

DELAWARE COUNTY COMMISSIONER'S MEETING
Monday, June 3rd, 2024 @ 9:01 A.M.
In the Commissioners' Courtroom at:
100 W. Main St. Room 309A
Meetings will also be live streamed via the
Delaware County, Indiana Government Facebook Page
[Comments may be made to the Commissioners via their email at
commissioners@co.delaware.in.us]

ORDER OF BUSINESS

CALL TO ORDER:

PLEDGE TO FLAG:

ROLL CALL:

Mr. Shannon Henry
Ms. Sherry Riggan
Mr. James King
Mr. John Brooke
Mr. Ed Carroll

APPOINTMENT(S):

Muncie Public Library – Mary Buck and Denise King

MOTION: Commissioner Riggan made a motion to reappoint Mary Buck and Denise King to the Muncie Public Library.

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggan, President King

APPROVAL OF MINUTES:

Commissioners Meeting May 20th, 2024

MOTION: Commissioner Riggan made a motion to approve May 23, 2024 minutes

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggan, President King

PRESENTATIONS:

Anti-Stigma Training – Lieutenant Andrew Payne

Mr. Lieutenant Andrew Payne stated training for Anti-Stigma will be held on August 21, 2024 from 5:30pm to 8:30pm at the Justice Center in the auditorium. Then again on October 21 from 5:30pm to 8:30pm at the Community Engagement Center at the Ball State Oakwood location.

CONTRACTS OR AGREEMENTS FOR APPROVAL:

BOT Agreement- John Brooke

Mr. John Brooke stated this is the agreement for the mental health facility since the funds are coming from ARP and state money. The guarantee price minimum at \$7,996,000 for the agreement.

MOTION: Commissioner Henry made a motion to approve the BOT agreement

SECOND: Commissioner Riggan

YEAS: Commissioner Henry, Commissioner Riggan, President King

Grant Agreement – John Brooke

Mr. John Brooke stated this is the agreement from the state that was in the budget 2023 \$2.5 million

MOTION: Commissioner Henry made a motion to approve the

SECOND: Commissioner Riggan

YEAS: Commissioner Henry, Commissioner Riggan, President King

District 6 MOU – John Coutinho

Mr. John Coutinho presented the District 6 MOU (EMA coalition) which allows the EMA to send help to their neighboring counties without going through the state.

MOTION: Commissioner Henry made a motion to approve the District 6 MOU

SECOND: Commissioner Riggan

YEAS: Commissioner Henry, Commissioner Riggan, President King

2024-02 Road Paving Project Agreement- Angie Moyer

MOTION: Commissioner Henry made a motion to approve the 2024-02 Road Paving Project Agreement to E&B Paving for \$264,738.00

SECOND: Commissioner Riggan

YEAS: Commissioner Henry, Commissioner Riggan, President King

2024-03 Road Paving Project Agreement- Angie Moyer

MOTION: Commissioner Riggan made a motion to approve the 2024-03 Road Paving Project Agreement to E&B Paving for \$1,951,571.75.

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggan, President King

DEPARTMENT HEADS AND ELECTED OFFICIALS:

Ms. Meagan Coutinho EMS, thanked the community for coming out to Station 4's open house.

WEEKLY, MONTHLY AND QUARTERLY REPORTS:

PAYMENT OF CLAIMS: \$768,883.82

MOTION: Commissioner Riggan made a motion to approve payment of claims in the amount of \$768,883.82

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggan, President King

PAYMENT OF PAYROLL FOR 5/6/2024: \$966,544.03

MOTION: Commissioner Riggan made a motion to approve payment of payroll in the amount of \$966,544.03

SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggan, President King

PUBLIC COMMENTS, QUESTIONS, OTHER BUSINESS & DISCUSSION (ALL PUBLIC COMMENTS ARE LIMITED TO THREE MINUTES AND SPEAKER MUST SIGN-IN PROVIDING NAME AND ADDRESS):

[COMMENTS MAY BE MADE TO THE COMMISSIONERS VIA THEIR EMAIL AT commissioners@co.delaware.in.us

RECESS:

MOTION: Commissioner King made a motion to recess

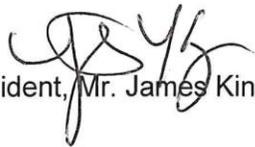
SECOND: Commissioner Henry

YEAS: Commissioner Henry, Commissioner Riggini, President King

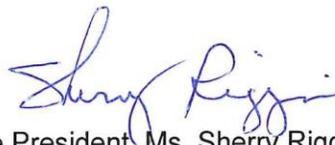
The next Commissioner's meeting will be Monday June 17th, 2024, starting at 9:00 am.

To be placed on the next Commissioner's Agenda, contact the Commissioner's Office (765-747-7730) no later than **NOON on the Thursday prior to the scheduled meeting.**

<https://www.youtube.com/watch?v=YvrqjJwjXw&t=605s>



President, Mr. James King



Vice President, Ms. Sherry Riggini



Member, Mr. Shannon Henry



Auditor, Mr. Ed Carroll

BUILD-OPERATE-TRANSFER AGREEMENT
Delaware County Regional Mental Health Facility

This Build-Operate-Transfer Agreement (Delaware County Regional Mental Health Facility) (the "Agreement") is executed this 3rd day of June, 2024, by and between Delaware County Justice Partners, LLC (the "Developer"), and the Delaware County, Indiana (the "County").

1. Definitions.

Acquisition Property shall mean the completed Project.

Assignment Transaction (AT) shall mean the purchase of an absolute assignment of the Payment Rights, with the AT Proceeds being used to pay (or reimburse Developer for) the Project Costs.

AT Closing shall mean the closing with respect to the Assignment Transaction.

AT Closing Date shall mean the date of the AT Closing.

AT Documents shall mean all instruments, agreements, and other documents evidencing, or required in connection with, the Assignment Transaction, including, without limitation, the Participation Agreement.

AT Proceeds shall mean the proceeds of the progress payments made to the Developer during the course of construction from the County as set forth herein.

Books and Records shall mean all of the books and records pertaining to the acquisition of materials to construct, and the construction of, the Project in accordance with the terms and conditions of this Agreement and the Construction Contract.

BOT Progress Payments shall mean monthly payments submitted by the Developer for work completed or materials purchased for the construction of the Regional Mental Health Facility which progress payments, subject to adjustment in accordance with Subsection 12(c), shall be in the amounts specified in the BOTP Schedule.

BOTP Schedule shall mean the schedule of BOT Progress Payments that is attached hereto as Exhibit E.

Change Order shall mean a change order executed by Developer and County finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request, which change has been approved; provided that, a change order for a Permitted Change shall be effective if executed only by Developer.

Change Order Request shall mean a written request for a change to the Final Plans.

Judicial Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys' fees).

Claim Form shall mean the approved Indiana State Board of Accounts (ISBOA) form for the payment of claims from county funds that is accompanied by the appropriate documentation from the Developer as to the funds being requested for work completed, lien waivers from any subcontractor or sub-subcontractor or material supplier, documents showing materials purchased by name and quantity that will be used on the Project either prior to submission of the claim form or to be used in the future as well as certification of the progress of the project as of the date of the claim form being submitted. Claim forms may not be submitted more frequently than every 30 days from the date of the last approved claim form. County reserves the right to review and/or reject any claim form submitted and must provide a written explanation to the Developer of the reason for rejection. Claims forms that are approved will be submitted to the County Auditor for payment as per the usual County schedule for payment of claims.

Construction Contract shall mean the contract executed by and between Developer and the Contractor for construction of the Project in accordance with the Final Plans, the approved Project Budget, and the terms and conditions of this Agreement.

Construction Drawings shall mean construction drawings consistent with the Design Development Documents and the Laws.

Construction Schedule shall mean the portion of the Final Plans comprised of the construction schedule.

Contractor shall mean the entity that will be the general contractor or the construction manager in connection with the construction of the Project.

County shall mean Delaware County, Indiana.

Current CDC Projections shall mean, at the time when: (a) the Plan Schedule or the Construction Schedule, as applicable, is finalized; or (b) a determination is made as to dates by which, or periods within which, obligations are to be satisfied; the then-current information, forecasts, and projections available to the public from the Centers for Disease Control and Prevention.

Design Development Documents shall mean reasonably detailed design development documents that are consistent with the Schematic Design Drawings and the Laws.

Documentation Costs shall mean all fees, costs, and expenses incurred by Developer in connection with drafting and negotiating: (a) this Agreement; (b) the AT Documents; (c) the Easement Agreement; and (d) any other documents contemplated to be executed by this Agreement or the AT Documents.

Event of Default shall have the meaning set forth in Section 15.

Final Documents and Drawings shall mean final Schematic Design Drawings, final Design Development Documents, final Construction Drawings, and the final Construction Schedule, as each is finalized and approved or reviewed by County pursuant to the Plan Refinement Process.

Final Inspection shall mean an inspection of the Project by County after substantial completion thereof.

Final Plans shall mean the aggregated Final Documents and Drawings.

Force Majeure shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; (iii) epidemics, pandemics, and other public health circumstances resulting in a governmental declaration of a public health emergency; and (iv) utility or energy shortages or acts or omissions of public utility providers).

Inspection shall mean a Permitted Inspection or the Final Inspection, as applicable.

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines of or from: (i) governmental agencies, boards, commissions, or departments; and (ii) judicial, administrative, or regulatory bodies; and (c) judicial orders, consents, and/or decrees.

Material Defect shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Plans; or (c) has not been constructed materially in accordance with the terms and conditions of this Agreement.

Non-Compliance Notice shall mean a written notice from County that identifies Material Defects discovered by it during an Inspection.

Operating Period shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the first to occur of: (i) the date that is three months after the Substantial Completion Date; or (ii) such earlier date as is specified in a written notice delivered by County to Developer.

Participation Agreement shall mean a "Participation and Purchase Agreement" to be executed at the AT Closing by and among Developer, County, pursuant to which agreement Developer shall convey and assign the Payment Rights to the Payment Rights Purchaser for the Payment Rights Price. The Participation Agreement shall be on the terms and conditions set forth on Exhibit C; provided that, if and to the extent that the executed Participation Agreement conflicts with any of the terms and conditions set forth on Exhibit C, then the executed Participation Agreement shall control.

Payment Rights shall mean the rights hereunder with respect to the receipt of the BOT Progress Payments.

Permitted Change shall mean any change to the Final Plans, so long as such change: (a) is not materially inconsistent with the Final Plans; (b) does not result in the Final Plans containing structurally flawed elements; (c) does not result in increased Project Costs; and (d) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the Construction Schedule.

Permitted Inspection shall mean an inspection by County of any item or component of the Project when reasonably deemed to be necessary or appropriate by County.

Plan Refinement Process shall mean the process set forth in Section 6 for completion of the Final Plans and the Project Budget.

Plan Schedule shall mean the schedule in accordance with which Developer shall prepare and provide to County the Schematic Design Drawings, the Design Development Documents, the Construction Drawings, and the Construction Schedule, which schedule is attached hereto as Exhibit B.

Pledged Funds shall mean the funds that have been allocated by the Board of Commissioners in their American Rescue Plan Fund, project 1 (Mental Health Facility) and any and all grants received by the County from the State of Indiana or any other source of funds for the construction of the Regional Mental Health Facility. **The aggregated BOTP Principal Amounts shall not exceed \$7,996.017.00.**

Project shall mean a Regional Mental Health Facility located at 3100 South Tillotson Ave., Muncie, IN 47302 together with related site and infrastructure improvements, to be constructed on the Project Site. In the event of any discrepancy between the foregoing definition and the project reflected in the Final Plans, "Project" shall mean the project reflected in the Final Plans.

Project Budget shall mean the budget for the Project Costs.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including, without limitation: (a) the Documentation Costs; (b) the costs incurred in connection with determining that all of the conditions set forth in Section 5 have been satisfied and/or will be waived by Developer and/or County; (c) the costs incurred in connection with the closing of the Assignment Transaction and the purchase of the Payment Rights (to the extent that such costs are not included in the Documentation Costs); (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of this Agreement, including all architect, engineer, and other professional fees; (e) a reasonable and customary amount for contingencies; and (f) the development fees to be paid by County to Developer.

Project Payments shall mean those payments as submitted by the Developer on the appropriate claim forms and appropriate documentation as required on a monthly basis which detail the work or materials done or purchased and for which the Developer is requesting payment. Progress payments may not be

requested more frequently than every thirty (30) days from the date of the last Project Payment requested.

Project Site shall mean that certain real estate delineated generally as the "Project Site" on Exhibit A.

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for the construction of the Project.

Schematic Design Drawings shall mean detailed schematic design drawings for the Project, which drawings shall be consistent with the Laws.

Substantial Completion Date shall mean the date on which Developer delivers to County a copy of an architect's certificate of substantial completion indicating that the Project has been completed substantially in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the Final Inspection, which "punch-list" items will not materially affect the use of the Project for its intended use.

Taxable Event shall mean any action or event that results in the loss of the exclusion of the BOTP Interest Amounts from gross income for federal and/or state income tax purposes under the Internal Revenue Code of 1986, as amended, or any Laws regarding Indiana income taxation.

Transfer shall mean: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project Site, the materials to construct the Project, or the Acquisition Property, or any interest in the foregoing; or (b) any granting of a security interest in the Project Site, the materials to construct the Project, or the Acquisition Property, other than to the Payment Rights Purchaser. Notwithstanding the foregoing, encumbrances created by the AT Documents or required by the terms and conditions of this Agreement shall not constitute Transfers.

2. General Obligations.

(a) **Project.** Subject to the terms and conditions of this Agreement, Developer shall construct the Project on the Project Site.

(b) **Assignment Transaction.** Subject to the terms and conditions of this Agreement:

(i) each of Developer and County shall execute, comply with, and satisfy its obligations under the AT Documents to which it is a party;

(ii) the AT Proceeds shall be used solely to pay (or reimburse Developer for) Project Costs; and

(iii) County shall provide such assistance to Developer in connection with the Assignment Transaction as Developer reasonably may request.

(c) **Conveyance.** Subject to the terms and conditions of this Agreement: (i) Developer shall lease from the County the project site during construction and operation; and (ii) County be granted title via transfer of the interest of the Developer at the conclusion of construction and after operation for a period of not less than seven (7) days after acceptance by the County of the entire building. Acceptance of the Regional Mental Health Center Building shall not waive, void or extend any warranty on construction and operation of equipment provided by the Developer and/or manufacturers.

(d) **Utility Availability.** County, at its cost and expense, shall ensure that there are gas, electricity, telephone, internet, water, storm and sanitary sewer, and other necessary or reasonably appropriate utility services in adjoining public rights-of-way or properly granted and recorded utility easements, all of which serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in

accordance with the terms and conditions of this Agreement. In connection with the satisfaction of the foregoing obligation, County, at its cost and expense, shall make any improvements outside the Project Site that are necessary or reasonably appropriate.

3. AT Closing. Subject to the terms and conditions of this Agreement, the AT Closing shall: (a) occur on or before June 30, 2024, with the AT Closing Date being established mutually by Developer and County, and (b) take place at such place (which may include remotely) as Developer and County mutually agree.

4. AT Closing Documents. At the AT Closing, the documents and instruments set forth in this Section shall be executed and/or delivered by the parties thereto.

(a) the AT Documents;

(b) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or County, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or County of its obligations hereunder and under the foregoing documents, have been authorized by Developer or County; and

(c) such other customary documents and instruments as either party reasonably may request in connection with the AT Closing.

5. Conditions to AT Closing.

(a) Mutual. Except to the extent waived by proceeding to the AT Closing, the obligation of each of Developer and County to proceed to the AT Closing is subject to the satisfaction, as of the AT Closing Date, of the conditions set forth in this Subsection.

(i) Developer has obtained, or Developer and County are satisfied that Developer will be able to obtain, all Required Permits.

(ii) The Final Plans and the Project Budget have been completed pursuant to the Plan Refinement Process, and either: (A) the budgeted Project Costs do not exceed the Payment Rights Price; or (B) the budgeted Project Costs do exceed the Payment Rights Price, and County has provided to Developer the written agreement contemplated pursuant to Subsection 6(e).

(iii) Developer and County have agreed to the form and substance of the Easement Agreement.

(iv) Developer, County, and all other parties to the AT Documents have agreed to the form and substance of the AT Documents, and each of Developer and County has determined, in the exercise of its reasonable discretion, that the Payment Rights Purchaser is prepared to close the Assignment Transaction on the AT Closing Date.

(v) Developer and County have adopted all necessary resolutions: (A) to authorize the execution of the documents required to be executed by it in connection with the transaction; (B) to authorize the performance by it of its obligations under such documents.

(vi) Developer has not identified any conditions with respect to the Project Site that would interfere with, or prohibit, construction of the Project

in accordance with the terms and conditions of this Agreement.

(b) Developer. In addition to the conditions set forth in Subsection 5(a), the obligation of Developer to proceed to the AT Closing is subject to the condition that: (i) there is no continuing Event of Default by County; and (ii) all the representations, warranties, and covenants made by County in this Agreement are true and accurate in all respects.

(c) County. In addition to the conditions set forth in Subsection 5(a), the obligation of County to proceed to the AT Closing is subject to the condition that: (i) there is no continuing Event of Default by Developer; and (ii) all the representations, warranties, and covenants made by Developer in this Agreement are true and accurate in all material respects.

(d) Condition Failure. If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, the applicable party either may elect to: (i) waive satisfaction of the conditions and proceed to the AT Closing; or (ii) terminate this Agreement by a written notice to the other party; provided that, with respect to Events of Default, the non-defaulting party shall have the rights and remedies set forth in Section 17. Notwithstanding anything to the contrary set forth herein, Developer and County shall work diligently and in good faith to satisfy the conditions set forth in this Section.

6. Plan Refinement Process.

(a) Approvals. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit to County for its approval the Schematic Design Drawings, the Design Development Documents, and the Construction Schedule. Within ten (10) days after County receives the Schematic Design Drawings, Design Development Documents, or Construction Schedule, County shall deliver to Developer written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (i) specify the part or parts that County is rejecting; and (ii) include the specific basis for such rejection. As each is approved by County, the Schematic Design Drawings, Design Development Documents, or Construction Schedule, respectively, shall be final and, accordingly: (i) part of the Final Documents and Drawings; and (ii) subject to modifications only by Change Orders.

(b) Construction Drawings. In accordance with the Plan Schedule, the Developer, at its cost and expense, shall submit to County for its review the Construction Drawings with respect to each trade or other discrete aspect of construction of the Project. Thereafter, such Construction Drawings shall be final and, accordingly: (i) part of the Final Documents and Drawings; and (ii) subject to modifications only by Change Orders.

(c) Re-submissions. If, at any stage of the Plan Refinement Process, County rejects all or any portion of the Schematic Design Drawings, the Design Development Documents, and/or the Construction Schedule, then, within ten (10) days after receipt of notice of such rejection, Developer shall revise and resubmit to County the Schematic Design Drawings, Design Development Documents, and/or Construction Schedule, as applicable. Within ten (10) days after County receives such resubmissions, County shall deliver to Developer written notice of approval or rejection thereof in accordance with Subsection 6(a). This process shall continue until such time as the Schematic Design Drawings, the Design Development Documents, and the Construction Schedule are approved by County, at which time each of the foregoing shall be final and, accordingly: (i) part of the Final Documents and Drawings; and (ii) subject to modifications only by Change Orders.

(d) Final Plans. Upon completion of the Final Documents and Drawings pursuant to this Section, the aggregated Final Documents and Drawings shall constitute the complete Final Plans and, accordingly, be subject to modification only by Change Orders. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings until such time as all of the Final Documents and Drawings are completed. After completion of all of the Final Documents and Drawings, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified only by Change Orders.

