

PLAINFIELD TOWN COUNCIL

RESOLUTION 2022-17

**A RESOLUTION APPROVING AN INTERLOCAL
COOPERATION AGREEMENT WITH HENDRICKS COUNTY**

WHEREAS, the Town of Plainfield and Hendricks County, individually and collectively, have determined to cooperate on the financing, design, and construction of improvements to Stafford Road and Bridge #237;

WHEREAS, a portion of the improvements are within the jurisdiction of the Town of Plainfield;

WHEREAS, Hendricks County and Plainfield recognize that improvements to Stafford Road and Bridge #237 will provide benefits to the residents of the Town and County;

WHEREAS, Hendricks County and Plainfield agree that these benefits are best accomplished through mutual cooperation;

WHEREAS, the Interlocal Cooperation Agreement signed by the Parties that outlines the responsibilities of each party to the agreement is attached as Exhibit A.

IT IS THEREFORE, RESOLVED THAT:

This Resolution and the attached Interlocal Cooperation Agreement is approved and will become effective upon its adoption by the Plainfield Town Council, the Hendricks County Council, and the Hendricks County Commissioners.

The Resolution is hereby passed and adopted this 28th day of February, 2022.

TOWN COUNCIL, TOWN OF PLAINFIELD
HENDRICKS COUNTY, INDIANA

DocuSigned by:

Robin G. Brandgard

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Robin G. Brandgard, President

DocuSigned by:

Bill Kirchoff

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Bill Kirchoff, Vice-President

DocuSigned by:

Kent McPhail

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Kent McPhail

DocuSigned by:

Dan Bridget

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Dan Bridget

Lance K. Angle

Attested by:

DocuSigned by:

Mark Todisco

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Mark J. Todisco, Clerk-Treasurer
of the Town of Plainfield

EXHIBIT A

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
PLAINFIELD, INDIANA AND
HENDRICKS COUNTY, INDIANA**

This Interlocal Cooperation Agreement (“Agreement”) is entered into by and between the Town of Plainfield (“Town”) and Hendricks County, Indiana (“County”) related to improvements to Stafford Road (CR 450 South) and Bridge #237.

RECITALS

WHEREAS, the Town and the County share an interest and responsibility for streets and roads located within and/or adjacent to their corporate limits; and

WHEREAS, the Town and the County, individually and collectively, have determined that the financing, design, and construction of improvements to Stafford Road and Bridge #237 (the “Project”) will be of public utility and benefit; and

WHEREAS, pursuant to I.C. § 8-17-1-1 and I.C. § 8-17-1-2 the County has the power to construct, alter, and maintain bridges in its jurisdiction; and the Town has the power to construct, alter, and maintain roads in its jurisdiction; and

WHEREAS, the County has entered into an agreement with INDOT for Federal Aid funding of the replacement of Bridge 237, identified as DES # 1902753, and INDOT has agreed to add the construction of improvements to Stafford Road adjacent to the Bridge project, identified as DES # 2100150, using 100% Plainfield local funds; and

WHEREAS, accordingly, the County and the Town desire to enter into this Agreement pursuant to the authority of I.C. § 36-1-7-2 to allow for the County to be the lead local agency for both of the above Federal Aid projects to conduct construction activities; and

WHEREAS, the County and the Town hereby enter this agreement pursuant to I.C. 36-1-7-9,

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions contained herein, the Town of Plainfield and Hendricks County agree as follows:

1. Representations. Each party represents to the other party that:
 - a. It will submit this Agreement for approval by the party’s executive body as required by I.C. § 36-1-7-10;
 - b. Subject to approval by the party’s executive body, it has all requisite power, authority and legal right to enter into and carry out the obligations set forth in this Agreement; and

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

2. Obligations of the County. The County shall be the lead agency on the Projects as it relates to interactions with INDOT and shall have the following obligations hereunder:

