u>Totals</u>
	Road	Road	Signal	
Designation No:	0101114	8020562	9710740	
	66%	32%	2%	
Base Payroll	\$118,306.98	\$ 57,360.96	\$ 3,585.06	\$179,253.00
O.H.	\$191,277.90	\$ 92,740.80	\$ 5,796.30	\$289,815.00
Total Labor & O.H.	\$309,584.88	\$150,101.76	\$ 9,381.36	\$469,068.00
Fixed Fee	\$ 46,437.60	\$ 22,515.20	\$ 1,407.20	\$ 70,360.00
Direct Cost	\$ 15,079.68	\$ 7,311.36	\$ 456.96	\$ 22,848.00
FCCM	\$ 2,638.02	\$ 1,279.04	\$ 79.94	\$ 3,997.00
O.T.	\$ 5,202.78	\$ 2,522.56	\$ 157.66	\$ 7,883.00
Total	\$378,942.96	\$183,729.92	\$11,483.12	\$574,156.00

B. Method of Payment

1. Payment shall be made monthly to the CONSULTANT upon submission to the LOCAL PUBLIC AGENCY of an invoice, including an amount of the Fixed Fee arrived at by taking a ratio of the accumulative monthly labor cost to the total labor cost as estimated above and multiplying this ratio by the total Fixed Fee. From the partial payment computed each month, there shall be deducted all previous partial fee payments made to the CONSULTANT.
2. Should the scope of the work be modified or this Agreement terminated for any reason, the direct costs incurred by the CONSULTANT will be reimbursed and a revised amount of the Fixed Fee to be paid shall be negotiated between the parties to this Agreement to reflect the changes in the scope, extent and character of the services to be furnished by the CONSULTANT from those contemplated for full

completion of the Agreement, had the scope of work not been adjusted or the Agreement terminated.

3. If, prior to the satisfactory completion of the services under this Agreement, the total of the direct and indirect costs incurred by the CONSULTANT is within ten percent (10%) of the maximum amount payable, the CONSULTANT shall notify the LOCAL PUBLIC AGENCY of such fact and shall prepare and deliver to the LOCAL PUBLIC AGENCY an estimate of the total cost to complete the services covered by this Agreement. An adjustment shall be made to the maximum amount payable under this agreement for the estimated additional total cost required to complete the services covered by this agreement. A revised amount of fixed fee shall be negotiated between the parties to this Agreement to reflect the increase in scope, extent and character of services furnished by the CONSULTANT under this Agreement.
4. It is the policy of the Indiana Department of Transportation that Project Representatives and/or Inspectors be on the construction site whenever the Contractor is engaged in any activity requiring inspection or testing concurrent with the construction or activity. In order for the contractor to comply with the Contract Plans and Specifications and complete the work within the time required, it is often necessary for the Contractor to work more than an 8-hour day, and more than a 5-day week. This in turn, may require the Resident Project Representative and Inspectors to work over 40 hours per week. Should this become necessary, then Overtime Premium shall be paid on this project at the rate of 1.5 times the actual hourly rate for all hours worked on this project by the Project Representative and Inspectors over 8 hours per day.

ATTACHMENT B

**STATE - LOCAL PUBLIC AGENCY AGREEMENT
CONSTRUCTION AND PROJECT MANAGEMENT FOR FEDERAL AID PROJECTS**

THIS CONTRACT is made and entered into _____,
2004, by and between the STATE of Indiana, acting by and through the Indiana
Department of Transportation hereinafter referred to as the "STATE" and the
Local Public Agency, Vanderburgh County hereinafter
referred to as the "LPA".

WITNESSETH

WHEREAS, plans and specifications have been prepared for this project;

WHEREAS, the right-of-way for the project is of sufficient width to meet
the approved design standards for the project; and

WHEREAS, any additional right-of-way procured for the project
was obtained by the LPA in compliance with STATE and Federal Highway
Administration policies and procedures.