(e) Budget/Costs. At the appropriate points during the Plan Refinement Process, as determined by Developer and County, Developer shall: (i) deliver the Project Budget to County for its review and approval; and (ii) make such adjustments to the Project Budget as are determined by Developer and County to be necessary or appropriate in connection with proceeding through the Plan Refinement Process. Notwithstanding anything to the contrary set forth herein, Developer shall not be obligated to incur Project Costs in excess of the Payment Rights Price; accordingly, if there is an adjustment to the Project Budget that would cause the Project Costs to exceed the Payment Rights Price, then County shall agree in writing that: (i) the definition of "Payment Rights Price" will not be amended to add the amount of such excess Project Costs; and (ii) County will pay all such excess Project Costs as they are incurred.

(f) Sales Tax.

(i) Promptly after the execution of this Agreement, County shall deliver to Developer (or, upon direction from Developer, directly to the Contractor) Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate), pursuant to which County shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.

(ii) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and/or complete the Project, Developer (or the Contractor, pursuant to the terms and conditions of the Construction Contract) promptly shall notify County in writing. From and after receipt of the foregoing notice, County shall provide such cooperation, information, and assistance as Developer and/or the Contractor reasonably shall request.

(iii) County shall indemnify and hold harmless Developer and the Contractor, and the members, directors, officers, and employees of Developer and the Contractor, from and against any and all Claims arising from, or connected with: (A) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; and/or (B) any interest and penalties assessed by the Indiana Department of Revenue with respect to the non-payment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; including, without limitation, reasonable attorneys' fees and court costs. The obligations of County under this clause shall survive for a period of three years after the first to occur of the Substantial Completion Date or the termination of this Agreement.

7. Change Orders.

(a) **Developer Changes.** If the Developer desires to make any changes to the Final Plans, then Developer shall submit a Change Order Request to County for review and approval, together with an estimate of any resulting increase or decrease in the amount of the Project Costs. Within ten (10) days after County receives the Change Order Request, County shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) County shall not withhold its approval unreasonably; (ii) it shall not be unreasonable for County to reject a Change Order Request if the change proposed in the Change Order Request would result in increased Project Costs; and (iii) if County approves a Change Order Request for a change that would result in increased Project Costs, then, notwithstanding anything to the contrary set forth herein: (A) the definition of "Payment Rights Price" shall not be amended to add the increase in the Project Costs; (B) County shall pay the additional Project Costs as they are incurred; and (C) in no event shall Developer have any obligations with respect to the payment of such additional Project Costs. If County rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that County is rejecting; and (ii) include the specific basis for such rejection. If County approves a Change Order Request, then Developer and County shall execute a Change Order.

(b) **County Changes.**

(i) If County desires to make any changes to the Final Plans, then County shall submit a Change Order Request to Developer for review and approval. Within five (5) business days after Developer receives the Change Order Request, Developer shall deliver to County written notice stating whether the change proposed in the Change Order Request would result in increased Project Costs; provided that, if the proposed change would result in increased Project Costs, then such notice also shall include an estimate of the amount of the increase.

(ii) If the foregoing notice states that the change proposed in the Change Order Request would not result in increased Project Costs, then, within five (5) business days after delivery of such notice, Developer shall deliver to County written notice that it approves or rejects the Change Order Request; provided that the Developer shall not withhold its approval unreasonably.

(iii) If the foregoing notice states that the change proposed in the Change Order Request would result in increased Project Costs, then, within five (5) business days after receipt of such notice, County shall provide written notice to Developer either confirming or withdrawing the Change Order Request. If County does not elect to withdraw the Change Order Request, then, within five additional business days, Developer shall deliver to County written notice that it approves or rejects the Change Order Request; provided that the Developer shall not withhold its approval unreasonably.

(iv) If the Developer approves a Change Order Request, then the Developer and County shall execute a Change Order. If the approved Change Order Request is for a change that will result in increased Project Costs, then, notwithstanding anything to the contrary set forth herein: (A) the definition of "Payment Rights Price" shall not be amended to add the increase in the Project Costs; (B) County shall pay the additional Project Costs as they are incurred; and (C) in no event shall Developer

have any obligations with respect to the payment of such additional Project Costs.

(v) If the Developer rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that Developer is rejecting; and (B) include the specific basis for such rejection.

(c) Permitted Change. Notwithstanding anything to the contrary set forth herein: (i) the Developer shall not be required to obtain the approval of County with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer.

8. Construction.

(a) Permits. Prior to commencing construction of the Project, Developer, at its cost and expense, shall obtain and submit to County for its review the Required Permits.

(b) Construction. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders) and the terms and conditions of this Agreement; and (iii) in compliance with the Laws and the Required Permits. On or before the date that is 15 days after the Substantial Completion Date, Developer and County shall execute a completion certificate substantially in the form attached hereto as Exhibit F.

(c) Progress Payments. Progress payments shall be disbursed to Developer in accordance with the BOT Agreement and the Participation Agreement to pay (or reimburse Developer for) Project Costs.

(d) Records. The Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. County and its attorneys, accountants, representatives, architects, engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records. The Developer shall also participate and assist the County in the event of any audit by any federal or state agency or department.

(e) Compliance with local rules and regulations. The Developer shall be responsible during the course of construction and completion of the project compliance with any and all local regulations such as building codes, stormwater control, pest and vector control and any other requirement for a standard building construction.

(f) The Developer shall also maintain a clean and tidy work site and environment. The Developer is responsible for the safety of any and all employees, subcontractors, employees of subcontractors, employees or contractors of the County that may be lawfully on the job site.

9. Inspection.

(a) Permitted Inspection. The County may perform inspections of the facility at any time during the course of construction itself or its appointed agent. There is no limit in the number of inspections to be performed by the County during construction. If applicable, County shall deliver a Non-Compliance Notice to Developer within five (5) days after completion of an inspection. The cost of inspections and/or inspectors shall be the sole cost of the County.

(b) Final Inspection. The Developer shall deliver to County a written request for the Final Inspection at least five (5) business days prior to the anticipated Substantial Completion Date. County shall conduct the Final Inspection on or before the later of the date that is five (5) business days after: (i) receipt by County of such request; or (ii) the Substantial Completion Date and, as soon as reasonably is practicable after completion of the Final Inspection, shall provide a copy of the inspection report to the Developer. If applicable, County shall deliver a Non-Compliance Notice to Developer within five days after completion of the Final Inspection; provided that: (i) if County does not deliver a timely Non-Compliance Notice, then, within five business days after the expiration of the foregoing 5-day period, Developer and County shall identify the "punch-list" items; or (ii) if County does deliver a timely Non-Compliance Notice, then such "punch-list" items shall be identified within five business days after correction by Developer of all Material Defects identified in the Non-Compliance Notice. The Developer shall complete all "punch-list" items within 60 days after identification thereof. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to Subsection 9(c); County shall have no further Project-related inspection rights pursuant to this Agreement.

(c) Non-Compliance. If County delivers a Non-Compliance Notice to Developer in accordance with this Section, then Developer shall correct, as soon as is practicable, all Material Defects identified in a Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or have been deemed to have been accepted, by County. All items or components of the Project with respect to which: (i) an Inspection is conducted; and (ii) no Material Defects are identified in a timely Non-Compliance Notice; shall be deemed to be accepted by County.

(d) General.

(i) In connection with any Inspection, County shall: (A) comply with all health and safety rules of which County has been informed that have been established for personnel present on the construction site; and (B) coordinate the Inspection so that it does not interfere with the performance of construction. Developer shall have the right to accompany, and/or have the Contractor accompany, County during any Inspection.

(ii) An acceptance, or deemed acceptance, by County pursuant to this Section shall not mean that County has accepted, or Developer has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; (C) correcting any portion of the Project if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project; or (D) any material defects in the construction of the Project that are latent and, accordingly: (1) were not discovered; and (2) reasonably

were not discoverable; by County during an Inspection.

10. Insurance. During construction of the Project, the Developer shall maintain the policies of insurance reflected on the certificate attached hereto as Exhibit D. Each such policy shall be written by a company reasonably acceptable to County, and Developer shall provide notice of any intended modification to, or cancellation of, such policy to County at least 30 days in advance. The policy of general liability insurance required by this Section to be maintained by the Developer shall name County as an additional insured. Developer shall deliver to County certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. From and after the Substantial Completion Date, Developer shall have no obligation to maintain any policies of insurance with respect to the Project.

11. Operation/Conveyance.

(a) Operation. Subject to the obligations of County under Section 14, Developer shall operate the Property during the Operating Period.

(b) Conveyance. Upon the expiration of the Operating Period, Developer shall convey the Property to County pursuant to a quitclaim deed substantially in the form attached hereto as Exhibit G. The foregoing conveyance shall not: (i) result in a merger of this Agreement into the conveyance documents by which County receives title to the Acquisition Property; accordingly, this Agreement, and all of the rights of the parties hereunder, shall remain in full force and effect; or (ii) have any effect on the obligation of County to make the BOT Payments pursuant to the terms and conditions of this Agreement (stated alternatively, such conveyance shall not accelerate payment of the Outstanding BOTP Principal Amount or shorten the Payment Period). County shall be responsible for all costs and expenses incurred in connection with the acquisition of the Acquisition Property, including, without limitation: (i) costs to obtain all surveys, title searches, abstracts, and/or title policies deemed by County to be necessary or appropriate; and (ii) attorneys' fees and closing costs.

12. Tax Covenants. Notwithstanding anything to the contrary set forth herein, neither Developer nor County shall: (a) take or, to the extent within its power, permit to be taken, any action; or (b) fail to take any action; that would cause a Taxable Event. If either party becomes aware that a Taxable Event has occurred (or believes in good faith that a Taxable Event may have occurred), then such party promptly shall deliver written notice thereof to the other party and to the Payment Rights Purchaser. Any agreement entered into by Developer or County that would result in a Taxable Event shall: (a) be of no force or effect; and (b) not convey any rights, or impose any obligation, at law or in equity. If Developer incurs out-of-pocket costs and expenses to comply with the terms and conditions of this Section, then County shall reimburse Developer for such costs and expenses.

13. County Covenants. The covenants set forth in this Section shall apply at all times during the Payment Period, including that, for purposes of clarity and notwithstanding the fact that Developer will be operating the Acquisition Property, such covenants shall apply during the Operating Period.

(a) Agreement Compliance. County: (i) shall pay the BOT Progress Payments punctually and in strict conformity with the terms of this Agreement; (ii) faithfully shall observe and perform all of its obligations under this Agreement; and (iii) shall not terminate this Agreement for any cause whatsoever.

(b) Other Contract Compliance. County shall: (i) not take, or omit to take, any action under any contract, if the effect of such act or failure to act would in any manner impair or adversely affect the ability of County to pay BOT Payments; and (ii) observe and perform all of its obligations under all other contracts affecting or involving the Project to which County is a party.

(c) Property/BOT Expenses.

(i) County: (A) shall pay all costs and expenses incurred in connection with the use, operation, maintenance, and repair of the Acquisition Property, including, without limitation that County shall: (1) pay and discharge when due all taxes, assessments, and other governmental charges that lawfully are imposed upon the Project Site, the Acquisition Property, or any part thereof; and (2) pay all usage and other charges for utility services furnished to the Acquisition Property.

(ii) County shall have the right to contest, at its cost and expense and in accordance with all Laws, the valuation of the Acquisition Property and/or the calculation of any real estate taxes or assessments; provided that prior to such contest County shall deliver written notice to the Payment Rights Purchaser, together with any surety bond that may be required by the Payment Rights Purchaser. Pending resolution of such a contest, County shall pay when required by the applicable taxing authority the installments and payments of the taxes and assessments being contested, except to the extent that the foregoing may be deferred without penalty during the pendency of the contest.

(d) No Liens. At all times the Developer and the County shall: (i) keep the Project Site and the Acquisition Property free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) any of the foregoing: (1) existing on the AT Closing Date; or (2) resulting from compliance with this Agreement and/or the AT Documents; and (B) the lien of current real estate taxes not delinquent; and (ii) defend the Project Site and the Acquisition Property against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Acquisition Property, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to the Developer and/or County, then the party responsible for payment of the mechanic's, supplier's, or similar to have said lien discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(e) Title. Upon request by the Developer, County shall take such actions as may be necessary or appropriate to remedy or cure any defect in, or cloud upon, the title to all or any portion of the Project Site or the Acquisition Property.

(f) Protection. County shall: (i) preserve and protect the security hereof, and the rights of Developer to the BOT Progress Payments; and (ii) warrant and defend such rights against all claims and demands of all persons.

(g) Laws. County shall comply with the Laws of the State of Indiana.

(h) Assurances. County shall adopt such resolutions, execute and deliver such instruments, and make any and all further assurances as reasonably may be necessary or proper: (i) to carry out the intention of this Agreement; (ii) to facilitate the performance of this Agreement; and/or (iii) in connection with assuring and confirming the rights and benefits provided to Developer and the Payment Rights Purchaser.

(i) No Transfer. Except as permitted by the AT Documents, County shall not undertake, permit, or cause a Transfer.

14. Developer Covenants.

(a) Filings. Developer shall keep in full force and effect, without any violations by Developer, any and all filings or registrations required by the Laws in connection with: (i) the performance by Developer of its obligations under the AT Documents; (ii) the acquisition of the materials to construct, and/or the construction of, the Project in accordance with this Agreement and the Construction Contract; or (iii) the sale of the Acquisition Property to County in accordance with this Agreement.

(b) No Liens. At all times prior to conveyance of the Acquisition Property to County, Developer shall: (i) keep the materials to construct the Project free from any and all liens, claims, security interests, encumbrances, and restrictions, except for any of the foregoing existing on the AT Closing Date or as a result of compliance with this Agreement and the AT Documents; and (ii) defend such materials against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Acquisition Property, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, Developer, then Developer shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(c) Laws. Developer shall comply with all Laws of the State of Indiana.

(d) No Transfer. Except as permitted pursuant by the AT Documents, Developer shall not undertake, permit, or cause a Transfer.

(e) Developer Interests. Prior to conveyance of the Acquisition Property to County, Developer: (i) shall not change its name; (ii) shall not: (A) merge into, or consolidate with, any other entity, or otherwise reorganize; (B) sell, convey, or transfer to any person any interest in Developer; and/or (C) otherwise permit any change in the members of Developer or the percentage of ownership in Developer, if the effect of the foregoing is that Developer no longer is controlled by Troy Woodruff; (iii) shall notify County in writing of any change of the nature specified in the foregoing clause (ii); and (iv) shall not grant any security interest in any interest in Developer.

(f) No Amendments. Prior to conveyance of the Acquisition Property to County, Developer shall not: (i) amend, modify, or restate the articles of organization or operating agreement of Developer; (ii) cause or permit any such amendment, modification, or restatement; or (iii) be dissolved, wound up, or converted to another type of entity, or have its existence as a limited liability company terminated.

(g) Business. Prior to conveyance of the Acquisition Property to County, Developer shall not make or permit to be made any material change in the character of its business as currently conducted.

15. Events of Default. Each of the following shall be deemed to be an "Event of Default" by Developer or County, as applicable:

(a) the failure by the applicable party to pay on the date due any amount due hereunder, including, without limitation, the failure by County to pay any BOT Progress Payment when due;

(b) the failure by the applicable party to observe or perform any term or condition of this Agreement to be observed or performed by it (other than the payment of any amount due hereunder), which failure continues for a period of 30 days after receipt of written notice

specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (i) commences to remedy the failure within the 30-day period; and (ii) diligently pursues such remedy to completion;

(c) an "Event of Default" by the applicable party under the Participation Agreement;

(d) the filing or commencement of any bankruptcy or similar proceeding by or against County, including, without limitation: (i) the filing of a petition for arrangement or reorganization; (ii) the appointment of a receiver for all or a substantial portion of County or Developer's property; or (iii) the assumption of custody or control of the Developer or County or any of its property by a court of competent jurisdiction pursuant to any Law for the relief or aid of debtors; provided that, if any of the foregoing are filed, appointed, assumed, or otherwise commenced against the Developer and/or County without its consent, then there shall not be an Event of Default unless and until such filing, appointment, assumption, or other commencement remains in effect and/or active in excess of 45 days;

(e) County or Developer becoming insolvent or generally unable to pay its debts as they become due; and

(d) the occurrence of any of the circumstances set forth in Subsection 16(d) or (e) with respect to Developer, if such occurrence is prior to the expiration of the Operating Period and the conveyance of the Acquisition Property to County.

16. Remedies.

(a) Remedies.

(i) During the continuance of an Event of Default, the non-defaulting party may take such actions at law or in equity as are necessary or appropriate to: (A) collect any payments due under this Agreement; (B) protect the rights granted to the non-defaulting party under this Agreement; (C) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, through the exercise of the equitable remedies of injunction and/or specific performance); or (D) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it; provided that no cure undertaken by the non-defaulting party shall be construed to be a waiver of the Event of Default.

(ii) if the County is the defaulting party, then Developer may require interest on the past due BOT Progress Payments at the rate no greater than eight per cent (8%) per annum. In the event that County fails to make BOT Progress Payments for two consecutive months and there is no objection or dispute then such failure shall constitute an Event of Default, with the result being that Developer shall have the right to exercise remedies available at law or in equity (including, without limitation, those set forth in this Section).

(iii) if the Developer is the defaulting party, then the County may declare the project uncompleted, withhold payment and secure alternatives to complete construction and charge the costs back to the Developer as one

element of damages, including loss of use and time.

Except to the extent provided to the contrary in this Section or by the Laws, the non-defaulting party is not required to give notice to the defaulting party prior to exercising its remedies during the continuance of an Event of Default.

(b) **No Remedy Exclusive.** No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity.

(c) **No Waiver.** No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. None of: (i) a waiver by the non-defaulting party of an Event of Default; (ii) a delay in the exercise by the non-defaulting party of any right or remedy with respect to an Event of Default; or (iii) the acceptance by Developer of BOT Payments during the continuance of an Event of Default by County; shall be deemed to: (i) constitute a waiver of the current or any subsequent Event of Default; (ii) release or relieve the defaulting party from performing any of its obligations under this Agreement; or (iii) constitute an amendment or modification of this Agreement.

(d) **Mandatory Mediation.** In the event that there is an event of default or a dispute between the parties as to the interpretation of this BOT Agreement or terms, conditions or obligations herein, the parties shall be required to secure the services of a neutral mediator selected by both parties and from outside of Delaware County, Indiana to mediate the dispute. The parties shall mediate in good faith toward a resolution prior to commencing any litigation. In the event that the parties are unable to select a mediator, then the parties shall submit the request to the Delaware County Circuit Court for the naming of a panel of three (3) mediators outside of Delaware County from which the parties are to alternatively strike. The Developer shall strike first. The cost of the mediation shall be equally divided by the parties. The mediator shall have the authority to determine if a party is not mediating in good faith, but shall not have the authority to make any final determination or award damages.

(e) **Damages.** The non-defaulting party may recover from the defaulting party all costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) that the non-defaulting party incurs: (i) by reason of any Event of Default by the defaulting party; and/or (ii) in connection with exercising its rights and remedies with respect to any Event of Default; together with interest thereon at the rate of 8% per annum. All such amounts shall be due and payable by the defaulting party immediately upon receipt of written demand from the other party, and the obligation of the defaulting party to pay such amounts shall survive the acquisition by County of the Acquisition Property.

17. Authority Representations. Each of Developer and County represents and warrants that:

(a) it has: (i) the power and authority to enter into this Agreement and perform its obligations hereunder; (ii) the power and authority to carry out the transaction contemplated by this Agreement; and (iii) complied with the Laws in all matters relating to such transaction;

(b) it has been authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder;

(c) neither the execution and delivery of this Agreement by it, nor the performance by it of its obligations hereunder: (i) violates any Law or the terms and conditions of any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (ii) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (iii) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets; and

(d) this Agreement, once executed, will be its legal, valid, and binding obligation.