- a. To finance, or to see financed, all improvements including but not limited to design, utility relocation, right-of-way acquisition, construction, and construction inspection to satisfactorily complete and closeout DES #1902753 as herein referenced.
- b. Appoint a representative to act as liaison with the Town.
- c. Submit to the Town the design and construction plans and specifications for the bridge portion of the project for review by the Town, and cooperate with the Town with regard to any comments the Town may have regarding the plans and specifications and the common elements between the projects.
- d. Perform all activities necessary to construct the bridge portion of the project, including but not limited to design, engineering, environmental due diligence, testing and remediation, utility relocation, construction, and construction inspection, at its sole cost and expense except as otherwise provided for in the LPA/INDOT agreement.
- e. Submit all necessary plans, specifications, and other documents to INDOT as required for approval and bidding.
- f. Acquire all right-of-way required to construct the bridge portion of the Project, including inside the boundaries of the Town, by whatever means it deems necessary and appropriate, including through the exercise of eminent domain, at its sole cost and expense. Any such property interests acquired by the County shall be held in the name of Hendricks County.
- g. Comply with all applicable rules, regulations, ordinances, statutes and law concerning the Project, at its sole cost and expense.
- h. Obtain all necessary permits required to construct the bridge portion of the Project, at its sole cost and expense.
- i. Maintain the bridge and approaches at its sole cost and expense.

- j. Agree not to discriminate, and agree to require each of its contractors on the Project to agree in writing not to discriminate, against any employee or applicant for employment to be employed in the performance of the Project with respect to her or his hire, tenure, terms, conditions, or privilege of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identify, color, national origin, ancestry, age, disability, or United States military service veteran status.
- k. Before the Agreement takes effect, the County shall:
 - i. Record the agreement with the County Recorder;
 - ii. File the Agreement with the County Auditor and the Town Executive;
 - iii. File the Agreement with the Auditor of State.

3. Obligations of the Town. The Town shall have the following obligations hereunder:

- a. To finance, or to see financed, all improvements including but not limited to design, utility relocation, right-of-way acquisition, construction, and construction inspection to satisfactorily complete and closeout DES #2100150 as herein referenced.
- b. Appoint a representative to act as liaison with the County.
- c. Submit to the County the design and construction plans and specifications for the road portion of the project for review by the County, and cooperate with the County with regard to any comments the County may have regarding the plans and specifications and the common elements between the projects.
- d. Perform all activities necessary to construct the road portion of the project, including but not limited to design, engineering, environmental due diligence, testing and remediation, utility relocation, public bidding and contracting, construction, and construction inspection, at its sole cost and expense.
- e. Submit all necessary plans, specifications, documents, etc. to INDOT as required.
- f. Acquire all right-of-way required to construct the road portion of the Project, by whatever means it deems necessary and appropriate, including through the exercise of eminent domain, at its sole cost and expense. Any such property interests acquired by the Town shall be held in the name of the Town of Plainfield.
- g. Comply with all applicable rules, regulations, ordinances, statutes and law concerning the Project, at its sole cost and expense.

- h. Obtain all necessary separate permits required to construct the roadway portion of the Project as defined under DES #2100150, at its sole cost and expense.
 - i. Maintain the roadway at its sole cost and expense.
 - j. Agree to remit payment directly to INDOT in a timely manner for all pay items attributed to the roadway portion of the project at the time an invoice is submitted by INDOT.
 - k. Agree not to discriminate, and agree to require each of its contractors on the Project to agree in writing not to discriminate, against any employee or applicant for employment to be employed in the performance of the Project with respect to her or his hire, tenure, terms, conditions, or privilege of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identify, color, national origin, ancestry, age, disability, or United States military service veteran status.
 - l. Before the Agreement takes effect, the Town shall:
 - i. Record the agreement with the County Recorder;
 - ii. File the Agreement with the County Auditor and the Town Executive;
 - iii. File the Agreement with the Auditor of State.
 - m. Consent to the County's acquisition of right-of-way required to construct DES #19002753 inside the boundaries of the Town, including consent for the County to exercise eminent domain to acquire such right-of-way. The Town hereby acknowledges and agrees that the County may acquire such right-of-way in the County's name within the boundaries of the Town. The Town will cooperate in providing the County the assistance necessary to acquire legal right-of-way property required for the Project.
4. Joint Undertaking. The parties hereby acknowledge and agree that the purpose and intent of this Agreement is not to undertake the joint exercise of power within the meaning of I.C. § 36-1-7-2(a) and, therefore, this Agreement need not address other matters related to the financing, staffing, budget, administration through a joint board or separate legal entity, or the manner of acquiring, holding and disposing of real and personal property of a joint undertaking. There will be no jointly held property under this Agreement; however, in the event there is other jointly held property, it shall be distributed to Hendricks County.
5. Dispute Resolution. Any disputes that may arise under this Agreement shall be resolved by the parties' respective executive officers, or their designees. Failing resolution by the executive officers, the parties shall submit the dispute to mediation. Failing resolution of the dispute by mediation, either party may institute a suit in a court of law as provided for in Section 12 hereof.