WHEREAS, through the cooperation of the LPA, the STATE and the Federal
Highway Administration, the following designated project has been approved by
the Federal Highway Administration and is ready for letting by the STATE:

Project No. STP-6687(001), STP-6687(001) Des. No. 0101114, 8020562, 9710740

Description: Lynch Road Extension from I-164 to Vanderburgh/Warrick County Line

Lynch Rd Extension from Vanderburgh/Warrick County line to Telephone Contract: _____ R-27619

NOW THEREFORE, in consideration of the mutual covenants, herein contained, the LPA and STATE mutually covenant and agree as follows:

1. The LPA's share of the cost shall be the total amount of the entire cost of the project (approximately \$ 5,750,000*) less the amount contributed by the Federal Government through Federal-aid **.

The LPA has by an appropriation duly made and entered of record appropriated the sum of \$ 1,150,000 - Match Credits*** to apply to the cost of said project, which amount is estimated to equal the LPA's share of the entire cost of the project.

2. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said highway shall be regulated on a continuing basis by the LPA with written use and occupancy agreements in accordance with the STATE's utility accommodation policy titled "Indiana Department of Transportation, Utility Accommodation Policy".
3. The LPA shall comply with the applicable conditions set forth in (1) Title 23, U.S. Code, Highways, (2) the regulations issued pursuant thereto, and (3) the policies and procedures promulgated by the STATE and Federal Highway Administration relative to the project.
4. A. General
 1. Notice is hereby given to the LPA or its subcontractor that failure to carry out the requirements set forth in 49 CFR Sec. 23.43(a) shall constitute a breach of contract and, after notification, may result in termination of the contract or such remedy as the STATE deems appropriate.
 2. The referenced section requires the following policy and Disadvantaged Business Enterprise (DBE) obligation to be included in all subsequent contracts between the LPA and any subcontractor.
 - a. It is the policy of the Indiana Department of Transportation that disadvantaged business enterprises,

* *Total = Estimated Bid Letting Cost + Supervision Cost (15%) + Contingencies (5%)*

** ***FEDERAL FUNDS = \$5,000,000 (MAXIMUM FOR PROJECT)***

*** ***Local Match = Total x 20% - match credits = \$1,150,000 - match credits (match credits equal the approved preliminary engineering and right of way costs incurred by the LPA for this project)***

as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this contract. Consequently, the DBE requirements of the 49 CFR Part 23 apply to this contract.

- b. The LPA agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this contract. In this regard, the LPA shall take all necessary and reasonable steps, in accordance with 49 CFR Part 23, to ensure that disadvantaged business enterprises have the maximum opportunity to compete for, and perform contracts. The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of federally assisted contracts.

3. As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise subcontractors, vendors or suppliers.

4. B. Definitions

The following definitions apply to this section.

1. "Disadvantaged Business Enterprise" means a small business concern: (a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. "Small Business concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
3. "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women or and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

4. "Certified disadvantaged business enterprises" means the business has completed and filed with the Indiana Department of Transportation a request for certification, and that the business has been reviewed and determined to comply with the guidelines established in 49 CFR Part 23. Businesses which are determined to be eligible will be certified as Disadvantaged Business Enterprises (DBE).

4. C. Subcontracts

1. If the LPA intends to subcontract a portion of the work, the LPA is required to take affirmative actions to seek out and consider disadvantaged business enterprises as potential subcontractors prior to any subcontractual commitment.
2. The contacts made with potential disadvantaged business enterprise subcontractors and the results thereof shall be documented and made available to the STATE and the FHWA when requested.
3. In those cases where the LPA originally did not intend to subcontract a portion of the work and later circumstances dictate subletting a portion of the contract work, the affirmative action contacts covered under paragraph C.1. and C.2. of this section shall be performed.

4. D. Affirmative Actions

The LPA agrees to establish and conduct a program which will enable disadvantaged business enterprises to be considered fairly as subcontractors and suppliers under this agreement. In this connection the LPA shall:

1. Designate a liaison officer who will administer the LPA's Disadvantaged Business Enterprise program.
2. Ensure that known disadvantaged business enterprises will have an equitable opportunity to compete for subcontracts, so as to facilitate the participation of Disadvantaged Business Enterprises.
3. Maintain records showing (1) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of disadvantaged business enterprises, (2) awards to disadvantaged business enterprises on the source list, and (3) specific efforts to identify and award contracts to Disadvantaged Business Enterprises.
4. Cooperate with the STATE in any studies and surveys of the LPA's Disadvantaged Business Enterprise procedures and practices that the STATE may from time to time conduct.
5. Submit periodic reports of subcontracting to known Disadvantaged Business Enterprises with respect to the

records referred to in Subparagraph (3) above, in such form and manner and at such times as the STATE may prescribe.