In addition to the foregoing: (a) Developer represents and warrants that it is a limited liability company organized and existing under the laws of the State of Indiana; and (b) County represents and warrants that it is a public body organized and existing under the laws of the State of Indiana.

18. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at 8770 North Street, Suite 310, Fishers, Indiana 46038, Attn: Troy Woodruff; and to County at 100 W. MAIN Street, Room 300, Muncie, Indiana 47305, Attn: President, Board of Commissioners, with a copy to John H. Brooke, Brooke & Struble, PC, 112 E. Gilbert Street, Muncie, Indiana 47305. Either party may change its address for notice from time to time by delivering notice to the other party as provided in this Section.

19. Assignment. Except for the direct assignment of the Payment Rights to the Payment Rights Purchaser in accordance with the AT Documents, neither Developer nor County shall: (a) assign this Agreement or any interest herein; or (b) delegate any duty or obligation hereunder. Notwithstanding any assignment or delegation: (a) the assigning or delegating party shall remain fully liable to perform all of its obligations under this Agreement; and (b) a consent by a party to any assignment or delegation shall not release the assigning or delegating party from such performance. Any transfer of this Agreement by operation of law (including, without limitation, a transfer as a result of merger, consolidation, or liquidation of Developer or County) shall constitute an assignment for purposes of this Agreement.

20. Indemnification.

(a) Mutual. Each of Developer and County shall indemnify and hold harmless the other from and against any and all Claims arising from, or in connection with:

(i) mechanics', suppliers', or similar liens filed against the Project Site, the Acquisition Property, or the materials to construct the Project for work claimed to have been done for, or materials claimed to have been furnished to, Developer or County, respectively;

(ii) the negligence or willful misconduct of: (A) Developer or County, respectively; or (B) any party acting by, under, through, or on behalf of Developer or County, respectively; and

(iii) the: (A) breach by Developer or County, respectively, of any term or condition of this Agreement or the AT Documents; and (B) resulting exercise by County or Developer, respectively, of its rights and remedies with respect to such breach.

The indemnification obligations of the parties under this Subsection shall survive for a period of two years after the expiration of the Payment Period or the earlier termination of this Agreement.

(b) Developer. Developer shall indemnify and hold harmless County from and against

any and all Claims arising from, or connected with: (i) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; or (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer. The indemnification obligations of Developer under this Subsection shall survive for a period of two years after the Substantial Completion Date.

21. Force Majeure.

(a) Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (i) the party asserting Force Majeure shall deliver written notice to the other party; (ii) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (iii) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

(b) COVID-19. Each party agrees that: (i) it shall exercise commercially reasonable, good-faith efforts to take (or, in the case of the Plan Schedule, it has taken) into account the Current CDC Projections in finalizing the Plan Schedule, the Construction Schedule, and any dates or time periods applicable hereunder; and (ii) notwithstanding that the current COVID-19 pandemic falls within the definition of Force Majeure, to the extent that such pandemic "acts" in a manner, or results in effects, materially consistent with (or more favorable than) the applicable Current CDC Projections, neither party shall be entitled to the protections of Subsection 22(a) by reason of a Force Majeure claim based upon the COVID-19 pandemic. For purposes of clarity, to the extent that the COVID-19 pandemic "acts" in a manner, or results in effects, materially and adversely inconsistent with the applicable Current CDC Projections, the protections of Subsection 22(a) shall apply.

22. BOT Statute. This Agreement is intended to be a public-private agreement authorized by Indiana Code §5-23. If and to the extent this Agreement is not such a public-private agreement, then this Agreement shall be deemed to: (a) include such terms not otherwise included; and (b) exclude such terms not otherwise excluded; as is necessary to cause this Agreement to be a public-private agreement.

23. Miscellaneous. Subject to Section 20, this Agreement shall inure to the benefit of, and be binding upon, Developer and County, and their respective successors and assigns. This Agreement (a) constitutes the entire agreement between Developer and County with respect to the subject matter hereof, and may be modified only by a written agreement executed by both Developer and County; (b) shall be governed by, and construed in accordance with, the laws of the State of Indiana; and (c) may be executed in separate counterparts, each of which shall be an original, but all of which together shall constitute a single instrument. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

[Signature Page Follows]

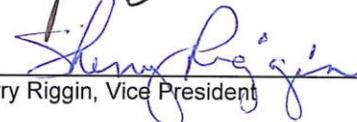
IN WITNESS WHEREOF, Developer and County have executed this Agreement on the date set forth in the introductory paragraph of this Agreement.

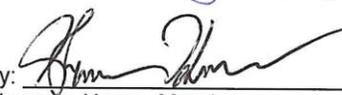
DELAWARE COUNTY JUSTICE PARTNERS,
LLC

By: _____
Troy Woodruff, Managing Member

BOARD OF COMMISSIONES,
DELAWARE COUNTY, INDIANA

By:  _____
James King, President

By:  _____
Sherry Riggan, Vice President

By:  _____
Shannon Henry, Member

Attest:


Edward Carroll, Auditor
Delaware County, Indiana

INDEX TO EXHIBITS

Exhibit A	Project Site Depiction
Exhibit B	Plan Schedule
Exhibit C	Certificate of Insurance
Exhibit D	BOTP Schedule
Exhibit E	Form Completion Certificate
Exhibit F	GMP Scope, Schedule & Cost Summary
Exhibit G	Form Quitclaim Deed

EXHIBIT A
Project Site Depiction

Reference Exhibit F for Site Description

**EXHIBIT B
Plan Schedule**

Reference Exhibit F for Plans

EXHIBIT C

Certificate of Insurance

EXHIBIT D
BOTP Payment Schedule

EXHIBIT E
Form Completion Certificate

COMPLETION CERTIFICATE
Delaware County Regional Mental Health Facility

This Completion Certificate (Delaware County Regional Mental Health Facility) (the "Certificate") is executed this ___ day of _____, by and between Delaware County Justice Partners, LLC (the "Developer"), and the County of Delaware, Indiana (the "County").

Recitals

WHEREAS, Developer and County have executed that certain Build-Operate-Transfer Agreement (Delaware County Regional Mental Health Facility) dated _____, 2024 (the "BOT Agreement");

WHEREAS, pursuant to the BOT Agreement, Developer is obligated to construct a Delaware County Regional Mental Health Facility, together with related improvements, on that certain real estate more particularly described on Exhibit A;

WHEREAS, the BOT Agreement provides that, subsequent to the Substantial Completion Date (as defined in the BOT Agreement"), Developer and County shall execute a certificate of completion; and

WHEREAS, Developer and County agree that the Substantial Completion Date has occurred.

Certificate

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, each of Developer and County certifies and agrees that the Substantial Completion Date occurred on _____.

[signature pages to follow]

IN WITNESS WHEREOF, Developer and County have executed this Certificate as of the date set forth in the introductory paragraph hereof.

DELAWARE COUNTY JUSTICE PARTNERS,
LLC

By: _____

Printed: _____

Title: _____

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of Delaware County Justice Partners, LLC, who acknowledged the execution of the foregoing Completion Certificate (Delaware County Regional Mental Health Facility) on behalf of such entity.

WITNESS my hand and Notarial Seal this ____ day of _____.

By: _____
Notary Public

Printed Name: _____

I am a resident of _____ County, Indiana.

My commission expires _____.

COUNTY OF DELAWARE, INDIANA
BOARD OF COMMISSIONERS

By: _____
Printed: James King, President

By: _____
Printed: Sherry Riggin, Vice President

By: _____
Printed: Shannon Henry, Member

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of the County of Delaware, Indiana, Board of Commissioners who acknowledged the execution of the foregoing Completion Certificate (Delaware County Regional Mental Health Facility) on behalf of such entity.

WITNESS my hand and Notarial Seal this ____ day of _____.

By: _____
Notary Public

Printed Name: _____

I am a resident of _____ County, Indiana.

My commission expires _____.

EXHIBIT F – GMP SCOPE PACKET

**EXHIBIT G
Form Quitclaim Deed**

QUITCLAIM DEED

_____ (the Grantor") hereby QUITCLAIMS to **Delaware County, Indiana**, for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, all of Grantor's right, title, and interest in and to that certain real estate (including the County hall and police station) more particularly described on Exhibit A, attached hereto and incorporated by reference.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed as of _____.

DELAWARE COUNTY JUSTICE PARTNERS,
LLC

By: _____

Printed: _____

Title: _____

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of Delaware County Justice Partners, LLC, who acknowledged the execution of the foregoing Quitclaim Deed on behalf of such entity.

WITNESS my hand and Notarial Seal this ___ day of _____.

By: _____
Notary Public

Printed Name: _____

I am a resident of _____ County, Indiana.

My commission expires _____.

PARTICIPATION AGREEMENT

This Participation Agreement (the "Agreement") is executed this ___ day of June, 2024, by and among Delaware County Justice Partners, LLC (the "Company"), Delaware County, Indiana (the "County").

1. Definitions.

BOT Agreement shall mean that a certain BOT Agreement executed by and between Company and County, a copy of which is incorporated herein.

Closing shall mean the closing with respect to the Transaction.

Closing Date shall mean the date of the Closing.

Completion Statement shall mean a statement from Company stating that: (a) the Project has been constructed in substantial accordance with the terms and conditions of the BOT Agreement; and (b) all of the Project Costs have been determined and paid (or that: (i) all of the Project Costs have been paid, other than specified claims that are subject to dispute; and (ii) there is to be retained in the Project Fund, until resolution of the dispute, the full amount of such specified claims).

Contracts shall mean all contracts of County with respect to which amounts are payable from Build, Operate Transfer Agreement including: (a) the BOT Agreement; (b) contracts entered into for the continued operations of County; and (c) contracts entered into on a "pay-as-you-go" basis, the term of which does not exceed 24 months.

Contract Payment Service shall mean, with respect to a given period, the sum of: (a) all construction progress payments for such period; plus (b) Progress Payments for such period.

Conveyance Closing Date shall have the meaning ascribed to such term in the BOT Agreement.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

Disbursement Request shall mean: (a) a request, together with instructions, for disbursement of Transaction Proceeds to (or for the account of) Company, which request shall be substantially in the form attached hereto as Exhibit B; together with (b) copies of inspection reports, AIA forms, or other reports showing: (i) the total amount disbursed to date; (ii) the percentage of completion of the Project; and (iii) the anticipated cost to complete the Project.

Early Acquisition Option shall have the meaning ascribed to such term in the BOT Agreement.

Event of Default shall have the meaning set forth in Subsection 9(a).

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

Progress Payments shall mean the Progress Payments payable by County pursuant to the BOT Agreement. The Progress Payments are the "Progress Payments" under the BOT Agreement.

Payment Rights shall mean the rights under the BOT Agreement with respect to the receipt of the Progress Payments. The Payment Rights are the "Payment Rights" under the BOT Agreement.

Payment Rights Price shall mean the amount of \$7,796,112.00.

Pledged Revenue shall mean: (a) funds allocated under the County's American Rescue Plan (ARP) Project Plan from ARP funds available to County; and (b) funds from the State of Indiana for the construction of the Regional Mental Health Project as per Indiana Code and appropriation for regional mental health facilities.

Project shall mean the project to be constructed by Company pursuant to, and in accordance with, the BOT Agreement.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including: (a) the costs to draft and negotiate this Agreement, the BOT Agreement, and any other documents contemplated by any of the foregoing; (b) the costs incurred in connection with determining that all of the conditions set forth in Section 6 of the BOT Agreement have been satisfied and/or will be waived by Company and/or County; (c) the costs incurred in connection with the Closing and the purchase of the Payment Rights (to the extent that such costs are not included in Subsection (a) of this definition); (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of the BOT Agreement; (e) a reasonable and customary amount for contingencies; and (f) the development fees to be paid by County to Company.

Term shall have the meaning ascribed to such term in the BOT Agreement.

County Account shall mean an account maintained by County Auditor of the ARP funds appropriated already and those received from the State of Indiana for construction.

2. Closing.

(a) Closing. The Closing Date shall be established by the parties, acting jointly. At the Closing: (i) fully executed copies of this Agreement, the BOT Agreement, and any other documents reasonably determined by Company and/or County, to be necessary to consummate the Transaction shall be delivered to each of the Company and County.

3. Representations.

(a) Each of Company and County represents and warrants as follows:

(i) It has: (A) the power and authority to enter into, and perform its obligations under, this Agreement and the BOT Agreement; (B) the power and authority to carry out all transactions contemplated by this Agreement and the BOT Agreement; and (C) complied with the Laws in all matters relating to the foregoing transactions;

(ii) It has: (A) taken all actions necessary to authorize the execution, delivery, and performance of its obligations under this Agreement and the BOT Agreement; and (B) been authorized by proper action to execute, deliver, and perform its obligations under this Agreement and the BOT Agreement;

(iii) Neither the execution and delivery of this Agreement by it, nor the performance by it hereunder: (A) violates any Law or any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (B) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (C) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets;

(iv) No litigation is pending or, to its knowledge, threatened: (A) seeking to restrain or enjoin: (1) the Transaction; or (2) the collection of the ARP and/or State Pledged Revenue, or the use thereof for payment of the construction payments; (B) in any way contesting or affecting: (1) any authority for the consummation of the Transaction; or (2) the validity of this Agreement, the BOT Agreement, or the Transaction; or (C) in any other manner contesting its existence or powers;

(v) This Agreement and the BOT Agreement, when executed and delivered by it, will be its valid and binding obligation; provided that the enforceability of the foregoing may be subject to: (A) Laws relating to bankruptcy, insolvency, reorganization, moratorium, or other similar subjects; (B) the exercise of judicial discretion in appropriate cases; and/or (C) general principles of equity; and

(vi) During the last five years, it has not been in default beyond any applicable cure periods in the payment of principal or interest due and payable with respect to any obligations issued or guaranteed by it, or with respect to which it is an obligor.

(b) County. In addition to the representations and warranties set forth in Subsection 5(a), County represents and warrants as follows:

(i) County has not pledged, encumbered, or granted any lien on, or security interest in, the Pledged Revenue, other than the pledge by County of the Pledged Revenue to make construction Payments;

(ii) There has been no material adverse change in the financial condition of County from that shown in the most recent financial statements of County that have been delivered to the Bank;

(iii) There is no litigation or governmental proceeding pending or, to the knowledge of County, threatened against County or any of its property that, if adversely determined, would have a material adverse effect on the financial condition of County; and

(iv) In connection with effectuating the Transaction, it has complied with all Laws, including that it has followed and/or complied with all required local procedures and requirements.

(c) Company. In addition to the representations and warranties set forth in Subsection 5(a), Company represents and warrants that it is a limited liability company organized and existing under the laws of the State of Indiana.

4. Consents/Covenants.

(a) County shall: (i) comply with all of its obligations under the BOT Agreement; and (ii) pay each Progress Payment directly to the Company on or before the applicable Payment Due Date, as required pursuant to Section 4.

(b) County shall not issue any Bonds, or enter into any Contracts, the payments under which are superior to the BOT Payments. For purposes of clarity, County may issue Bonds, and enter into Contracts, the payments under which are subordinate to the Progress Payments.

(c) Promptly after knowledge thereof has come to the attention of County, County shall provide to the Company written notice of: (i) any Event of Default; (ii) any litigation or governmental proceeding pending or threatened against County, or any property of County, that, if adversely

determined, would have a material adverse effect on the financial condition of County; or (iii) any event that has a material adverse effect on the financial condition of County.

5. The parties also incorporate the following documents into this Participation Agreement:

- (a) The blueprints, plans and other drawings as created for this project.
- (b) The GMP (Guaranteed Minimum Price Proposal of April 15, 2024 from the Company).

6. **Disbursements.**

(a) Disbursement. The County shall disburse Pledged Revenues to the Company to pay (or reimburse Company for) Project Costs upon receipt of claims on approved forms from the SBOA along with all documentation necessary to support said claim and showing progress on each item of the claim being submitted: (i) no disbursements shall be made until the proper documentation and approval has been made by the County; and (ii) the County shall not be obligated to make disbursements from the Pledged Revenues more frequently than once per month.

(b) Completion. Upon completion of the Project in substantial accordance with the BOT Agreement such that no further disbursements from the Pledged Revenues will be needed to pay (or reimburse Company for) Project Costs, Company will provide the Completion Statement to the County. After receipt of the Completion Statement, any funds remaining in the Project Fund, less the amount thereof certified by Company as sufficient to cover the full amount of any specified claims that are subject to dispute, shall be retained by the County until all disputes and/or claims are satisfied, and the project is complete.

7. **Defaults/Remedies.**

(a) Events of Default. Each of the following shall constitute an "Event of Default":

(i) A material misrepresentation by Company or County hereunder or under the BOT Agreement;

(ii) Any failure by County to pay a progress payment when due; provided that, it shall not be an Event of Default if such failure is due to the failure of the Company to provide the appropriate documentation, lien waivers and other information necessary to substantiate the claim as submitted;

(iii) The issuance of any Bonds, or entering of any Contracts, by County in violation of Subsections 6(c) or 6(e);

(iv) Any "Event of Default" by County or Company under the BOT Agreement;

(v) Commencement of any voluntary or involuntary bankruptcy or similar proceeding against County or Company;

(vi) County or Company becoming insolvent or generally unable to pay its debts as they become due;

(vii) The appointment of a receiver for a substantial portion of County or Company's property; and/or

(viii) The failure by Company or County to observe or perform any other term or condition of this Agreement, and the continuance of such failure beyond the Cure Period.

(b) Remedies. Company and County agree that, during the continuance of an Event of Default, the County or Company shall have the right to exercise any right or remedy available to either party under the BOT Agreement as a result of an "Event of Default" by County or Company thereunder.

8. Indemnification. To the extent permitted by the Laws, Company and County shall indemnify and hold harmless each other from and against any and all claims, judgments, damages liabilities, injuries, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising from, or connected with: (a) the consummation of the Transaction; and/or (b) the breach by Company and/or County, respectively; and/or (c) the act or negligence of any actor, person, employee or contractor acting on behalf or for either the County or the Company, of any term or condition to be observed or performed by it pursuant to this Agreement and/or the BOT Agreement. The foregoing indemnifications shall survive the termination of this Agreement.

9. Notice. Any notice or approval required or permitted to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Company at _____ with a copy to: _____; to County in care of Board of Commissioners, 100 W. Main St., Room 300, Muncie, IN 47305. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

10. Miscellaneous. This Agreement: (a) shall be binding upon, and shall inure to the benefit of, the Company and County and no person or entity shall be deemed to be a third-party beneficiary hereof; (b) shall be governed by the laws of the State of Indiana; and (c) may be executed in counterparts, each of which shall constitute an original, but all of which together shall be a single instrument.

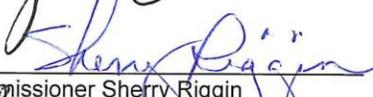
IN WITNESS WHEREOF, Company and County have executed this Agreement as of the date set forth above.

DELAWARE COUNTY JUSTICE PARTNERS LLC

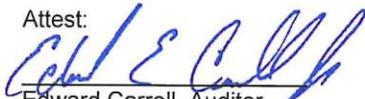
By: _____
Troy Woodruff, Member

COUNTY OF DELAWARE, INDIANA

By: 
Commissioner James King

By: 
Commissioner Sherry Riggan

By: 
Commissioner Shannon Henry

Attest:

Edward Carroll, Auditor
Delaware County, Indiana

GRANT AGREEMENT
CONTRACT #CONTRACT_ID

This Grant Agreement (this "Grant Agreement"), entered into by and between the Indiana Family and Social Services Administration, Division of Mental Health and Addiction (the "State") and Delaware County, Indiana (the "Grantee"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Grant Agreement; Funding Source.