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

7. Term.

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

b. Section 7.a. notwithstanding, the following Sections shall survive termination or expiration of this Agreement, unless otherwise specifically terminated by written agreement of the parties:

- i. Section 2.h. (maintenance of the Project);
- ii. Section 5 (dispute resolution);
- iii. Section 9.a. (indemnification of Hendricks County); and
- iv. Section 12 (applicable law; suit).

8. Notice.

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

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

To Hendricks County:

To the Town of Plainfield:

John E. Ayers, P.E.
Hendricks County Engineer
355 S. Washington Street #209
Danville, IN 46122

Scott Singleton
Transportation Director
206 W. Main Street
Plainfield, IN 46168

9. Indemnification.

- a. The Town of Plainfield hereby agrees to indemnify, defend, exculpate, and hold harmless Hendricks County and its officers, employees and agents, from and against any and all claims, suits and liabilities of any kind or character, including reasonable attorneys' fees ("Claims") which result or arise from any negligent acts or omissions of the Town or those for whom the Town is responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of the Town's duties or responsibilities under this Agreement, including construction and maintenance of the Project. Notwithstanding the preceding sentence, the obligation of the Town to indemnify, defend, exculpate, and hold harmless Hendricks County shall only arise if the Town would also be liable under I.C. 34-13-3, as may be amended from time to time. Furthermore, the liability of the Town shall be limited by the provisions of I.C. 34-13-3, as may be amended from time to time. The Town shall include in any contracts pertaining to the Project appropriate clauses to extend any indemnification and hold harmless obligation of its contractors in favor of the Hendricks County.
 - b. Hendricks County agrees to indemnify, defend, exculpate, and hold harmless the Town and its respective officers, employees and agents, from and against Claims, including reasonable attorneys' fees, which result or arise from any negligent acts or omissions of Hendricks County or those for whom Hendricks County is responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of the duties or responsibilities of Hendricks County under this Agreement. Notwithstanding the preceding sentence, the obligation of Hendricks County to indemnify, defend, exculpate, and hold harmless the Town shall only arise if Hendricks County would also be liable under I.C. 34-13-3, as may be amended from time to time. Furthermore, the liability of Hendricks County shall be limited by the provisions of I.C. 34-13-3, as may be amended from time to time.
10. Modification. The parties may alter, change or amend the terms and conditions of this Agreement only by mutual written agreement approved by the fiscal body of each party.
 11. Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties with respect to its subject matter, supersedes any prior discussions, negotiations, and understandings between them, and cannot be altered, changed or amended except as provided for in Section 10 hereof. The parties acknowledge that neither Hendricks County or the Town of Plainfield, nor any of their respective officers, employees, or agents have made any representations relied upon by any other party other than the agreements contained herein.
 12. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Indiana. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency. Suit, if any, shall be brought in the State of Indiana, County of Hendricks.

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

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

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

[The remainder of this page left blank intentionally]

APPROVED by the Hendricks County Council by [resolution/ordinance] adopted _____,
20__.

HENDRICKS COUNTY COUNCIL

David Wyeth, President

David Cox

Larry Scott

Brad Whicker

Eric Wathen

Caleb Brown

Larry Hesson

ATTEST:

APPROVED by the Hendricks County Commissioners by resolution adopted _____, 20__.

HENDRICKS COUNTY BOARD OF
COMMISSIONERS

Phyllis A. Palmer

Matthew D. Whetstone

Bob Gentry

ATTEST:

APPROVED by the Plainfield Town Council by [resolution/ordinance] adopted _____, 2020

TOWN COUNCIL, TOWN OF PLAINFIELD
HENDRICKS COUNTY, INDIANA

Robin G. Brandgard, President

Bill Kirchoff, Vice-President

Kent McPhail

Dan Bridget

Lance K. Angle

ATTEST:

Mark J. Todisco, Clerk-Treasurer
of the Town of Plainfield

APPROVED AS TO LEGAL FORM:

This document was prepared by Melvin R. Daniel, Town Attorney for Plainfield, Indiana, Taft Stettinius & Hollister LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204.