4. E. Leases and Rentals

1. The LPA shall notify the Indiana Department of Transportation when purchases or rental of equipment (other than leases for hauling) are made with disadvantaged businesses. The information submitted shall include the name of the business, the dollar amount of the transactions, and the type of purchase made or type of equipment rented.

4. F. DBE Program

Unless otherwise specified in this Agreement, the DBE Program developed by the STATE and approved by the Federal Highway Administration applies to this Agreement.

5. The plans, specifications and special provisions shall be subject to the approval of the STATE and the Federal Highway Administration. The STATE will prepare the Engineer's Estimate for the construction project. The STATE will advertise for bids for construction of the project. Upon receipt of an acceptable bid less than the Engineer's Estimate, the STATE will award a contract for the project. If the acceptable bid is within 5% above the Engineer's Estimate, and the LPA concurs, the STATE may award the contract.
6. The construction contract shall be awarded based on unit prices and on estimated quantities. If the total payment to the contractor under the construction contract is more or less than the estimated cost at the time of the signing of the construction contract, the LPA portion of the cost shall increase or decrease accordingly. Changes in the construction contract shall not be made without approval of the LPA, the STATE and the Federal Highway Administration.
7. When the construction contract is awarded and before the beginning of work thereunder, the LPA shall pay to the STATE, within

forty-five (45) days after the contract is awarded, a sum equal to one hundred percent (100%) of the LPA's share of the bid price for construction. If an Advice of Change Order, AC, is approved which increases the project cost, the LPA shall pay to the STATE within ninety (90) days a sum equal to one hundred percent (100%) of the LPA's share of the increased cost.

8. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications. In the event that the engineering, testing, and inspection service provided by the LPA shall, in the opinion of the STATE, be incompetent or inadequate, the STATE shall have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. The STATE's engineers shall control the work the same as on other construction contracts.
9. If the LPA or its consultant is providing project management, the LPA shall make reports to the STATE as to the progress and performance of the work at such times and in such manner as the STATE may require.
10. Upon completion of the construction and project management and prior to final reimbursement of the project management costs pursuant to this Contract, a final audit of the project management costs shall be done by the Indiana Department of Transportation's Division of Accounting and Control in accordance with generally accepted auditing standards and the cost principles contained in the Federal Acquisition Regulations, 48 CFR Part 31. After the final audit is approved by the STATE, then final payment shall be made.

11. A. The LPA portion of the construction cost shall equal the total payment to the contractor less the amount eligible for Federal-aid reimbursement.
11. B. The LPA portion of the project management costs shall equal the cost incurred by the LPA in providing such service for this project less the amount eligible for Federal-aid reimbursement. Costs eligible for Federal-aid reimbursement shall be limited to a maximum percentage of the construction cost. The maximum percentage rates for reimbursement are:

Types of Funds	Project Prefix	Max. %
Interstate Substitution	IX	15%
Urban	M, MG	15%
Rural Secondary	RS, RSG, SR	15%
Bridge Replacement & Bridge Rehabilitation	BRM, BRS, BRZ BHM, BHS, BHZ	15%
Railroad Demonstration	RR	Unlimited
Hazard Elimination	HES	Unlimited
Railroad Protection	RRP	Unlimited
Railroad Crossing	RRS	Unlimited
Minimum Allocation	MA	Same as for the type of funds for the project "but for" using MA funds

1. Project Management by Consultant - A separate agreement between the LPA and the Consultant, setting forth the scope of work and fee, is required and must be approved by the STATE before the letting. Only costs incurred after the STATE's written notice to proceed to the LPA and the LPA's written notice to proceed to the Consultant shall be eligible for Federal-aid reimbursement.

The STATE must approve, in writing, the Consultant's

personnel prior to their assignment to the project.

2. Project Management by LPA - The personnel must be bona fide employees of the LPA. They can not be paid on a "retainer" basis. Only costs incurred after the STATE's written notice to proceed to the LPA shall be eligible for Federal-aid reimbursement.