The purpose of this Grant Agreement is to enable the State to award a Grant of \$2.5MM (the "**Grant**") to the Grantee for eligible costs of the services or project (the "**Project**") described in **Exhibits 1 and 2** of this Grant Agreement, which are attached hereto and incorporated fully herein. The funds shall be used exclusively in accordance with the provisions contained in this Grant Agreement and in conformance with Indiana Code § 12-8-10 establishing the authority to make this Grant, as well as any rules adopted thereunder. The funds received by the Grantee pursuant to this Grant Agreement shall be used only to implement the Project or provide the services in conformance with this Grant Agreement and for no other purpose.

FUNDING SOURCE:

If Federal Funds: Program Name per Catalog of Federal Domestic Assistance ("**CFDA**");

CFDA # _____

If State Funds: Regional Mental Health Facility (RMHF) RFF via funds from House Bill 1001 of the 2023 legislative session

2. Representations and Warranties of the Grantee.

- A. The Grantee expressly represents and warrants to the State that it is statutorily eligible to receive these Grant funds and that the information set forth in its Grant Application is true, complete and accurate. The Grantee expressly agrees to promptly repay all funds paid to it under this Grant Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its grant application.
- B. The Grantee certifies by entering into this Grant Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant Agreement by any federal or state department or agency. The term "principal" for purposes of this Grant Agreement is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Grantee.

3. Implementation of and Reporting on the Project.

- A. The Grantee shall implement and complete the Project in accordance with **Exhibit 1** and with the plans and specifications contained in its Grant Application, which is on file with the State and is incorporated by reference. Modification of the Project shall require prior written approval of the State.
- B. The Grantee shall submit to the State written progress reports until the completion of the Project. These reports shall be submitted on a monthly basis and shall contain such detail of progress or performance on the Project as is requested by the State.

4. Term.

This Grant Agreement commences on June 1, 2024 and shall remain in effect through April 30, 2026. Unless otherwise provided herein, it may be extended upon the written agreement of the parties and as permitted by state or federal laws governing this Grant.

5. Grant Funding.

- A. The State shall fund this Grant in the amount of **\$2.5MM**. The approved Project Budget is set forth as **Exhibit 1** of this Grant Agreement, attached hereto and incorporated herein. The Grantee shall not spend more than the amount for each line item in the Project Budget without the prior written consent of the State, nor shall the Project costs funded by this Grant Agreement and those funded by any local and/or private share be changed or modified without the prior written consent of the State.
- B. The disbursement of Grant funds to the Grantee shall not be made until all documentary materials required by this Grant Agreement have been received and approved by the State and this Grant Agreement has been fully approved by the State.

6. Payment of Claims.

- A. If advance payment of all or a portion of the Grant funds is permitted by statute or regulation, and the State agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. After such funds have been expended, Grantee shall provide State with a reconciliation of those expenditures. Otherwise, all payments shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures. As required by IC § 4-13-2-14.8, all payments will be by the direct deposit by electronic funds transfer to the financial institution designated by the Grantee in writing unless a specific waiver has been obtained from the Indiana Auditor of State.
- B. Requests for payment will be processed only upon presentation of a Claim Voucher in the form designated by the State. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items.
- C. The State may require evidence furnished by the Grantee that substantial progress has been made toward completion of the Project prior to making the first payment under this Grant. All payments are subject to the State's determination that the Grantee's performance to date conforms with the Project as approved, notwithstanding any other provision of this Grant Agreement.

- D. Claims shall be submitted to the State within **Sixty (60)** calendar days following the end of the [month/quarter] in which work on or for the Project was performed. The State has the discretion, and reserves the right, to NOT pay any claims submitted later than **Sixty (60)** calendar days following the end of the month in which the services were provided. All final claims and reports must be submitted to the State within **Sixty (60)** calendar days after the expiration or termination of this agreement. Payment for claims submitted after that time may, at the discretion of the State, be denied. Claims may be submitted on a [monthly or semi-monthly basis] only. If Grant funds have been advanced and are unexpended at the time that the final claim is submitted, all such unexpended Grant funds must be returned to the State.
- E. Claims must be submitted with accompanying supportive documentation as designated by the State. Claims submitted without supportive documentation will be returned to the Grantee and not processed for payment. Failure to comply with the provisions of this Grant Agreement may result in the denial of a claim for payment.

7. Project Monitoring by the State.

The State may conduct on-site or off-site monitoring reviews of the Project during the term of this Grant Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Grantee shall extend its full cooperation and give full access to the Project site and to relevant documentation to the State or its authorized designees for the purpose of determining, among other things:

- A. whether Project activities are consistent with those set forth in **Exhibit 1**, the Grant Application, and the terms and conditions of the Grant Agreement;
- B. the actual expenditure of state, local and/or private funds expended to date on the Project is in conformity with the amounts for each Budget line item as set forth in **Exhibit 1** and that unpaid costs have been properly accrued;
- C. that Grantee is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Grant Agreement and are fully and accurately reflected in Project reports submitted to the State.

8. Compliance with Audit and Reporting Requirements; Maintenance of Records.

- A. The Grantee shall submit to an audit of funds paid through this Grant Agreement and shall make all books, accounting records and other documents available at all reasonable times during the term of this Grant Agreement and for a period of three (3) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost.
- B. If the Grantee is a "subrecipient" of federal grant funds under 2 C.F.R. 200.331, Grantee shall arrange for a financial and compliance audit that complies with 2 C.F.R. 200.500 et seq. if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements).
- C. If the Grantee is a non-governmental unit, the Grantee shall file the Form E-1 annual financial report required by IC § 5-11-1-4. The E-1 entity annual financial report will be used to determine audit requirements applicable to non-governmental units under IC § 5-11-1-9. Audits required under this section must comply with the State Board of Accounts *Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources*, <https://www.in.gov/sboa/files/guidelines-examination-entities->

[receiving-financial-assistance-government-sources.pdf](#). Guidelines for filing the annual report are included in **Exhibit 2** attached hereto and incorporated herein (Guidelines for Non-governmental Entities).

9. Compliance with Laws.

- A. The Grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Grant Agreement shall be reviewed by the State and the Grantee to determine whether the provisions of this Grant Agreement require formal modification.
- B. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, et seq., IC § 4-2-7, et seq. and the regulations promulgated thereunder. **If the Grantee has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Grant, the Grantee shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Grant Agreement.** If the Grantee is not familiar with these ethical requirements, the Grantee should refer any questions to the Indiana State Ethics Commission or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Grant immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
- C. The Grantee certifies by entering into this Grant Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Grantee agrees that any payments currently due to the State may be withheld from payments due to the Grantee. Additionally, payments may be withheld, delayed, or denied and/or this Grant suspended until the Grantee is current in its payments and has submitted proof of such payment to the State.
- D. The Grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Grantee agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Grantee's liability or guilt in any action initiated by the State or its agencies, and the State decides to suspend funding to the Grantee, the Grantee may submit, in writing, a request for review to the Indiana Department of Administration ("IDOA"). A determination by IDOA shall be binding on the parties. Any disbursements that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.
- E. The Grantee warrants that the Grantee and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Grant Agreement and grounds for immediate termination and denial of grant opportunities with the State.
- F. The Grantee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- G. As required by IC § 5-22-3-7:
(1) The Grantee and any principals of the Grantee certify that:

- (A) the Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC § 24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC § 24-5-12 [Telephone Solicitations]; or
 - (iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

- (B) the Grantee will not violate the terms of IC § 24-4.7 for the duration of this Grant Agreement, even if IC §24-4.7 is preempted by federal law.
- (2) The Grantee and any principals of the Grantee certify that an affiliate or principal of the Grantee and any agent acting on behalf of the Grantee or on behalf of an affiliate or principal of the Grantee, except for de minimis and nonsystematic violations,
- (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC § 24-4.7 for the duration of this Grant Agreement even if IC § 24-4.7 is preempted by federal law.

10. Debarment and Suspension.

- A. The Grantee certifies by entering into this Grant Agreement that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Grant Agreement means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Grantee.
- B. The Grantee certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Grant Agreement and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The Grantee shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Grant Agreement.

11. Drug-Free Workplace Certification.

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

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

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against

employees for violations of such prohibition; and

- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Grantee'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; and
- 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 Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

12. Employment Eligibility Verification.

As required by IC § 22-5-1.7, the Grantee hereby swears or affirms under the penalties of perjury that:

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

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

13. Funding Cancellation.

As required by Financial Management Circular 3.3 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A

determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

14. Governing Law.

This Grant Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

15. Information Technology Accessibility Standards.

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

16. Insurance.

The Grantee shall maintain insurance with coverages and in such amount as may be required by the State or as provided in its Grant Application.

17. Nondiscrimination.

Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Grant with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

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

18. Notice to Parties.

Whenever any notice, statement or other communication is required under this Grant, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Division of Mental Health and Addiction

402 W. Washington St., W353

Indianapolis, IN 46204

E-mail: rebecca.buhner@fssa.in.gov

B. Notices to the Grantee shall be sent to:

____ Board of Commissioners, Delaware County, Indian 100 W. Main Street, Room 300, Muncie,
IN 47305 _____

E-mail: shenry@co.delaware.in.us _____

As required by IC § 4-13-2-14.8, payments to the Grantee shall be made via electronic funds transfer in accordance with instructions filed by the Grantee with the Indiana Auditor of State.

19. Order of Precedence; Incorporation by Reference.

Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or state law, including those identified in paragraph 24, below, (2) this Grant Agreement, (3) Exhibits prepared by the State, (4) Invitation to Apply for Grant; (5) the Grant Application; and (6) Exhibits prepared by Grantee. All of the foregoing are incorporated fully herein by reference.

20. Public Record.

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

21. Termination for Breach.

- A. Failure to complete the Project and expend State, local and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to suspend grant payments, and to suspend the Grantee's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction.
- B. The expenditure of State or federal funds other than in conformance with the Project or the Budget may be deemed a breach. The Grantee explicitly covenants that it shall promptly repay to the State all funds not spent in conformance with this Grant Agreement.

22. Termination for Convenience.

Unless prohibited by a statute or regulation relating to the award of the Grant, this Grant Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Grantee of a Termination Notice, specifying the extent to which such termination becomes effective. The Grantee shall be compensated for completion of the Project properly done prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Grantee exceed the original grant.

23. Travel.

No expenses for travel will be reimbursed unless specifically authorized by this Grant.

24. Federal and State Third-Party Contract Provisions.

If part of this Grant involves the payment of federal funds, the Grantee and, if applicable, its contractors shall comply with the federal provisions attached as Exhibit 1 and incorporated fully herein.

25. Confidentiality, Security and Privacy of Personal Information.

Terms used, but otherwise not defined in this Grant shall have the same meaning as those found in 45 CFR Parts 160, 162, and 164.

- A. "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996 (sections 1171 through 1179 of the Social Security Act), including any subsequent amendments to such Act.
- B. "**HIPAA Rules**" mean the rules adopted by and promulgated by the US Department of Health and Human Services ("**HHS**") under HIPAA and other relevant federal laws currently in force or subsequently made, such as the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"), as enumerated under 45 CFR Parts 160, 162, and 164, including without limitation any and all additional or modified regulations thereof. Subsets of the HIPAA Rules include:

- 1) "HIPAA Enforcement Rule" as defined in 45 CFR Part 16
 - 2) "HIPAA Security Rule" as defined in 45 CFR Part 164, Subparts A and C;
 - 3) "HIPAA Breach Rule" as defined in 45 CFR Part 164, Subparts A and D; and
 - 4) "HIPAA Privacy Rule" as defined in 45 CFR Part 164, Subparts A and E.
- C. If Grantee is deemed a Business Associate to the State, Grantee is hereby authorized by the State to create, receive, maintain, and/or transmit Protected Health Information ("PHI") and other Personally Identifiable Information (meaning personal information as collectively defined in IC 4-1-6-1 and IC 4-1-11-3, "PII") on the State's behalf pursuant to and consistent with the Services performed by Grantee under this Grant.
- D. Grantee agrees that as a Business Associate to the State it is obligated to comply with the HIPAA Rules, as such Rules apply to Business Associates, throughout the term of this Grant and thereafter as may be required by federal law and such compliance will be at Grantee's sole expense. Further:
- 1) Grantee will not use or further disclose PHI or PII except as expressly permitted by this Grant or as required by law. Grantee understands that this prohibition expressly applies to any information provided by the Social Security Administration, directly or through the State. It is further provided that nothing in this Grant shall be construed to permit Grantee use or disclose PHI in a manner that would violate the provisions of the HIPAA Privacy Rule as such Rule applies to the State with regard to the Services performed by Grantee under this Grant or otherwise cause the State to be non-compliant with the HIPAA Privacy Rule.
 - 2) Grantee understands it must fully comply with the HIPAA Security Rule and will employ appropriate and compliant safeguards to reasonably prevent the use or disclosure of PHI and PII other than as permitted by this Grant or required by the HIPAA Privacy Rule. Such safeguards will be designed, implemented, operated, and managed by Grantee at Grantee's sole expense and following the Grantee's best professional judgment regarding such safeguards. Upon the State's reasonable request, Grantee will review such safeguards with the State. Grantee will implement the following HIPAA requirements for any forms of PHI or PII that the Grantee receives, maintains, or transmits on behalf of the State:
 - a) Administrative safeguards under 45 CFR 164.308;
 - b) Physical safeguards under 45 CFR 164.310;
 - c) Technical safeguards under 45 CFR 164.312; and
 - d) Policies and procedures and documentation requirements under 45 CFR 164.316.
 - 3) Grantee understands that it is subject to the HIPAA Enforcement Rule under which Grantee may be subject to criminal and civil penalties for violations of and non-compliance with the HIPAA Rules.
- E. Improper Disclosure, Security Incident, and Breach Notification.
- 1) Grantee understands that it is subject to the HIPAA Breach Rule.
 - 2) For the purposes of this Grant, the term Breach has the same meaning as defined in the HIPAA Breach Rule. The term "**Security Incident**" shall mean an action or event that has resulted in the improper use or disclosure of PHI or PII in Grantee's safekeeping (in violation of this Grant and/or in violation of the HIPAA Privacy Rule), the reasonable possibility or suspected possibility that an improper use or disclosure of PHI or PII may have occurred, or circumstances in which PHI or PII has been exposed to an opportunity for improper use or disclosure.

- 3) If a Security Incident occurs or if Grantee suspects that a Security Incident may have occurred with respect to PHI and/or PII in Grantee's safekeeping:
- a) Grantee shall notify the State of the Security Incident within one (1) business day of when Grantee discovered the Security Incident; such notification shall be made to the FSSA Privacy & Security Office in a manner reasonably prescribed by the FSSA Privacy & Security Officer and shall include as much detail as the Grantee reasonably may be able to acquire within the one (1) business day.
 - b) For the purposes of such Security Incidents, "**discovered**" and "**discovery**" shall mean the first day on which such Security Incident is known to the Grantee or, by exercising reasonable diligence, would have been known to the Grantee. Regardless of whether the Grantee failed to exercise reasonable diligence, improperly delaying the notification of discovery beyond the one day requirement, the Grantee will notify the FSSA Privacy & Security Office within one day of gaining actual knowledge of a breach.
 - c) In collaboration with the FSSA Privacy & Security Office, Grantee shall undertake all commercially reasonable efforts necessary to thoroughly investigate the Security Incident and to provide all results of such investigation to the FSSA Privacy & Security Office, including but not limited to Grantee personnel involved, source and cause of the Security Incident, specific information disclosed, disclosure victims (those whose PHI/PII was disclosed), disclosure recipients, supporting materials, actions taken to mitigate or stop the Security Incident, and similar details.
 - d) Grantee's investigation must be undertaken expeditiously and completed to the extent that a determination of whether a Breach has occurred can be reasonably made, including the identification of the victims or likely victims, within a reasonable timeframe as mutually agreed upon with the FSSA Privacy & Security Office, from the date of discovery of the Security Incident. Grantee shall provide details of its investigation to the FSSA Privacy & Security Office on an ongoing basis until the investigation is complete.
 - e) Grantee and the FSSA Privacy & Security Office will collaborate on the results of Grantee's investigation; the determination as to whether a Breach has occurred rests solely with the FSSA Privacy & Security Office.
 - f) If it is determined by the FSSA Privacy & Security Office that a Breach has occurred:
 - (i) Grantee agrees that it shall be responsible for, including all costs with respect to, fulfilling the State's and/or Grantee's obligations for notice to all of the known and suspected victims of the Breach. Such notice shall comply with the HIPAA Breach Rule notification requirements and/or applicable notification requirements under State law.
 - (ii) Grantee further agrees that such notification will be made under its name, unless otherwise specified by the FSSA Privacy & Security Office. Grantee will coordinate its Breach notification efforts with the FSSA Privacy & Security Office; the FSSA Privacy & Security Office will approve Grantee's Breach notification procedures and plans, including the format and content of the notice(s) prior to such notification being made.
 - (iii) Grantee accepts full responsibility for the Breach and any resulting losses or damages incurred by the State or any victim of the Breach.
 - (iv) Grantee will undertake all commercially reasonable efforts necessary to mitigate any deleterious effects of the Breach for the known and suspected victims of the

Breach.

- (v) The State, through the FSSA Privacy & Security Office, will make the appropriate notifications to HHS and/or the applicable State agencies with respect to the Breach, unless the Grantee is directed to do so by the FSSA Privacy & Security Office.
 - g) Grantee will undertake commercially reasonable corrective actions to eliminate or minimize to the greatest degree possible the opportunity for an identified Security Incident to reoccur and provide the FSSA Privacy & Security Office with its plans, status updates, and written certification of completion regarding such corrective actions.
- F. Subcontractors. Grantee agrees that in accordance with the HIPAA Privacy Rule any subcontractors engaged by Grantee (in compliance with this Grant) that will create, receive, maintain, or transmit State PHI/PII on Grantee's behalf will contractually agree to the same restrictions, conditions, and requirements that apply to Grantee with respect to such PHI/PII.
- G. Access by Individuals to their PHI. Grantee acknowledges that in accordance with the HIPAA Privacy Rule individuals for whom Grantee has direct possession of their PHI on the State's behalf have the right to inspect and amend their PHI, and have the right for an accounting of uses and disclosures of such PHI, except as otherwise provided therein. Grantee shall provide such right of inspection, amendment, and accounting of disclosures to such individuals upon reasonable request by the State (or by such individuals if the State directly refers such individuals to Grantee). In situations in which Grantee does not have direct possession of such PHI, then the State shall be responsible for such inspection, amendment, and accounting of disclosures rights by individuals.
- H. Access to Records. Grantee shall make available to HHS and/or the State, Grantee's internal practices, books, and records relating to the use and disclosure of PHI and PII provided to Grantee by the State or created, received, maintained, or transmitted by Grantee on the State's behalf. Grantee shall promptly inform the State by giving notice to the FSSA Privacy & Security Office of any request by HHS (or its designee) for such internal practices, books, and/or records and shall provide the State with copies of any materials or other information made available to HHS.
- I. Return of Protected Health Information. Upon request by the State or upon termination of this Grant, Grantee will, at the State's sole option, either return or destroy all copies of any PHI or PII provided to Grantee by the State, including PHI or PII created, received, maintained, or transmitted by Grantee on the State's behalf and Grantee shall warrant in writing that it has returned or destroyed such PHI and/or PII. Further, upon termination of this agreement Grantee will not retain any copies of any such PHI and PII and shall warrant same in writing.
- J. At the sole discretion of the State, the State may terminate this Grant for Grantee's material breach of this Section.
- K. Grantee agrees to participate in a disaster recovery plan, as appropriate to the Grantee's Services, as determined by the State to be necessary to uphold integral business functions in the event of an unforeseen disaster.
- L. Drug and Alcohol Records. In the performance of the Services under this Grant, Grantee may have access to confidential information regarding alcohol and drug abuse patient records. Grantee agrees that such information is confidential and protected information and promises and assures that any such information, regardless of form, disclosed to Grantee for the purposes of this Grant will not be disclosed or discussed with others without the prior written consent of the State. The Grantee and the State will comply with the applicable requirements

of 42 CFR Part 2 and any other applicable federal or state law or regulatory requirement concerning such information. The Grantee will report any unauthorized disclosures of such information in compliance with Section 25.F.