The STATE must approve in writing the LPA's personnel prior to their assignment to the project.

11. C. In accordance with IC 8-23-2-14 the LPA shall pay the STATE the actual cost, less the amount eligible for Federal-aid reimbursement, for performing laboratory testing of materials. The material-testing charge shall be determined by application of the approved material testing rate to actual construction costs incurred excluding project management costs. This rate is based upon the amount of eligible costs of operating the Indiana Department of Transportation material testing function divided by the total costs incurred for specific types of contracts which utilize the services of the material testing function. The cost of providing material testing is included in the maximum limitation mentioned in Section 11B.

11. D. The LPA shall pay the STATE for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement. This cost is eligible for Federal-aid and is not included in the maximum limitation mentioned in section 11B.

11. E. The LPA shall pay the STATE for expenses incurred in supervising the project according to the terms in section 8, less the amount eligible for Federal-aid reimbursement. This cost is included

in the maximum limitation mentioned in section 11B.

- 11.F. If, for any reason, the STATE is required to repay to the Federal Highway Administration the sum or sums of Federal Funds paid to the LPA or any other entity through the STATE under the terms of this Agreement, then the LPA shall repay to the STATE such sum or sums upon receipt of a billing from the STATE. Payment for any and all costs incurred by the LPA which are not eligible for Federal funding shall be the sole obligation of the LPA.
12. A Construction by Contractor - During the progress of the work, the contractor through the LPA or its representative shall submit invoice vouchers to the STATE for construction completed.
12. B. Construction by LPA - During the progress of the work, the LPA shall submit claim vouchers to the STATE for construction completed.
- When claiming costs, the contractor or LPA shall certify by its responsible officer and/or engineer that those costs represented by the subject billing represent work physically completed. Upon approval of the voucher by the STATE, the STATE will request Federal-aid funds from the Federal Highway Administration for the amount of the subject voucher. Upon receipt of Federal-aid funds, the STATE will make payment to the contractor or LPA.
- 13 Project Management by LPA or Consultant. - The LPA shall be reimbursed for management costs expended by submitting claim vouchers to the STATE not more often than once per month during the progress of the work. Upon approval of the claim voucher by the STATE, the STATE will request Federal-aid funds from the Federal

Highway Administration for the amount of the subject claim voucher. Upon receipt of Federal-aid funds, the STATE will make payment to the LPA.

14. The LPA's share of the project cost shall be the amount as determined by the procedure outlined in section 11 of this Agreement. From the LPA's share thus computed, there shall be deducted all previous payments made by the LPA to the STATE. Billings to the LPA for its share of project costs shall be due and payable 30 days from date of billing by the STATE. If the LPA has not paid the full amount due within 60 days past the due date, the STATE shall be authorized to proceed in accordance with IC 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to the Indiana Department of Transportation's account.
15. The LPA, prior to final acceptance of the project by the STATE and the Federal Highway Administration, shall place and maintain informational, regulatory, and warning signs or other markings and traffic signals necessary for proper traffic operations in the vicinity of the project, subject to the approval of the STATE and the concurrence of the Federal Highway Administration. The LPA shall not open the project to traffic for unrestricted use until all appropriate traffic control devices, either temporary or permanent, are installed and properly functioning. Both temporary and permanent traffic control devices shall conform to the National Manual on Uniform Traffic Control Devices.
16. After the completion of the construction work in accordance with the plans and specifications, and the approval thereof by the LPA, the

STATE and Federal Highway authorities, the LPA shall provide all maintenance, satisfactory to the STATE and the Federal Highway Administration, at the LPA's expense.

17. During the contract period and for three (3) years from the date of final payment the LPA shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred and shall make such materials available at their respective offices at all reasonable times for inspection by the Federal Highway Administration, the STATE, or other authorized representatives of any unit providing money for the project and copies thereof shall be furnished if requested.
18. The LPA agrees to indemnify, defend, exculpate, and hold harmless the STATE, its officials and employees, from any liability due to loss, damage, injuries, or other casualties of whatever kind to the person or property of anyone on or off the right-of-way arising out of or directly attributable to the negligent acts or omissions of the LPA, its agents or employees engaged in the performance of the work covered by this Agreement.
19. Pursuant to I.C. 22-9-1-10, the LPA and its subcontractor, if any, 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 or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement. Acceptance of this contract also signifies compliance with acceptable 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.