- M. Confidentiality of State Information. The Grantee understands and agrees that data, materials, and information disclosed to the Grantee may contain confidential and protected information. The Grantee covenants that data, material and information gathered, based upon or disclosed to the Grantee for the purpose of this Grant, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Grantee for the State under this Grant may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Grantee and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Grantee, Grantee agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Grant. The Grantee shall report any unauthorized disclosures of Social Security numbers to the FSSA Privacy & Security Office within one (1) business day of the date of discovery.

- N. Grantee will indemnify and hold the State harmless from any loss, damage, costs, expense, judgment, sanction or liability, including, but not limited to, attorneys' fees and costs, that the State incurs or is subject to, as a result of a breach of this Section by the Grantee or any subcontractor, agent or person under Grantee's control. In the event a claim is made against the State for any such claim, cause of action, liability, damage, cost or expense, State may, at its sole option: (i) tender the defense to Grantee, who shall provide qualified and competent counsel to represent the State interest at Grantee's expense; or (ii) undertake its own defense, utilizing such professionals as it deems reasonably necessary, holding Grantee responsible for all reasonable costs thereof. In any event, State shall have the sole right to control and approve any settlement or other compromise of any claim brought against it that is covered by this Section.
- O. Grantee shall adhere to all relevant FSSA Application Security policies located at <http://in.gov/fssa/4979.htm> for any related activities provided to FSSA under this Grant. Grantee is responsible for validating that any subcontractors they engage will also comply with these policies. Any exceptions to these policies require written approval from the FSSA Privacy & Security Office.

**26. Provision Applicable to Grants with tax-funded State Educational Institutions:
"Separateness" of the Parties.**

The State acknowledges and agrees that because of the unique nature of State Educational Institutions, the duties and responsibilities of the State Educational Institution in these Standard Conditions for Grants are specific to the department or unit of the State Educational Institution. The existence or status of any one contract or grant between the State and the State Educational Institution shall have no impact on the execution or performance of any other contract or grant and shall not form the basis for termination of any other contract or grant by either party.

27. State Boilerplate Affirmation Clause.

I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the 2022 SCM Template) in any way except as follows:

6. Payment of Claims. Modified.

25. Confidentiality, Security and Privacy of Personal Information. Modified.

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Non-Collusion, Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Grantee, or that the undersigned is the properly authorized representative, agent, member or officer of the Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Grant Agreement other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Grant, the Grantee attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: <https://secure.in.gov/apps/idoa/contractsearch/>

In Witness Whereof, the Grantee and the State have, through their duly authorized representatives, entered into this Grant Agreement. The parties, having read and understood the foregoing terms of this Grant Agreement, do by their respective signatures dated below agree to the terms thereof.

Delaware County Board of Commissioners

Indiana Family and Social Services
Administration, Division of Mental Health
and Addiction

By:



By:

Title: Pres.

Title:

Date:

6-03-2024

Date:

*** Rule IOT_YES_NO (Is it an IOT Contract?) ***

*** Rule COLLUSION_NOIOT (Is it an IOT Contract?) ***

EXHIBIT 1
THE PROJECT

Overview

The Indiana Division of Mental Health and Addiction, in collaboration with the State Budget Agency, offered a grant opportunity for counties to provide mental health services for incarcerated individuals who have been determined by a court of competent jurisdiction to be in need of mental health treatment in Indiana. This exercise was conducted to fulfill the requirements of House Bill 1001 of the 2023 legislative session.

The State has awarded \$2.5MM to Delaware County to fund the construction or renovation of a Regional Mental Health Facility (RMHF). Delaware County has satisfied the eligibility requirement by securing fifty percent (50%) of the proposed project's cost from other sources. Grant awards may only be used for capital costs to construct new facilities or renovate existing county facilities. Grant awards may not be used for the operational costs of a new or existing county facility.

The term of this Grant Agreement extends from June 1, 2024 through April 30, 2026.

Funding Source

Funding Descriptions	FAIN	CFDA#	State Fund#	Amount
				\$2,500,000.00
			Total	\$2,500,000.00

EXHIBIT 2
ANNUAL FINANCIAL REPORT FOR NON-GOVERNMENTAL ENTITIES

Guidelines for filing the annual financial report:

1. Filing an annual financial report called an Entity Annual Report (E-1) is required by IC 5-11-1-4. This is done through Gateway which is an on-line electronic submission process.
 - a. There is no filing fee to do this.
 - b. This is in addition to the similarly titled Business Entity Report required by the Indiana Secretary of State.
 - c. The E-1 electronic submission site is found at <https://gateway.ifionline.org/login.aspx>
 - d. The Gateway User Guide is found at <https://gateway.ifionline.org/userguides/E1guide>
 - e. The State Board of Accounts may request documentation to support the information presented on the E-1.
 - f. Login credentials for filing the E-1 and additional information can be obtained using the notforprofit@sboa.in.gov email address.
2. A tutorial on completing Form E-1 online is available at https://www.youtube.com/watch?time_continue=87&v=nPpgtPcdUcs
3. Based on the level of government financial assistance received, an audit may be required by IC 5-11-1-9.

Homeland District Six Mutual Aid Agreement An Inter-Local Government Agreement

Preamble

WHEREAS

In 2003, the Indiana General Assembly created a statewide mutual aid program by enacting IC 10-14-3-10.8 The Intrastate mutual aid statutes automatically made each Indiana unit of government (county, city, town and township) a party to a Statewide Mutual Aid Agreement, subject to the ability of each unit to opt out of the agreement. IC 10-14-3-18 provides a standard allocation of responsibilities for the payment of compensation, benefits and the expenses of the joint effort. It also provides that any two or more participating units may enter into written agreements providing a different allocation of loss, damage, expense, labor or equipment costs, and

WHEREAS

In Indiana Code 10-14-3-9 (g), the Indiana General Assembly directed the Indiana Department of Homeland Security to develop a statewide mutual aid program to implement the statewide mutual aid agreement, and

WHEREAS

In Indiana Code 10-14-3-16, the Indiana General Assembly authorized Indiana political subdivisions to develop mutual aid agreements with other public and private agencies within Indiana for reciprocal emergency management aid and assistance in case of a disaster too great to be dealt with unassisted.

WHEREAS

Indiana political subdivisions wishing to enter into separate mutual aid agreements must comply with the several requirements found in IC 36-1-7, wherein the General Assembly set out the required contents for agreements for interlocal cooperation which may be entered into by any political subdivision of this State, and

WHEREAS

The Counties, Cities, Towns, Townships, Fire Protection Districts, and other relevant entities (collectively referred to as "Signatories to this Agreement" or "Signatories") of Homeland District 6 desire to enter into this Agreement for the purposes of providing for mutual support, aid and assistance between the signatories following the occurrence of a natural or manmade disaster emergency and for conducting preparation activities including but not limited to planning, training, and exercises, and

WHEREAS

The purpose of this mutual aid agreement is to expand the response resources available to each of the participating jurisdictions, to help the participating jurisdictions to coordinate planning, ensure more timely arrival of aid, minimize

operational and administrative conflicts, resolve disputes and facilitate the prompt recovery of costs, and

WHEREAS

The signatories of this agreement, all of whom are from Indiana Homeland Security District 6, desire to provide for interlocal emergency management cooperation between the member jurisdictions to be administered by the District Emergency Management Agency Coalition, and

WHEREAS

The signatories also wish to provide for a different allocation of loss, damage, expense, labor, and equipment costs between the requesting jurisdiction and the assisting jurisdictions than is provided for in the Statewide Mutual Aid statutes, all of which is authorized both under the Mutual Aid Statutes and under Indiana Code 36-1-7.

NOW, THEREFORE, the parties hereby agree as follows:

Article I: Definitions

Assisting Jurisdiction: A jurisdiction participating in the District Mutual Aid Interlocal Government Agreement and providing emergency response manpower, equipment, and resources to another jurisdiction that has requested assistance to confront an emergency.

Authorized Representative: The executive of a participating jurisdiction, or their designee, who has been authorized to request, offer, or provide assistance under the terms of this Agreement.

District 6: The local units of government for Homeland District 6 consisting of the following Counties;

- a. County of Blackford;
- b. County of Delaware;
- c. County of Fayette;
- d. County of Grant;
- e. County of Henry;
- f. County of Howard;
- g. County of Jay;
- h. County of Madison;
- i. County of Randolph;
- j. County of Rush;
- k. County of Tipton;
- l. County of Union;
- m. County of Wayne;

District EMA Coalition: Those emergency management directors and emergency response professionals appointed to conduct emergency response and planning activities within Homeland Security District 6.

EMA Coalition Fiscal Agent: The Emergency Management Coalition will designate a governmental entity from its membership to serve as the District Fiscal Agent for

the management of funds provided by federal and state entities, which directly supports the Homeland Security activities of the Emergency Management Coalition.

Emergency Management Agency (EMA): The agency which manages emergency preparedness and response on a county-wide basis.

Emergency Management Director (EMD): the position that manages the emergency management agency or their designee.

Emergency Management Worker: As used in this agreement, the term "emergency management worker" includes any full-time or part-time paid, volunteer, or auxiliary employee of any of the signatories of this agreement or of any agency or organization acting upon the request of a signatory who is performing emergency management services at any place in Indiana subject to the order or control of, or under a request of, the state government or any political subdivision of the state. The term includes "Emergency Management workers" as defined in IC 10-14-3-3.

Emergency: Any occurrence, or threat thereof, whether natural or caused by man, in war or in peace, which results or may result in substantial injury or harm to the population, substantial damage to or loss of property, or substantial harm to the environment and is beyond the capacity of an individual jurisdiction to effectively control.

Mutual Aid: A prearranged written agreement and plan whereby assistance is requested and provided between two or more jurisdictions during a designated emergency under terms of the Agreement.

Period of Assistance: The period of time beginning with the departure of any personnel and/or equipment of the assisting jurisdiction from any point for the purpose of traveling to provide assistance exclusively to the requesting jurisdiction, and ending on the return of all of the assisting jurisdiction's personnel and equipment to their regular place of work or assignment, or otherwise terminated through written or verbal notice to the authorized representative of the requesting jurisdiction by the authorized representative of the assisting jurisdiction.

Requesting Jurisdiction: A jurisdiction under an emergency condition that has requested mutual aid from another jurisdiction participating in the District Mutual Aid Inter-local Government Agreement.

Staging Area: A location identified outside the immediate emergency area where emergency response equipment and personnel assemble for briefing, assignment, and related matters.

Article II: Participating Political Subdivisions Responsibilities

A. Preparedness: Each participating political subdivision with jurisdiction over and responsibility for emergency management within that jurisdiction should do the following:

1. Identify potential hazards that could affect the participant using an identification system common to all participating jurisdictions.
2. Conduct joint planning, intelligence sharing and threat assessment development with the other Homeland District 6 participating political subdivisions and conduct joint training in accordance with the schedule of joint training established by the Homeland District 6 EMA Coalition.
3. Identify and inventory the current services, equipment, supplies, personnel, and other resources related to planning, prevention, mitigation, response and recovery activities of the participating political subdivision.
4. Adopt and put into practice the standardized incident management system approved by the Indiana Department of Homeland Security.
5. The parties should utilize the Incident Command System (ICS) as developed by the U.S. Department of Homeland Security as part of the National Incident Management System (NIMS) to provide structure for incident management so as to assure efficient use of resources and the safety of emergency responders and the public.

B. Providing Assistance:

1. The Signatories of Homeland District 6 agree that any assistance which may be furnished under this Agreement from one party to the other shall not be regarded as "available assets" of the requesting party for purposes of determining whether local assets are sufficient or insufficient to respond to any natural or manmade emergency or disaster.
2. Each party agrees that in the event of an emergency situation resulting in a Requesting Jurisdiction making a request for assistance, that each other party to this Agreement will furnish such personnel, equipment, facilities or services as are available, provided that such action would not unreasonably diminish the capacity of the Assisting Jurisdiction to provide basic services to its own jurisdiction.
3. The Signatories of Homeland District 6 agree that the senior officers (and their assistants, or alternatives) of the entities that will provide direct assistance under this Agreement (i.e. fire chief, sheriff, police chief, EMS provider, highway superintendent, ESF Coordinator, etc) shall be accorded the status of emergency management workers, as that term is defined in IC 10-14-3-3, for purposes of administration of this Agreement. The senior officers in command of the units providing assistance under this Agreement are required to promptly inform the EMD and the appropriate chief executive of their respective unit of government that the assets have been sent out of the area. This step will allow the EMD to keep track of assets remaining for response to other emergencies that might arise while mutual aid assistance is being rendered.
4. The chief executive or their designee of each participating jurisdiction to this Agreement shall act as the authorized representative of that jurisdiction. If the chief executive or their designee is not available, the official next in the line of succession as defined by local or state statute should assume responsibilities of the authorized representative. The name, title, jurisdiction, county and contact information for each of the authorized representatives is attached to this Agreement as Exhibit A, labeled "Authorized

Representatives.” This list may be updated when necessary and provided to all participating jurisdictions by the Homeland District 6 EMA Coalition, without the necessity to formally amend this mutual aid agreement.

Article III Implementation

A. A participating jurisdiction may request assistance of other participating political subdivisions in preventing, mitigating, responding to and recovering from those disasters that result in a locally declared emergency or in concert with authorized drills or exercises as allowed under this legislation/agreement. Requests for assistance shall be made through the chief executive officer of a participating political subdivision or his designee. Requests may either be verbal or in writing and are not required to go through the Indiana Department of Homeland Security (IDHS), but in all cases will be reported to IDHS as soon as is practical. Verbal requests will be followed up with a written request as soon as is practical.

B. The Signatories of Homeland District 6 agree that their respective county EMAs shall be the entities which are appropriate to administer and call into effect the activation terms of this Agreement pursuant to the subsequent provisions.

C. To invoke assistance under the provisions of this Agreement, the authorized representative from the Requesting Jurisdiction shall be required to contact the EMD or their designee of the county in which the requesting jurisdiction resides. This communication may be conducted by telephone, in writing or via email or other electronic communication.

D. Each request for assistance should be accompanied by the following information, to the extent known:

1. The intent to implement this District Mutual Aid Agreement, as distinguished from the Statewide Mutual Aid Agreement or any other existing mutual aid agreement.
2. A general description of the damage or injury sustained or threatened;
3. Identification of the emergency service function or functions for which assistance is needed (e.g. fire, law enforcement, emergency medical, search and rescue, transportation, communications, public works and engineering, building, inspection, planning and information assistance, mass care, resource support, health and other medical services, etc.), and the particular type of assistance needed;
4. The amount and type of personnel, equipment, materials, supplies, and/or facilities needed and a reasonable estimate of the period of assistance that each will be needed; and
5. The location or locations to which the resources are to be dispatched and the specific time by which the resources are needed; and
6. The name and contact information of a representative of the Requesting Party to meet the personnel and equipment of any Assisting Party at each location to which resources are dispatched.
7. This information may be provided on a form designed for this purpose or by any other available means.

E. The EMD should forward the request for assistance to Emergency Management Directors (EMDs) in the appropriate counties within the District based on the proximity and availability of the resources required by the request. The EMDs who receive a request for assistance shall contact the Authorized Representatives of the local jurisdictions within the county and submit the request for assistance.

F. An EMD who determines that their Assisting Jurisdictions have the available personnel, equipment, or other resources, shall so notify the EMD of the Requesting Jurisdiction and provide the following information, to the extent known:

1. A complete description of the personnel and their expertise and capabilities, equipment, and other resources to be furnished to the Requesting Party;
2. The estimated period of assistance that the personnel, equipment, and other resources will be available;
3. The name of the person or persons to be designated as supervisory personnel for the Assisting Jurisdiction; and
4. The estimated time of arrival for the assistance to be provided at the designated location.
5. This information may be provided on a form designed for this purpose or by any other available means.

G. Under IC 36-1-7-3, an Interlocal Mutual Aid Agreement entered into by Indiana political subdivisions must provide for its own administration through a separate legal entity, the nature, organization, composition, and powers of which must be provided; or a joint board composed of representatives of the entities that are parties to the agreement, and on which all parties to the agreement must be represented. Whenever a joint board is created to administer the agreement, the terms of the agreement must provide the manner of acquiring, holding, and disposing of real and personal property used in the joint undertaking. The agreement may not provide for members, directors, or trustees of the separate legal entity or joint board to make appointments (either individually or jointly) to fill vacancies on the separate legal entity or joint board. This Mutual Aid Agreement will be administered by the Homeland District 6 EMA Coalition.

H. IC 36-1-7-3 provides that an Indiana Mutual Aid Agreement must state its duration, its purpose, the manner of financing, staffing, and supplying the joint undertaking and of establishing and maintaining a budget, the methods that may be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination. The duration of this mutual aid agreement is addressed in Article XII. The purpose of this mutual aid agreement is addressed in the Preamble. The manner of financing is addressed in Article VI. The manner of staffing and supplying the joint undertaking is addressed in Article III. Establishing and maintaining a budget is the separate obligation of each of the parties. The methods for termination of the agreement are provided for in Article XII. The agreement does not provide for the collective purchase or ownership of personal or real property. All personal or real property acquired by any of the participating entities for the purpose of this agreement shall remain the sole and absolute property of the purchaser, unless the purchaser elects to sell, dispose of or transfer the ownership of the property to another.

Article IV Limitations

A. A participating jurisdiction's obligation to provide assistance in the prevention, of response to and recovery from a local emergency or in authorized drills or exercises is subject to the following conditions:

1. A participating political subdivision requesting assistance may have a declared state of emergency or authorized drills and exercises for which assistance is required by the requesting jurisdiction from one or more assisting jurisdictions.
2. A responding participating political subdivision may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction.

B. Emergency response personnel of a responding participating political subdivision may/should continue under the command and control of their responding jurisdiction to include medical protocols, standard operating procedures and other protocols, but may/should be under the operational control of the appropriate officials within the incident management system of the participating political subdivision receiving the assistance.

C. The parties may/should utilize the Incident Command System (ICS) as developed by the U.S. Department of Homeland Security as part of the National Incident Management System (NIMS) to provide structure for incident management so as to assure efficient use of resources and the safety of emergency responders and the public.

D. During an emergency situation, all personnel from both the Requesting and the Assisting Jurisdictions should report to and work under the direction of the designated incident commander. Personnel from either the Requesting or Assisting Jurisdiction may receive supervision from any command personnel from the combined participating jurisdictions if authorized by the incident commander or her or his designee in the command structure. Tactical teams should operate under the direction of their tactical commander once they are authorized to undertake assignments.

Article V License, Certificate and Permit Portability

A. Under IC 10-14-3-15(b), any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized emergency management worker who, in the course of performing duties as an emergency management worker, practices a professional, mechanical, or other skill during a disaster emergency.

B. If a person or entity holds a license, certificate or other permit issued by a participating political subdivision or the state evidencing qualification in a professional, mechanical or other skill and the assistance of that person or entity is requested by a participating political subdivision, the person or entity shall be deemed to be licensed, certified or permitted in the political subdivision requesting assistance for the duration of the declared emergency or authorized drills or exercises under this mutual aid agreement, subject only to any limitations and conditions the chief executive of the participating political subdivision receiving the assistance may prescribe by executive order or otherwise.

C. Under IC 36-1-7-7 (a) (1), visiting law enforcement officers or firefighters have the same powers and duties as corresponding personnel of the entities they visit, but only for the period they are engaged in activities authorized by the entity they are visiting, and are subject to all provisions of law as if they were providing services within their own jurisdiction.

Article VI Reimbursement, Disputes Regarding Reimbursement

A. The parties to this mutual aid agreement agree to provide equipment and personnel to a requesting jurisdiction without a contractual obligation to be reimbursed or an expectation of reimbursement for the first 12 hours of an emergency or disaster event. For each responding jurisdiction, the 12 hours shall commence when that responding jurisdiction first arrives at the scene. After the first 12 hours, the requesting jurisdiction shall reimburse each of the assisting jurisdictions rendering aid under the Reimbursement Article of this mutual aid agreement in accordance with the terms and under the conditions set forth herein.

B. Subject to the above 12-hour limitation, the parties to this mutual aid agreement agree to utilize IC 10-14-3-10.7 subsections b, c and d, and to allow these statutory provisions to govern the allocation of responsibilities for the payment of compensation, benefits and the expenses of the joint effort under this District Mutual Aid Agreement.

1. IC 10-14-3-10.7 (b) addresses the possibility that an employee of the responding jurisdiction may be injured or killed during an event under the statewide mutual aid program. In the event a member of a participating unit is injured or killed while rendering assistance under this Homeland District 6 Mutual Aid agreement, each participating unit shall provide for the payment of compensation and benefits to an injured member or to the personal representative of a deceased member of the participating unit's emergency forces, in the same manner and on the same terms as if the injury or death were sustained while the member was rendering assistance for or within the member's own unit. Those expenses are not reimbursable by the requesting unit to the assisting unit. This requires each participating unit to ensure that its worker's compensation coverage or equivalent will not differ based upon the location of the injury or death or the fact that the employee was rendering aid to another jurisdiction.

2. Under IC 36-1-7-7 (a) (2), An entity providing visiting law enforcement and/or firefighter or any other emergency responder personnel remains responsible for the conduct of its personnel, for their medical expenses, for worker's compensation, and if the entity is a volunteer fire department, for all benefits provided by IC 36-8-12.

3. IC 10-14-3-10.7 Subsection (c) provides that a participating unit rendering assistance for disaster response or recovery to another participating unit shall be reimbursed by the unit receiving the assistance for the expenses incurred in answering the request for assistance and for any loss of, damage to, or expense incurred in the operation of any equipment in answering the request for assistance. The obligation of the requesting jurisdiction to reimburse the assisting jurisdiction for the loss of or damage to equipment is not subject to the 12-hour limitation.

4. IC 10-14-3-10.7 Subsection (d) provides that the straight time labor costs of the participating unit rendering assistance shall be reimbursed by the

participating unit receiving the assistance at the normal pay rates for the responding personnel not to exceed the standard FEMA reimbursement rates. Subsection (d) states that the overtime costs of the participating unit rendering assistance shall be reimbursed at 150% of the normal pay rates for the responding personnel if it is the normal practice of the requesting unit to pay these personnel overtime. In its claim for reimbursement of these costs, the assisting jurisdiction shall provide a copy of its relevant personnel policies pertaining to overtime to the requesting jurisdiction, in addition to the payroll documentation showing that the participating personnel were paid and the amounts that they were paid for the dates involved in the response effort.

5. IC 10-14-3-10.7 Subsection (d) also provides that, the equipment costs of the participating unit rendering assistance shall be reimbursed by the participating unit receiving the assistance at the lesser of the equipment costs reimbursement rates established by FEMA, or the equipment costs established by the participating unit rendering assistance.

6. The Requesting Jurisdiction shall in no way be deemed liable or responsible for the personal property of the members of the Assisting Jurisdiction which may be lost, stolen, or damaged while performing their duties in responding under the terms of this Agreement.

7. The parties agree that, in accordance with Indiana Code 10-14-3-18(b), no claim for loss, damage, or expense under this Agreement shall be allowed unless, within sixty (60) days after the same is sustained or incurred, an itemized notice of such claim, made under oath, is served by certified mail, return requested, restricted delivery upon the chief fiscal officer of such political subdivision where the equipment was used. Claims shall be fully documented in order to obtain any available reimbursements from state or federal disaster funds, if available.

8. Should a dispute arise between parties to the system regarding reimbursement or any other term and condition of this agreement, the parties involved in the dispute will make every effort to resolve the dispute within 30 days of written notice of the dispute by the party asserting non-compliance with the terms of this agreement. In the event that the dispute is not resolved within 90 days of the notice of the claim, either party may request the dispute be solved through binding arbitration.

9. This mutual aid agreement has been written to eliminate, in so far as is possible, the receipt, disbursement or accounting of monies or personal property, by leaving such responsibilities to the individual parties to the agreement. To the extent that any monies or personal property is temporarily acquired, the parties to this agreement delegate to the Fiscal Agent the duty to receive, disburse and account for all such monies or personal property.

10. Proof of mutual aid reimbursement as a standard practice shall be documented by each individual county mutual aid agreement within District Six in order to provide past practice to FEMA. Reimbursement in kind is allowable.

Article VII Development of Guidelines and Procedures

A. The Homeland District 6 EMA Coalition should develop and continuously update a comprehensive mutual aid operational plan containing guidelines and procedures including checklists for requesting and providing assistance, record keeping for all participating political subdivisions, reimbursement procedures and other necessary implementation elements along with the necessary forms for requests for assistance, requests for reimbursement and other records documenting deployment and return of assets. The Mutual Aid Operational Plan should provide detailed guidance on the following subject areas:

1. Activation: The specific manner by which Mutual aid under this agreement can be activated. Self-dispatch is unacceptable. Unsolicited aid effectively violates the terms and conditions of a mutual aid agreement.
2. Requests for Assistance: The mutual aid operational plan should provide details on how requests for assistance are to be made. Most plans will specify that the following information from Article III will be included, to the extent known:
 - a. The intent to implement this District Mutual Aid Agreement, as distinguished from the Statewide Mutual Aid Agreement or any other existing mutual aid agreement.
 - b. A general description of the damage or injury sustained or threatened;
 - c. Identification of the emergency service function or functions for which assistance is needed (e.g. fire, law enforcement, emergency medical, search and rescue, transportation, communications, public works and engineering, building, inspection, planning and information assistance, mass care, resource support, health and other medical services, etc.), and the particular type of assistance needed;
 - d. The amount and type of personnel, equipment, materials, supplies, and/or facilities needed and a reasonable estimate of the period of assistance that each will be needed; and
 - e. The location or locations to which the resources are to be dispatched and the specific time by which the resources are needed; and
 - f. The name and contact information of a representative of the Requesting Party to meet the personnel and equipment of any Assisting Party at each location to which resources are dispatched.
 - g. This information may be provided on a form designed for this purpose or by any other available means.

The assisting party must be able to evaluate its ability to meet the request and respond or not respond as agreed in the Limitations section of the agreement. The operational plan should also address the possibility that the assisting party may need to recall or withdraw deployed resources due to unforeseen emergencies that have developed in the assisting party's jurisdiction. The parties may determine that a formal request for assistance be followed up with or accompanied by the actual resource order, which provides detailed information on the kind and type of resource that is needed, desired delivery points and times, etc.

3. Mobilization: Once a request for assistance has been made, the mobilization of resources begins. Mutual aid operational plans should include provisions for

managing the mobilization process. The Incident Commander is responsible for making initial and ongoing assessments of resource requirements. The Incident Commander is also responsible for requesting additional resources if needed.

4. **Resource Accountability:** Once a resource has arrived at the incident and checked in, it is essential for the Incident Commander to monitor the status of resources throughout their deployment. This information needs to be shared with the officials of the requesting and assisting parties. Included in this process are:
 - Check-in or incident arrival
 - Task assignment and location
 - Task modification, if necessary
 - Task progress reporting
 - Task extension, reassignment, or completion
5. **Demobilization:** Demobilization is the process of releasing resources that have completed their mission or that are no longer needed, and seeing that they return safely. The process includes:
 - Debriefing personnel.
 - Completing any incident-specific checkout procedures.
 - Completing and submitting required documentation.
 - Arranging return travel.
 - Ensuring that released resources are prepared and safe to travel.
 - Tracking released assets back to their home duty station in the requesting jurisdiction in a safe and timely manner.
6. **Documentation:** Accurate recordkeeping is essential. Responsibility for documentation is shared at all levels from the individual resource level up to and including the authorized representatives of both the requesting and assisting parties. This section of the operational plan should specify the particular documents that are to be maintained, by whom, and where. Complete documentation is necessary for mission and task activity, reimbursement, accountability and claims management. ICS forms should be utilized as appropriate documentation.
7. **Training:** Regular training should be an integral part of a mutual aid system. Mutual aid partners must familiarize themselves with each other's operating procedures and with mutual aid procedures in general. Mutual aid agreements and operational plans should provide for training within and between the parties, including training frequency and provide for cost sharing as defined in the agreement.
8. **Exercises:** Exercises should begin at a basic level with small and simple scenarios. As the coordination between parties improves, more complex scenarios should be developed to test parties' communications and interoperability. In addition, the mutual aid system should be regularly incorporated into exercises for other system components so that its use becomes second nature to responders and others. Exercises should not only exercise the system but should also give key participants the opportunity to

work together and develop essential relationships. i.e. Local Emergency Planning Committee Hazmat Exercise.

9. After-Action Review: The after-action report process should be a responsibility of the mutual aid working group. After any system activation (incident or exercise), a detailed after-action report should be conducted with an emphasis on identification of best practices and important lessons learned. As a result of the review, a report should be drafted as part of overall system evaluation. An after-action report should tell the participants what parts of the mutual aid system worked as intended, what parts of the mutual aid system did not work as intended, what do the participants need to do better next time, what lessons learned need to be shared and what follow-up is needed and who is responsible for each follow-up item identified.

10. Mutual Aid Operational Plan Maintenance: The success of the mutual aid system is contingent upon the mutual aid operational plan being continuously reviewed and assessed to make sure it still meets the needs of all parties. This plan maintenance should be the responsibility of the mutual aid working group.

Article VIII Workers' Compensation

A. Pursuant to Indiana Code 10-14-3-17(j)(4), the executive of the political subdivision which is the Assisting Jurisdiction in this agreement may assign or make available for duty the appropriate emergency response personnel outside of the physical limits of their political subdivision; and pursuant to Indiana Code 10-14-3-18(a), when Homeland Security, Emergency Management, or Emergency Support Functions are so ordered to render aid outside the physical limits of their political subdivision, they will retain the same powers, duties, rights, privileges and immunities including any coverage under the Worker's Compensation Laws, that they receive when they are on duty in their home jurisdiction.

B. Personnel of a assisting jurisdiction responding to or rendering assistance to a requesting jurisdiction under this mutual aid agreement, who sustain injury or death in the course of, and arising out of, their employment, are entitled to all applicable benefits normally available to personnel while performing their duties for their employer. Responders shall receive any additional state and federal benefits that may be available to them for line of duty deaths.

C. IC 10-14-3-15 (c) provides that a volunteer working as an authorized emergency management worker may be covered by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7). If compensability of the injury is an issue, the administrative procedures of IC 22-3-2 through IC 22-3-7 shall be used to determine the issue, providing they are a rostered emergency management volunteer.

D. Under IC 22-3-2-2.1, a "rostered volunteer" whose name has been entered and approved on a county, municipal, or township roster of volunteers for volunteer programs operated by the county, municipality, or township may be covered by the at the option of the governmental unit by the medical-only provisions of the Worker's Compensation Act. Lost wage and impairment compensation would not be covered.

Article IX Liability

A. Under IC 10-14-3-15, all activities relating to emergency management are deemed to be governmental functions.

B. IC 10-14-3-15 also provides that the state of Indiana, any Indiana political subdivision, any other agencies of the state or political subdivision of the state, or, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker complying with or reasonably attempting to comply with Indiana Emergency Management Law (IC 10-14-3-1 et. Seq.), any order or rule adopted under IC 10-14-3, or under any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, is not liable for the death of or injury to persons or for damage to property as a result of any such activity.

C. Officers and employees of the assisting jurisdiction rendering assistance to and acting under the operational control of the requesting jurisdiction are deemed to be employees of the requesting jurisdiction for the purposes of the Indiana Tort Claims Act. This provision is both contractual and is consistent with the tort liability protections afforded to assisting jurisdictions and their personnel under Indiana Statewide Mutual Aid (IC 10-14-3-10.7 (f)).

D. The Requesting Jurisdiction under the terms of this Agreement shall assume no responsibility or liability for the personal property of personnel of the assisting jurisdiction which is lost, damaged or destroyed in responding under this agreement.

E. The execution of this Agreement shall not give rise to any liability or responsibility for failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as or deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action whatsoever hereunder for any cause whatsoever.

E. This mutual aid agreement is not written for the purpose of establishing operating procedures that are to be used as a basis of asserting liability against any of the participating agencies. To the extent that it touches upon subjects that may be characterized as operating procedures, it contains certain statements of best practices. In many cases, the best practices contained within this document strive to exceed and improve upon prevailing standard practices. This mutual aid agreement is intended only for use by the participating agencies and is not intended to be relied on by any other individual, public or private or any agency which is not a party to the agreement. This document may not be used in a court of law to determine an applicable standard of care under any particular circumstances.

Article X Severability

Should a court of competent jurisdiction rule any portion, section or subsection of this mutual aid agreement to be invalid or nullified, that fact shall not affect or invalidate any other portion, section or subsection; and all remaining portions, sections or subsections shall remain in full force and effect.

Article XI Counterparts

This agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. It shall not be necessary that any single counterpart hereof be executed by all parties hereto so long as at least one counterpart is executed by each party. One originally signed copy of each counterpart shall be forwarded to and permanently maintained on file to and by the separate legal entity or joint board identified in Article III, paragraph G to administer this agreement.

Article XII Effective Date and Termination Date

The governing body of each participating jurisdiction must grant approval of a mutual aid agreement in accordance with the established procedures of that jurisdiction concerning entering into legal agreements. Under IC 36-1-7-2, an Indiana political subdivision may, by ordinance or resolution, enter into a written agreement for interlocal cooperation with another Indiana political subdivision, with a state agency or with a public instrumentality or public corporate body created by state law.

In addition, a mutual aid agreement must be signed by the official or officials authorized by the governing bodies of each participating jurisdiction to sign such agreements.

If prior approval of the governing body of a jurisdiction is required, the official authorized by the governing body to enter into the agreement on behalf of that jurisdiction must sign the agreement after, not before, the governing body has given its approval.

By affixing their signature to the agreement on behalf of a jurisdiction, the signing official indicates to the other jurisdictions, that the signing individual has already secured the required ordinance or resolution manifesting prior approval from the governing body of their jurisdiction.

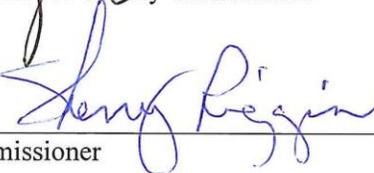
This Agreement shall become effective when approved and executed by the lawful representative of at least two jurisdictions.

This Agreement shall remain in effect as between and among each and every party until participation in this Agreement is terminated by a participating party in writing. Any party to this Agreement may terminate its participation in this Agreement upon thirty (30) days' written notice addressed to the District EMA Coalition Chairman. The Chairman will then notify the chief elected official of each participating party to the agreement. Termination of participation in this Agreement by a party shall not affect the continued operation of this Agreement between and among the remaining parties.

In witness whereof, this Agreement has been executed and approved and is effective and operative as to each of the parties as herein provided as of the day and year written below.



President of County Commission



Commissioner



Commissioner

Attest: 

County Auditor

Adopted: June 3 2024
Date

Approved as to Form: _____
County Attorney

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made this 3rd day of June, 2024, by and between the Board of County Commissioners of Delaware County, Indiana ("Owner") and E&B Paving, LLC ("Contractor"), for the project known as 2024-03 Road Paving Projects (the "Project"). Owner and Contractor agree as set forth below:

1. **THE WORK.** The intent of the Agreement is to provide for the construction and completion in every detail of the work described. Contractor shall provide all materials, labor, tools, equipment, supplies, safety equipment, transportation and supervision necessary to perform, and shall perform, the work generally described as follows, in a good and workmanlike manner and in accordance with the Contract Documents (as hereinafter defined) as necessary to produce the results intended by the Contract Documents (all hereinafter called the "Work"):

A. **SUPERVISION AND CONSTRUCTION PROCEDURES.** Contractor shall supervise and direct the Work using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Contractor shall be responsible to Owner for the acts and omissions of Contractor's employees, subcontractors, material suppliers, laborers, equipment lesser and all other persons performing portions of the Work. Contractor shall be responsible for the inspection of Work performed under the Contract Documents to determine that the Work is in proper condition to receive subsequent Work.

B. **LABOR AND MATERIALS.** Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

C. **SUBCONTRACTORS.** Before construction commences, Contractor shall furnish in writing to Owner the names of all persons or entities proposed for each principal portion of the Work and their respective contract sums. Contractor shall not contract with a proposed person or entity to whom Owner has made a reasonable objection. Contractor shall not change a subcontractor, person or entity previously selected if Owner makes reasonable objection to such change. By appropriate agreement, Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward Owner. Each subcontract shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound. Each subcontract for a portion of the Work is contingently assigned by Contractor to Owner;

however, such assignment is effective only after termination of this Agreement by Owner and only for those subcontracts which Owner accepts by notifying the subcontractor in writing.

D. REPRESENTATIONS. Contractor represents and warrants the following to Owner as a material inducement to Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- 1) Contractor is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- 2) Contractor has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated observations with the requirements of the Contract Documents; and
- 3) Contractor possesses a high level of experience and expertise in the business administration, construction and superintendence of projects of the size, complexity and nature of the Project involving, among other things, the Work to be performed hereunder, and will perform the Work with the care, skill and diligence of such a contractor.
- 4) Contractor has not, nor has any other member, representative, agent, or officer of the firm, company, corporation, or partnership represented by the Contractor:
 - (a) employed or retained any company or person, to solicit or secure this Agreement;
 - (b) entered into or offered to enter into any combination, collusion, or agreement to receive or pay and that the Contractor has not received or paid, any fee, commission, percentage, or any other consideration, contingent upon or resulting from the award of and the execution of this Agreement, excepting such consideration and subject to the terms and conditions expressed upon the face of the within Agreement.

For a breach or violation of this representation, the Owner shall have the right to cancel this Agreement without liability and to recover, at the election of the Owner, any and all monies or other consideration paid hereunder.

E. WARRANTY. Contractor warrants to Owner that the materials and equipment furnished under the Contract Documents shall be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements,

including substitutions not properly approved and authorized, shall be considered defective.

It is understood and agreed that the foregoing warranties shall not affect, limit or impair Owner's right against Contractor with regard to latent defects in the Work which does not appear within the applicable warranty period following acceptance of the Work and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner within such warranty period.

2. CONTRACT DOCUMENTS. The Contract Documents consist of this Agreement, the Plans and Specifications attached hereto as Exhibit A, the Contractor's Proposal, any and all documents prepared by the Owner or the Owner's representative prior to bidding which are incorporated by reference and any written modifications and addenda issued after execution of this Agreement. The Indiana Department of Transportation, Standard Specifications dated 2018 ("Standard Specifications") shall be used in conjunction with the Contract Documents. All references in the Contract Documents to the "Commissioner," "Department," "Indiana Department of Transportation," "Director," "Engineer," and/or "Chief Highway Engineer" shall be interpreted to refer and mean the Owner.