20. If this Agreement is for \$100,000.00 or more the LPA
20. A. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
20. B. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
20. C. Stipulates that as a condition of Federal-aid pursuant to this Contract it shall notify the STATE and Federal Highway Administration of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

21. MAINTAINING A DRUG-FREE WORKPLACE EXECUTIVE ORDER #90-5

- 21A. LPA hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement a drug-free workplace, and that it will give written notice to the Indiana Department of Administration and Indiana Department of Transportation within ten (10) days after receiving actual notice that an employee of LPA has been convicted of a criminal drug violation occurring in LPA's workplace
- 21B. In addition the provisions of subparagraph (A) above, if the total Agreement amount set forth in this Agreement is in excess of \$25,000 LPA hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations contained in the Drug-Free Workplace certification executed by LPA in conjunction with this contract.
- 21C. It is further expressly agreed that the failure of LPA to in good faith comply with the terms of sub paragraph (A) above, or falsifying or otherwise violating the terms of the certification referenced in sub paragraph (B) above shall constitute a material breach of this Agreement.

DRUG-FREE WORKPLACE CERTIFICATION

This certification required by Executive order No. 90-5 April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all Contracts with the State of Indiana in excess of \$25,000. No award of an Agreement or 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 Contractor and attached to the Contract or agreement as a part of the Contract documents. False certification or violation of the certification may result in sanctions including, but not limited to suspension of Contract payments, termination of the Contract or agreement and/or debarment of contracting opportunities with INDOT for up to three (3) years.

The LPA certifies and agrees that it will provide a drug-free workplace by:

- a. Publication and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LPA's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- c. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer 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 Indiana Department of Administration and Indiana Department of Transportation 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 subparagraph (a) through (e) above.

This Agreement shall not be effective unless and until approved by the Attorney General of Indiana, or his/her authorized representatives, as to form and legality

In Witness whereof, the State of Indiana and the LPA, through their respective officials, have hereto affixed their signatures.

Clerk-Treasurer or County Auditor

Mayor, with (Board of Public Works)
or (Town Board)
or (County Commissioners)

ATTEST:

Signature

Signature

(Print or type Name and Title)

(Print or type Name and Title)

Date _____

Signature

(Print or type Name and Title)

Signature

(Print or type Name and Title)

Approved as to form and legality:

STATE OF INDIANA
BY: INDIANA DEPARTMENT OF TRANSPORTATION

Stephen Carter
Attorney General of Indiana

J. Bryan Nicol
Commissioner

Date approved: _____

ACKNOWLEDGMENT

State of _____ County of _____ SS:

Before me, the undersigned Notary Public in and for said County personally appeared _____
(name of signers, their official capacity and firm name)

and each acknowledged the execution of the foregoing contract on this _____ day of _____, 20____, and each acknowledged and stated that he is the party authorized by the said firm to execute the foregoing contract.

Witness my hand and seal the said last named date.

My Commission Expires

Notary Public

County of Residence Print of type name

ACKNOWLEDGMENT

State of Indiana, County of Marion, SS:

Before me, the undersigned Notary Public in and for said County, personally appeared _____, _____
(name) (title)

of the Indiana Department of Transportation, and acknowledged the execution of the foregoing contract on this _____ day of _____, 20____.

Witness my hand and seal this said last named date.

My Commission Expires

Notary Public

County of Residence

ATTACHMENT C

**LYNCH ROAD EXTENSION PHASE III
CONSTRUCTION COST ESTIMATES**

	Vanderburgh County	Warrick County	
	<i>Vanderburgh County Road Project</i>	<i>Warrick County Road Project</i>	<i>Warrick County Traffic Signal</i>
INDOT Designation No.	101114	8020562	9710740
Engineer's Construction Cost Estimate	\$3,261,217.28	\$1,574,327.40	\$114,395.00
Percentage of Total Cost	65.88%	31.80%	2.31%

Total Construction Cost Estimate	\$4,949,939.68
Total Vanderburgh County % of Construction Cost	66%
Total Warrick County % of Construction Cost	34%