Contractor shall promptly call to the attention of Owner any discrepancy or conflict in the Contract Documents that affect its Work. The coordination of the Contract Documents shall be in accordance with Section 105.04 of the Standard Specifications. In the event of conflict or discrepancies between and among the Contract Documents, figure dimensions shall take precedence over scale measurements, large scale details shall take precedence over small scale plans or drawings, and plans or drawings of a later date shall take precedence over those of an earlier date. Any part of the Work shown on the Plans but not specifically mentioned in the Specifications, or vice versa, shall be considered as part of the Work as though included in both. Likewise, the Work to be undertaken by Contractor shall include all incidental work necessary as customarily done for the completion of the Project even though it may not be specifically described in the Specifications or Plans.

Contractor has carefully studied and compared all of the Contract Documents with each other and with information furnished by Owner and has reported to Owner all errors, inconsistencies or omissions. Contractor shall have no rights against Owner for errors, inconsistencies or omissions in the Contract Documents unless Contractor recognized such error, inconsistency or omission and reported it prior to the date of this Agreement. Contractor shall perform no construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents. Contractor warrants and represents to Owner that the Plans and Specifications for the Work are suitable and adapted for said Work and agrees that it will perform the Work and complete the same to the satisfaction of Owner.

3. CONTRACT SUM AND PAYMENTS. Owner agrees to pay Contractor for the performance of the Work, for the actual amount of work done and materials in place as measured by the Owner, at the unit prices submitted by the Contractor on the Itemized Proposal accepted

by the Board of Commissioners on May 23, 2024 in the sum of \$1,951,571.75 ("Contract Sum"), which is attached hereto as Exhibit B and made a part of this Agreement.

The Contract Sum, including authorized adjustments or Owner approved change orders, is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents. In determining the Contract Sum, Contractor has taken into account the level of completeness of the Contract Documents and has exercised its best skill and efforts to make (1) appropriate judgments and inferences in connection with the requirements of the Contract Documents, and (2) all inquiries to clarify the Contract Documents as necessary to calculate and establish the Contract Sum.

A. APPLICATIONS FOR PAYMENT. All payments provided herein are subject to funds as provided by Owner and the laws of the State of Indiana. The Owner shall make payments on account of the Agreement, upon acceptance of Application for Payment for labor and materials incorporated in the Work at the rate of Ninety percent (90%) of such value of the Work until the Work is substantially completed. The Contractor will be paid Ninety percent (90%) of the monthly estimate, the remaining ten percent (10%) will be retained by the Owner. No partial payment will be made nor estimates submitted when the total value of the Work done since the last estimate amounts to less than \$500.00. Any amount withheld as retainage by the Owner will be held until the final completion and acceptance of the work and will be paid with final payment.

Progress payments will be due on the first day of the month and will be paid monthly. At least ten (10) days before the date established for each progress payment, Contractor shall submit to Owner an itemized Application for Payment for operations completed in accordance with the Progress Schedule. Such Application for Payment shall be supported by such data substantiating Contractor's right to payment as Owner may require, such as copies of requisitions from subcontractors and material suppliers.

Before the first Application for Payment, Contractor shall submit to Owner a proposed Progress Schedule allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This Progress Schedule, once approved by Owner, shall be used as a basis for reviewing Contractor's Applications for Payment.

Owner reserves the right to inspect the Project and approve the progress of Work completed to the date of the Application for Payment. Prior to making said payment, Contractor shall submit to Owner an Affidavit and partial Waiver of Lien, and/or partial waivers from subcontractors and material suppliers, in form and content satisfactory to Owner, stipulating that all costs for labor and materials incurred in the previous month have been paid to subcontractors, material suppliers, laborers and equipment lessors. An Application for Payment shall not include requests for payment of amounts Contractor does not intend to pay to a subcontractor or material supplier.

In no instance shall payments exceed Ninety percent (90%) of the net value of stored materials or equipment. The requirements for storage and payment for such designated materials shall follow the requirements of the Contract Documents.

B. PAYMENT OF SUBCONTRACTORS. The Contractor agrees to assume and does assume full and exclusive responsibility for the payment of subcontractors in compliance with Ind. Code § 36-1-12-13. The Agreement is expressly made an obligation covered by the Contractor's Payment Bond and Performance Bond obligation. The obligation of the surety shall not in any way be affected by the bankruptcy, insolvency, or breach of contract of the Contractor.

The making of an incorrect certification by the Contractor shall be considered a substantial breach of contract on the part of the Contractor. Based on a breach of contract, the Owner may, in addition to all other remedies, withhold all payments not yet made and recover all payments previously made less that amount which has actually been paid to subcontractors by the Contractor. The obligation is hereby created on the part of the Contractor to return all such payments previously made in such case. Upon receipt of a progress payment, Contractor shall pay promptly all valid bills and charges for materials, equipment, labor and other costs in connection with or arising out of the Work and will hold Owner free and harmless from and against all liens and claims of liens for such materials, equipment, labor and other costs, or any of them, filed against the Project or the site, or any part thereof, and from and against all expenses and liability in connection therewith including, but not limited to, court costs and attorneys' fees. Should any lien or claim of lien be filed of record against the Project or the site, or should Owner receive notice of any claim or of any unpaid bill in connection with the Work, Contractor shall forthwith either pay or discharge the same and cause the same to be released of record or shall furnish Owner with appropriate indemnity in form and amount satisfactory to Owner.

C. WITHHOLDING OF PAYMENT. If any claim or lien is made or filed with or against Owner, the Project, the real estate, or contract proceeds by any person claiming that Contractor or any subcontractor or any person for whom Contractor is liable has failed to make payment for labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there shall be evidence of such non-payment or of any claim or lien which is chargeable to Contractor, or if Contractor or any subcontractor or other person for whom Contractor is liable causes damages to the Work, or if Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, Owner shall have the right to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such non-payment, damage, failure or default, and (3) compensate Owner for and indemnify him against any and all losses, liability, damages, costs, and expenses, including attorneys' fees and disbursements which may be sustained or incurred in connection therewith. Owner shall have the right to apply and charge against Contractor so much of the amount retained as may be required for the foregoing purposes. If the amount retained is insufficient therefore, Contractor shall be liable for the difference.

If Owner withholds any payment, partial or final; from Contractor, Owner may, but shall not be obligated or required to, make direct or joint payment on behalf of Contractor for any part or all of such sums due and owing to said subcontractors, material suppliers, equipment lessors and/or laborers for their labor, materials or equipment furnished to the Project, not to exceed the Contract Sum remaining due and owing to Contractor, and charge all such direct payments against the Contract Sum; provided, however, that nothing contained in this paragraph shall create any personal liability" on the part of Owner to any Subcontractor, material supplier, equipment lessor or laborer, or any direct contractual relationship between Owner and them.

D. FINAL PAYMENT. When the Contractor completes the work in accordance with the Contract Documents and in an acceptable matter as determined by the Engineer, the Contractor will prepare a final estimate for the work performed and will furnish the Engineer with a copy of the final estimate. Final payment shall not become due until Contractor submits (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents will remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, (3) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5) affidavit and waiver of liens from all subcontractors, material suppliers and equipment suppliers used in the prosecution of the work.

The Engineer, acting on behalf of the Owner, will then certify to the County Auditor the balance due the contractor and the certificate will be deemed evidence of final acceptance of the completed Agreement by the Owner. Owner will make final payment to the Contractor within sixty (60) days after final acceptance and completion of the Agreement. Final payment may not be made on any amount that is in dispute, but final payment may be made on the part of the Contract Sum or those amounts not in dispute. Acceptance of final payment by Contractor shall constitute a waiver of claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of final payment.

E. INTEREST. Unless otherwise expressly provided in the Contract Documents, payments due to Contractor under the terms of the Contract Documents and unpaid shall bear no interest and Contractor shall be entitled to no interest, statutory or otherwise. In the event Owner is entitled to withhold payment under the Contract Documents, or in the event of a good faith dispute between Owner and Contractor, no interest shall accrue.

4. DATE OF COMMENCEMENT AND COMPLETION. Contractor shall commence work promptly upon receipt of written notice from Owner to proceed with the Work, and Contractor shall achieve completion on or before July 31, 2024, subject to the Road Closure limitations and any adjustments authorized by Owner ("Contract Time"). The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Time limits stated in the Contract Documents are of the essence of this Agreement. By executing this Agreement, Contractor confirms that the Contract Time is a reasonable period for performing the Work. Contractor shall not knowingly, except by agreement or instruction of Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by the Contract Documents.

A. **COMMENCEMENT.** It is not incumbent upon Owner to notify Contractor when to begin (other than the notice to proceed), cease or resume Work, to give early notice of the rejection of faulty Work, nor in any way to superintend so as to relieve Contractor of responsibility or of any consequence of neglect or carelessness by Contractor or its subordinates. All materials and labor shall be furnished at such time as shall be for the best interest of all trades concerned, to the end that the combined Work of all may be properly and fully completed in accordance with the progress schedule.

5. MISCELLANEOUS PROVISIONS.

A. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Indiana.

B. **SUCCESSORS AND ASSIGNS.** Owner and Contractor respectively bind themselves, their successors, assigns and legal representatives to the other party hereto in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to this Agreement shall assign this Agreement without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under this Agreement.

C. **WRITTEN NOTICE.** Written notice shall be deemed to have been duly served if delivered in person to the individual or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

D. **RIGHTS AND REMEDIES.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. No act or failure to act by Owner or Contractor shall constitute a waiver of a right or duty afforded them under this Agreement, nor shall such action or failure to act constitute approval of or acquiescence thereunder.

6. ENTIRE AGREEMENT. The Contract Documents form the Contract for Construction and represent the entire and integrated agreement between the parties hereto and supersede any and all prior negotiations, representations, or agreements, whether written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Owner and any subcontractor or (2) between any persons or entities other than Owner and Contractor.

IN WITNESS WHEREOF, the Contractor does hereby accept the foregoing agreement and has hereunder set his hand this 28th day of May, 2024.

Contractor: E.B Paving, LLC
(Business Name)

By: M.L. Shelley
(Signature)

Mike Shelley
(Printed)

Project Manager
(Title)

STATE OF INDIANA

) SS:

COUNTY OF Delaware

Before me, the undersigned notary public, on this 28th day of May, 2024, Mike Shelley personally appeared as Contractor and being duly sworn, acknowledged the execution of the above Agreement.



Melissa Purkey
(Notary Public - Signature)

Melissa Purkey
(Notary Public - Printed)

My Commission Expires: August 14, 2024

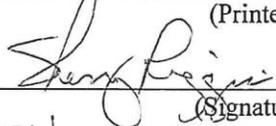
Residing in MADISON County, Indiana.

IN WITNESS WHEREOF, the Owner does hereby accept the foregoing agreement and has hereunder set his hand this 3rd day of June, 2024.

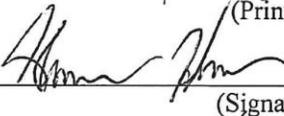
Board of Commissioners, Delaware County,
Indiana

By: 
(Signature)

James King
(Printed)

By: 
(Signature)

Sherry Riggan
(Printed)

By: 
(Signature)

Sitawon Henry
(Printed)

ATTEST: 
Ed Carroll, Delaware County Auditor

BID OF

E & B Paving, LLC

(Contractor)

13551 W. 550 S.

(Address)

Daleville, IN 47334

FOR

PUBLIC WORKS PROJECTS

OF

Board of Commissioners of Delaware County, Indiana

Project: 2024-03 Road Paving Projects, Delaware County

Bid Date: May 17, 2024

Filed _____

Action taken _____

CONTRACTORS BID FOR PUBLIC WORK - FORM 96

PART I

(To be completed for all bids Please type or print)

Date 5/17/2024

- 1. Governmental Unit (Owner): Board of Commissioners of Delaware County, Indiana
- 2. County : Delaware
- 3. Bidder (Firm): E & B Paving, LLC
 Address: 13551 W. 550 S.
 City/State: Daleville, IN 47334
- 4. Telephone Number: 765-289-7131
- 5. Agent of Bidder (if applicable): Cam Paddock

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of 2024-03 Road Paving Projects, Delaware County

(Governmental Unit) in accordance with plans and specifications prepared by _____

Delaware County Engineering Department and dated _____ for the sum of

See Attached Bid Form Cents \$ See Attached Bid Form

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

If additional units of material included in the contract are needed, the cost of units must be the same as that shown in the original contract if accepted by the Governmental Unit. If the bid is to be awarded on a unit basis, the itemization of the units shall be shown on a separate attachment.

The Contractor and his subcontractors, if any, shall not discriminate against or intimidate any employee, or applicant for employment, to be employed in the performance of this contract, with respect to any matter directly or indirectly related to employment because of race, religion, color, sex, national origin or ancestry. Breach of the covenant may be regarded as a material breach of the contract.

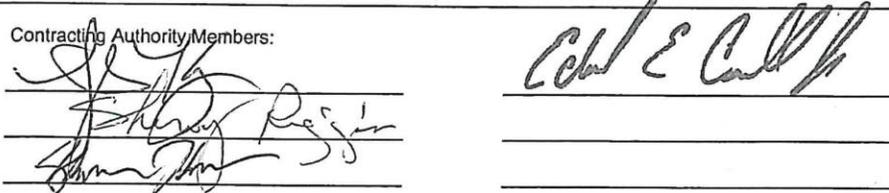
CERTIFICATION OF USE OF UNITED STATES STEEL PRODUCTS (If applicable)

I, the undersigned bidder or agent as a contractor on a public works project, understand my statutory obligation to use steel products made in the United States. I.C. 5-16-8-2. I hereby certify that I and all subcontractors employed by me for this project will use U.S. steel products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

ACCEPTANCE

The above bid is accepted this 30th day of June, 2024 subject to the following conditions: _____

Contracting Authority Members:



PART II

(For projects of \$150,000 or more - IC 36-1-12-4)

Governmental Unit: Board of Commissioners of Delaware County, Indiana
 Bidder (Firm) E & B Paving, LLC
 Date: 5/17/2024

These statements to be submitted under oath by each bidder with and as part of his bid. Attach additional pages for each section as needed.

SECTION I EXPERIENCE QUESTIONNAIRE

1 What public works projects has your organization completed for the period of one (1) year prior to the date of the current bid?

Contract Amount	Class of Work	When Completed	Name and Address of Owner
\$ 1,248,836.00	Reconstruction (Riverside Drainage)	2023	Muncie Sanitary District
\$ 348,812.00	(Riverside-Jackson Trail)	2023	Delaware Advancement Corporation
\$ 2,795,863.00	Asphalt Resurface & ADA Ramps	2023	City of Muncie, IN
\$ 2,995,329.00	Asphalt Resurface	2023	Indiana Department Of Transportation

2 What public works projects are now in process of construction by your organization?

Contract Amount	Class of Work	Expected Completion Date	Name and Address of Owner
\$ 16,788,771.52	Reconstruction (R-40497)	Nov-24	Indiana Department Of Transportation
\$ 10,541,939.69	Asphalt resurface and ADA Curb Ramp reconstruction (R-44703)	Nov-24	Indiana Department Of Transportation
\$ 180,963.00	Reconstruction (hoyt Ave.)	Oct-24	Muncie Sanitary District
\$ 303,045.00	Access Control (R-42709)	May-24	Indiana Department Of Transportation

3 3 Have you ever failed to complete any work awarded to you? NO If so, where and why?

4 4 List references from private firms for which you have performed work.

TK Constructors - Mark Thurston

SC Case Construction - Skyler Case

Pridemark Construction - Mike Tschour

JG Case Construction - Chuck Case

BW Construction - Dustin Frye

SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE

1 1 Explain your plan or layout for performing proposed work. (Examples could include a narrative of when you could begin work, complete the project, number of workers, etc. and any other information which you believe would enable the governmental unit to consider your bid)

We will provide labor, equipment and material to complete the project in a workmanlike manner and in approved construction practices within the time requirements of the contract.

2 2 Please list the names and addresses of all subcontractors (i.e. persons or firms outside your own firm who have performed part of the work) that you have used on public works projects during the past five (5) years along with a brief description of the work done by each subcontractor.

Please see attached list.

3 3 If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you expect to require a bond. However, if you are unable to currently provide a listing, please understand a listing must be provided prior to contract approval. Until the completion of the proposed project, you are under a continuing obligation to immediately notify the governmental unit in the event that you subsequently determine that you will use a subcontractor on the proposed project.

4 4 What equipment do you have available to use for the proposed project? Any equipment to be used by subcontractors may also be required to listed by the governmental unit.

We will provide all necessary equipment to construct the project per Plans & Specifications.

5 5 Have you entered into contracts or received offers for all materials which substantiate the process used in preparing your proposal? Otherwise, please explain the rationale used which would corroborate the prices listed.

Yes

SECTION III CONTRACTOR'S FINANCIAL STATEMENT

Attachment of bidders financial statement is mandatory. Any bid submitted without said financial statement as required by statute shall thereby be rendered invalid. The financial statement provided hereunder to the governing body awarding the contract must be specific enough in detail so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

SECTION IV CONTRACTORS NON-COLLUSION AFFIDAVIT

The undersigned bidder or agent, being, duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership, represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

SECTION V OATH AND AFFIRMATION

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing bid for public works are true and correct to the best of my knowledge and belief.

Dated at Daleville, IN this 17th day of May, 2024

E & B Paving, LLC
(Name of Organization)
By [Signature]
Cam Paddock, Area Manager
(Title of Person Signing)

ACKNOWLEDGEMENT

STATE Indiana)
COUNTY OF Delaware) SS:

Before me, a Notary Public, personally appeared the above-named Cam Paddock and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to before me this 17th day of May, 2024.
OFFICIAL SEAL
MELISSA PURKEY
COMMISSION NUMBER NP0688978
NOTARY PUBLIC-STATE OF INDIANA
MADISON COUNTY
MY COMM EXPIRES AUG 14, 2024
[Signature]
Notary Public

My Commission Expires: August 14th, 2024

County of Residence: Madison

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made this 3rd day of June, 2024, by and between the Board of County Commissioners of Delaware County, Indiana ("Owner") and E & B Paving, LLC ("Contractor"), for the project known as 2024-02 Road Paving Project (the "Project"). Owner and Contractor agree as set forth below:

1. **THE WORK.** The intent of the Agreement is to provide for the construction and completion in every detail of the work described. Contractor shall provide all materials, labor, tools, equipment, supplies, safety equipment, transportation and supervision necessary to perform, and shall perform, the work generally described as follows, in a good and workmanlike manner and in accordance with the Contract Documents (as hereinafter defined) as necessary to produce the results intended by the Contract Documents (all hereinafter called the "Work"):

A. **SUPERVISION AND CONSTRUCTION PROCEDURES.** Contractor shall supervise and direct the Work using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Contractor shall be responsible to Owner for the acts and omissions of Contractor's employees, subcontractors, material suppliers, laborers, equipment lesser and all other persons performing portions of the Work. Contractor shall be responsible for the inspection of Work performed under the Contract Documents to determine that the Work is in proper condition to receive subsequent Work.

B. **LABOR AND MATERIALS.** Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

C. **SUBCONTRACTORS.** Before construction commences, Contractor shall furnish in writing to Owner the names of all persons or entities proposed for each principal portion of the Work and their respective contract sums. Contractor shall not contract with a proposed person or entity to whom Owner has made a reasonable objection. Contractor shall not change a subcontractor, person or entity previously selected if Owner makes reasonable objection to such change. By appropriate agreement, Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward Owner. Each subcontract shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound. Each subcontract for a portion of the Work is contingently assigned by Contractor to Owner;

however, such assignment is effective only after termination of this Agreement by Owner and only for those subcontracts which Owner accepts by notifying the subcontractor in writing.

D. REPRESENTATIONS. Contractor represents and warrants the following to Owner as a material inducement to Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- 1) Contractor is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- 2) Contractor has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated observations with the requirements of the Contract Documents; and
- 3) Contractor possesses a high level of experience and expertise in the business administration, construction and superintendence of projects of the size, complexity and nature of the Project involving, among other things, the Work to be performed hereunder, and will perform the Work with the care, skill and diligence of such a contractor.
- 4) Contractor has not, nor has any other member, representative, agent, or officer of the firm, company, corporation, or partnership represented by the Contractor:
 - (a) employed or retained any company or person, to solicit or secure this Agreement;
 - (b) entered into or offered to enter into any combination, collusion, or agreement to receive or pay and that the Contractor has not received or paid, any fee, commission, percentage, or any other consideration, contingent upon or resulting from the award of and the execution of this Agreement, excepting such consideration and subject to the terms and conditions expressed upon the face of the within Agreement.

For a breach or violation of this representation, the Owner shall have the right to cancel this Agreement without liability and to recover, at the election of the Owner, any and all monies or other consideration paid hereunder.

E. WARRANTY. Contractor warrants to Owner that the materials and equipment furnished under the Contract Documents shall be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements,

including substitutions not properly approved and authorized, shall be considered defective.

It is understood and agreed that the foregoing warranties shall not affect, limit or impair Owner's right against Contractor with regard to latent defects in the Work which does not appear within the applicable warranty period following acceptance of the Work and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner within such warranty period.

2. CONTRACT DOCUMENTS. The Contract Documents consist of this Agreement, the Plans and Specifications attached hereto as Exhibit A, the Contractor's Proposal, any and all documents prepared by the Owner or the Owner's representative prior to bidding which are incorporated by reference and any written modifications and addenda issued after execution of this Agreement. The Indiana Department of Transportation, Standard Specifications dated 2018 ("Standard Specifications") shall be used in conjunction with the Contract Documents. All references in the Contract Documents to the "Commissioner," "Department," "Indiana Department of Transportation," "Director," "Engineer," and/or "Chief Highway Engineer" shall be interpreted to refer and mean the Owner.

Contractor shall promptly call to the attention of Owner any discrepancy or conflict in the Contract Documents that affect its Work. The coordination of the Contract Documents shall be in accordance with Section 105.04 of the Standard Specifications. In the event of conflict or discrepancies between and among the Contract Documents, figure dimensions shall take precedence over scale measurements, large scale details shall take precedence over small scale plans or drawings, and plans or drawings of a later date shall take precedence over those of an earlier date. Any part of the Work shown on the Plans but not specifically mentioned in the Specifications, or vice versa, shall be considered as part of the Work as though included in both. Likewise, the Work to be undertaken by Contractor shall include all incidental work necessary as customarily done for the completion of the Project even though it may not be specifically described in the Specifications or Plans.

Contractor has carefully studied and compared all of the Contract Documents with each other and with information furnished by Owner and has reported to Owner all errors, inconsistencies or omissions. Contractor shall have no rights against Owner for errors, inconsistencies or omissions in the Contract Documents unless Contractor recognized such error, inconsistency or omission and reported it prior to the date of this Agreement. Contractor shall perform no construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents. Contractor warrants and represents to Owner that the Plans and Specifications for the Work are suitable and adapted for said Work and agrees that it will perform the Work and complete the same to the satisfaction of Owner.

3. CONTRACT SUM AND PAYMENTS. Owner agrees to pay Contractor for the performance of the Work, for the actual amount of work done and materials in place as measured by the Owner, at the unit prices submitted by the Contractor on the Itemized Proposal accepted

by the Board of Commissioners on May 23, 2024 in the sum of \$264,738.00 ("Contract Sum"), which is attached hereto as Exhibit B and made a part of this Agreement.

The Contract Sum, including authorized adjustments or Owner approved change orders, is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents. In determining the Contract Sum, Contractor has taken into account the level of completeness of the Contract Documents and has exercised its best skill and efforts to make (1) appropriate judgments and inferences in connection with the requirements of the Contract Documents, and (2) all inquiries to clarify the Contract Documents as necessary to calculate and establish the Contract Sum.

A. APPLICATIONS FOR PAYMENT. All payments provided herein are subject to funds as provided by Owner and the laws of the State of Indiana. The Owner shall make payments on account of the Agreement, upon acceptance of Application for Payment for labor and materials incorporated in the Work at the rate of Ninety percent (90%) of such value of the Work until the Work is substantially completed. The Contractor will be paid Ninety percent (90%) of the monthly estimate, the remaining ten percent (10%) will be retained by the Owner. No partial payment will be made nor estimates submitted when the total value of the Work done since the last estimate amounts to less than \$500.00. Any amount withheld as retainage by the Owner will be held until the final completion and acceptance of the work and will be paid with final payment.

Progress payments will be due on the first day of the month and will be paid monthly. At least ten (10) days before the date established for each progress payment, Contractor shall submit to Owner an itemized Application for Payment for operations completed in accordance with the Progress Schedule. Such Application for Payment shall be supported by such data substantiating Contractor's right to payment as Owner may require, such as copies of requisitions from subcontractors and material suppliers.

Before the first Application for Payment, Contractor shall submit to Owner a proposed Progress Schedule allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This Progress Schedule, once approved by Owner, shall be used as a basis for reviewing Contractor's Applications for Payment.

Owner reserves the right to inspect the Project and approve the progress of Work completed to the date of the Application for Payment. Prior to making said payment, Contractor shall submit to Owner an Affidavit and partial Waiver of Lien, and/or partial waivers from subcontractors and material suppliers, in form and content satisfactory to Owner, stipulating that all costs for labor and materials incurred in the previous month have been paid to subcontractors, material suppliers, laborers and equipment lessors. An Application for Payment shall not include requests for payment of amounts Contractor does not intend to pay to a subcontractor or material supplier.

In no instance shall payments exceed Ninety percent (90%) of the net value of stored materials or equipment. The requirements for storage and payment for such designated materials shall follow the requirements of the Contract Documents.

B. PAYMENT OF SUBCONTRACTORS. The Contractor agrees to assume and does assume full and exclusive responsibility for the payment of subcontractors in compliance with Ind. Code § 36-1-12-13. The Agreement is expressly made an obligation covered by the Contractor's Payment Bond and Performance Bond obligation. The obligation of the surety shall not in any way be affected by the bankruptcy, insolvency, or breach of contract of the Contractor.

The making of an incorrect certification by the Contractor shall be considered a substantial breach of contract on the part of the Contractor. Based on a breach of contract, the Owner may, in addition to all other remedies, withhold all payments not yet made and recover all payments previously made less that amount which has actually been paid to subcontractors by the Contractor. The obligation is hereby created on the part of the Contractor to return all such payments previously made in such case. Upon receipt of a progress payment, Contractor shall pay promptly all valid bills and charges for materials, equipment, labor and other costs in connection with or arising out of the Work and will hold Owner free and harmless from and against all liens and claims of liens for such materials, equipment, labor and other costs, or any of them, filed against the Project or the site, or any part thereof, and from and against all expenses and liability in connection therewith including, but not limited to, court costs and attorneys' fees. Should any lien or claim of lien be filed of record against the Project or the site, or should Owner receive notice of any claim or of any unpaid bill in connection with the Work, Contractor shall forthwith either pay or discharge the same and cause the same to be released of record or shall furnish Owner with appropriate indemnity in form and amount satisfactory to Owner.

C. WITHHOLDING OF PAYMENT. If any claim or lien is made or filed with or against Owner, the Project, the real estate, or contract proceeds by any person claiming that Contractor or any subcontractor or any person for whom Contractor is liable has failed to make payment for labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there shall be evidence of such non-payment or of any claim or lien which is chargeable to Contractor, or if Contractor or any subcontractor or other person for whom Contractor is liable causes damages to the Work, or if Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, Owner shall have the right to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such non-payment, damage, failure or default, and (3) compensate Owner for and indemnify him against any and all losses, liability, damages, costs, and expenses, including attorneys' fees and disbursements which may be sustained or incurred in connection therewith. Owner shall have the right to apply and charge against Contractor so much of the amount retained as may be required for the foregoing purposes. If the amount retained is insufficient therefore, Contractor shall be liable for the difference.

If Owner withholds any payment, partial or final; from Contractor, Owner may, but shall not be obligated or required to, make direct or joint payment on behalf of Contractor for any part or all of such sums due and owing to said subcontractors, material suppliers, equipment lessors and/or laborers for their labor, materials or equipment furnished to the Project, not to exceed the Contract Sum remaining due and owing to Contractor, and charge all such direct payments against the Contract Sum; provided, however, that nothing contained in this paragraph shall create any personal liability" on the part of Owner to any Subcontractor, material supplier, equipment lessor or laborer, or any direct contractual relationship between Owner and them.

D. FINAL PAYMENT. When the Contractor completes the work in accordance with the Contract Documents and in an acceptable matter as determined by the Engineer, the Contractor will prepare a final estimate for the work performed and will furnish the Engineer with a copy of the final estimate. Final payment shall not become due until Contractor submits (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents will remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, (3) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5) affidavit and waiver of liens from all subcontractors, material suppliers and equipment suppliers used in the prosecution of the work.

The Engineer, acting on behalf of the Owner, will then certify to the County Auditor the balance due the contractor and the certificate will be deemed evidence of final acceptance of the completed Agreement by the Owner. Owner will make final payment to the Contractor within sixty (60) days after final acceptance and completion of the Agreement. Final payment may not be made on any amount that is in dispute, but final payment may be made on the part of the Contract Sum or those amounts not in dispute. Acceptance of final payment by Contractor shall constitute a waiver of claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of final payment.

E. INTEREST. Unless otherwise expressly provided in the Contract Documents, payments due to Contractor under the terms of the Contract Documents and unpaid shall bear no interest and Contractor shall be entitled to no interest, statutory or otherwise. In the event Owner is entitled to withhold payment under the Contract Documents, or in the event of a good faith dispute between Owner and Contractor, no interest shall accrue.

4. DATE OF COMMENCEMENT AND COMPLETION. Contractor shall commence work promptly upon receipt of written notice from Owner to proceed with the Work, and Contractor shall achieve completion on or before July 31, 2024, subject to the Road Closure limitations and any adjustments authorized by Owner ("Contract Time"). The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Time limits stated in the Contract Documents are of the essence of this Agreement. By executing this Agreement, Contractor confirms that the Contract Time is a reasonable period for performing the Work. Contractor shall not knowingly, except by agreement or instruction of Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by the Contract Documents.

A. **COMMENCEMENT.** It is not incumbent upon Owner to notify Contractor when to begin (other than the notice to proceed), cease or resume Work, to give early notice of the rejection of faulty Work, nor in any way to superintend so as to relieve Contractor of responsibility or of any consequence of neglect or carelessness by Contractor or its subordinates. All materials and labor shall be furnished at such time as shall be for the best interest of all trades concerned, to the end that the combined Work of all may be properly and fully completed in accordance with the progress schedule.

5. MISCELLANEOUS PROVISIONS.

A. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Indiana.

B. **SUCCESSORS AND ASSIGNS.** Owner and Contractor respectively bind themselves, their successors, assigns and legal representatives to the other party hereto in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to this Agreement shall assign this Agreement without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under this Agreement.

C. **WRITTEN NOTICE.** Written notice shall be deemed to have been duly served if delivered in person to the individual or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

D. **RIGHTS AND REMEDIES.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. No act or failure to act by Owner or Contractor shall constitute a waiver of a right or duty afforded them under this Agreement, nor shall such action or failure to act constitute approval of or acquiescence thereunder.

6. **ENTIRE AGREEMENT.** The Contract Documents form the Contract for Construction and represent the entire and integrated agreement between the parties hereto and supersede any and all prior negotiations, representations, or agreements, whether written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Owner and any subcontractor or (2) between any persons or entities other than Owner and Contractor.

IN WITNESS WHEREOF, the Contractor does hereby accept the foregoing agreement and has hereunder set his hand this 28th day of May, 2024.

Contractor: EiB Paving, LLC
(Business Name)

By: M.C. Shelley
(Signature)

Mike Shelley
(Printed)

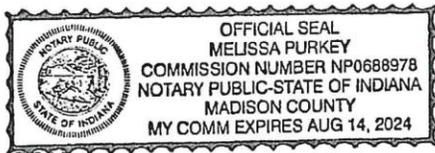
Project Manager
(Title)

STATE OF INDIANA

) SS:

COUNTY OF Delaware

Before me, the undersigned notary public, on this 28th day of MAY, 2024, Mike Shelley personally appeared as Contractor and being duly sworn, acknowledged the execution of the above Agreement.



SEAL

Melissa Purkey
(Notary Public - Signature)

Melissa Purkey
(Notary Public - Printed)

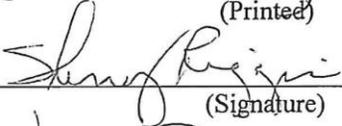
My Commission Expires: August 14/2024

Residing in MADISON County, Indiana.

IN WITNESS WHEREOF, the Owner does hereby accept the foregoing agreement and has hereunder set his hand this 3rd day of June, 2024.

Board of Commissioners, Delaware County,
Indiana

By: 
(Signature)
James King
(Printed)

By: 
(Signature)
Sherry Riggan
(Printed)

By: 
(Signature)
SHANNON HENRY
(Printed)

ATTEST:

Ed Carroll, Delaware County Auditor

BID OF

E & B Paving, LLC

(Contractor)

13551 W. 550 S.

(Address)

Daleville, IN 47334

FOR

PUBLIC WORKS PROJECTS

OF

Board of Commissioners of Delaware County, Indiana

Project: 2024-02 Road Paving Project Southwind Village

Bid Date: May 17, 2024

Filed _____

Action taken _____

CONTRACTORS BID FOR PUBLIC WORK - FORM 96

PART I

(To be completed for all bids Please type or print)

Date 5/17/2024

1. Governmental Unit (Owner): Board of Commissioners of Delaware County, Indiana

2. County : Delaware

3. Bidder (Firm): E & B Paving, LLC

Address: 13551 W. 550 S.

City/State: Daleville, IN 47334

4. Telephone Number: 765-289-7131

5. Agent of Bidder (if applicable): Cam Paddock

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of 2024-02 Road Paving Project Southwind Village (Governmental Unit) in accordance with plans and specifications prepared by Delaware County Engineering Department and dated for the sum of See Attached Bid Form Cents \$ See Attached Bid Form

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

If additional units of material included in the contract are needed, the cost of units must be the same as that shown in the original contract if accepted by the Governmental Unit. If the bid is to be awarded on a unit basis, the itemization of the units shall be shown on a separate attachment.

The Contractor and his subcontractors, if any, shall not discriminate against or intimidate any employee, or applicant for employment, to be employed in the performance of this contract, with respect to any matter directly or indirectly related to employment because of race, religion, color, sex, national origin or ancestry. Breach of the covenant may be regarded as a material breach of the contract.

CERTIFICATION OF USE OF UNITED STATES STEEL PRODUCTS (If applicable)

I, the undersigned bidder or agent as a contractor on a public works project, understand my statutory obligation to use steel products made in the United States. I.C. 5-16-8-2. I hereby certify that I and all subcontractors employed by me for this project will use U.S. steel products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

ACCEPTANCE

The above bid is accepted this 3rd day of June, 2024 subject to the following conditions: _____

Contracting Authority Members:

[Signature] [Signature]

PART II

(For projects of \$150,000 or more - IC 36-1-12-4)

Governmental Unit: Board of Commissioners of Delaware County, Indiana
 Bidder (Firm) E & B Paving, LLC
 Date: 5/17/2024

These statements to be submitted under oath by each bidder with and as part of his bid. Attach additional pages for each section as needed.

SECTION I EXPERIENCE QUESTIONNAIRE

1 What public works projects has your organization completed for the period of one (1) year prior to the date of the current bid?

Contract Amount	Class of Work	When Completed	Name and Address of Owner
\$ 1,248,836.00	Reconstruction (Riverside Drainage)	2023	Muncie Sanitary District
\$ 348,812.00	(Riverside-Jackson Trail)	2023	Delaware Advancement Corporation
\$ 2,795,863.00	Asphalt Resurface & ADA Ramps	2023	City of Muncie, IN
\$ 2,995,329.00	Asphalt Resurface	2023	Indiana Department Of Transportation

2 What public works projects are now in process of construction by your organization?

Contract Amount	Class of Work	Expected Completion Date	Name and Address of Owner
\$ 16,788,771.52	Reconstruction (R-40497)	Nov-24	Indiana Department Of Transportation
\$ 10,541,939.69	Asphalt resurface and ADA Curb Ramp reconstruction (R-44703)	Nov-24	Indiana Department Of Transportation
\$ 180,963.00	Reconstruction (hoyt Ave.)	Oct-24	Muncie Sanitary District
\$ 303,045.00	Access Control (R-42709)	May-24	Indiana Department Of Transportation

3 3 Have you ever failed to complete any work awarded to you? NO If so, where and why?

4 4 List references from private firms for which you have performed work.

TK Constructors - Mark Thurston

SC Case Construction - Skyler Case

Pridemark Construction - Mike Tschour

JG Case Construction - Chuck Case

BW Construction - Dustin Frye

SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE

1 1 Explain your plan or layout for performing proposed work. (Examples could include a narrative of when you could begin work, complete the project, number of workers, etc. and any other information which you believe would enable the governmental unit to consider your bid)

We will provide labor, equipment and material to complete the project in a workmanlike manner and in approved construction practices within the time requirements of the contract.

2 2 Please list the names and addresses of all subcontractors (i.e. persons or firms outside your own firm who have performed part of the work) that you have used on public works projects during the past five (5) years along with a brief description of the work done by each subcontractor.

Please see attached list.

3 3 If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you expect to require a bond. However, if you are unable to currently provide a listing, please understand a listing must be provided prior to contract approval. Until the completion of the proposed project, you are under a continuing obligation to immediately notify the governmental unit in the event that you subsequently determine that you will use a subcontractor on the proposed project.

4 4 What equipment do you have available to use for the proposed project? Any equipment to be used by subcontractors may also be required to listed by the governmental unit.

We will provide all necessary equipment to construct the project per Plans & Specifications.

5 5 Have you entered into contracts or received offers for all materials which substantiate the process used in preparing your proposal? Otherwise, please explain the rationale used which would corroborate the prices listed.

Yes

SECTION III CONTRACTOR'S FINANCIAL STATEMENT

Attachment of bidders financial statement is mandatory. Any bid submitted without said financial statement as required by statute shall thereby be rendered invalid. The financial statement provided hereunder to the governing body awarding the contract must be specific enough in detail so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

SECTION IV CONTRACTORS NON-COLLUSION AFFIDAVIT

The undersigned bidder or agent, being, duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership, represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

SECTION V OATH AND AFFIRMATION

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing bid for public works are true and correct to the best of my knowledge and belief.

Dated at Daleville, IN this 17th day of May, 2024

E & B Paving, LLC
(Name of Organization)

By

[Handwritten Signature]

Cam Paddock, Area Manager
(Title of Person Signing)

ACKNOWLEDGEMENT

STATE Indiana)
COUNTY OF Delaware) SS:

Before me, a Notary Public, personally appeared the above-named Cam Paddock and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to before me this 17th day of May, 2024



[Handwritten Signature]
Notary Public

My Commission Expires: August 14, 2024

County of Residence: Madison