

TIPPECANOE COUNTY

CARROLL COUNTY TRAFFIC COUNT AGREEMENT

THIS AGREEMENT, effective as of the 6th day of April 2020, is entered into by and between the **County of Tippecanoe, State of Indiana** (hereinafter referred to as the “County”), by and through its Board of Commissioners and **Brian J. Fahey**, (hereinafter referred to as the “Contractor”);

WHEREAS, Area Plan Commission of Tippecanoe County (APCTC) has entered into a Contract with the Indiana Department of Transportation (INDOT) whereby APCTC will provide certain traffic counting activities in connection with the provision of planning assistance for small urban and rural areas in the State of Indiana, including Carroll County, Indiana (the INDOT Contract); and

WHEREAS, pursuant to the INDOT Contract APCTC is undertaking certain traffic counting activities, as more fully described in the INDOT Contract, and in the APCTC Small Urban and Rural Transportation Planning Assistance Program FY 2020 for Traffic Counting and Planning Support for Carroll County, copies of which are attached hereto and made a part hereof as Exhibit A, including without limitation the provision of up to 65 traffic counts on non-state jurisdictional roads including at-grade railroad crossings in Carroll County, Indiana (the Project); and

WHEREAS, the County desires to engage the Contractor to give certain assistance in connection with such undertakings;

NOW, THEREFORE, the County and the Contractor do mutually agree as follows:

1. **DEFINITIONS:** As used in this Agreement:
 - A. “Contractor” means the entity which has the responsibility for providing all traffic counting activities described in the INDOT Contract.
 - B. “Sub-Contractor” means an entity other than the Contractor that furnishes to the County and Contractor services or supplies (other than standard commercial supplies, office space or printing services).
2. **SCOPE OF SERVICES:** The Contractor shall perform all traffic counting services, activities and related administrative services required by the “INDOT Contract”. The Contractor will also be responsible for training a new Contractor who will work under a separate contract for training. Under the same separate contract the new Contractor may also perform traffic counting services should the need arise by mutual agreement of APCTC and the two Contractors. All traffic counting equipment and required vehicle safety and personal safety equipment will be provided by APCTC and remains the property of APCTC. The Contractor shall take all reasonable care to keep the equipment in proper working order.

Should an Executive Order by the Governor of the State of Indiana or a Tippecanoe County or Carroll County emergency resolution impede or interrupt the ability to perform all sixty-five (65) counts by June 30, 2020, counts may be performed under a new contract executed for FY2021.

3. **TERM OF AGREEMENT: This Agreement shall commence as of the 6th day of April 2020, and end on the 30th day of June 2020.** The term of this Agreement may be extended by mutual consent of the County and Contractor, subject to termination provisions set forth herein and the expiration date of the INDOT Contract.
4. **AMENDMENTS:** Any revision to this Agreement, including Appendices, shall only be made by written amendment to this Agreement.
5. **COMPLIANCE WITH INDOT CONTRACT:** All activities authorized by this Agreement shall be performed in accordance with the terms and conditions of the INDOT Contract.
6. **SUBCONTRACTING:** The performance covered by this Contract shall not be subcontracted, assigned or delegated without the prior written consent of the County.
7. **COMPENSATION:** Contractor shall be compensated for full and complete satisfactory performance of this Agreement in the amount of **\$100.00 for all delivered, usable traffic counts taken for the purposes of training a new Contractor** and in the amount of **\$155.00 per delivered, usable traffic counts** as determined by the Carroll County Highway Engineer up to the total sum of **Nine Thousand Fifteen and No/100 Dollars (\$9,015) for 12 training and up to 53 regular traffic counts.**

The Carroll County Highway Engineer shall determine which delivered counts are usable and which counts need to be re-set. APCTC shall perform and maintain the accounting for payment for each traffic count location and submit the appropriate claim form for compensation earned under this Agreement. Contractor shall not be required to submit a monthly invoice, but will be required to sign the accounting document prior to APCTC's submittal of a claim form for payment.

8. **FISCAL AND ADMINISTRATIVE RESPONSIBILITIES:** The Contractor agrees to comply with the following requirements and standards:
 - A. **Allowable and Allocable Costs.** Costs must be necessary, reasonable and directly related to the scope of services of this Contract. In addition, costs must be legal and proper. The budget included in the INDOT Contract shall control amounts of allowable expenditures within budget categories.
 - B. **Documentation of Costs.** All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers or other official documentation evidencing in proper detail the nature and propriety of charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

C. Restrictions on Disbursements. No money under this Agreement shall be disbursed by the Contractor to any Sub-Contractor except pursuant to a written contract which incorporates the applicable requirements of this Contract and INDOT's regulations and unless the Sub-Contractor is in compliance with INDOT's requirements for applicable accounting and fiscal matters.

D. Records and Reports.

(1) Establishment and Maintenance of Records:

Records shall be maintained in accordance with requirements prescribed by INDOT or the County with respect to all matters covered by this Agreement. Except as otherwise authorized by INDOT, such records shall be maintained for a period of three (3) years after final close-out of the INDOT Contract.

(2) Reports:

At such times and in such forms as INDOT or the County may require, there shall be furnished to INDOT or the County such statements, records, data and information as INDOT or the County may request pertaining to matters covered by this Agreement.

9. ACCESS TO RECORDS: At any time during normal business hours and as often as the County may deem necessary, Contractor shall make available to the County for examination, all of its records with respect to all matters covered by this Agreement. Further, the Contractor shall permit the County, to audit, examine and make excerpts of transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

10. TERMINATION OF AGREEMENT:

A. By giving thirty (30) days written notice specifying the effective date, the County may terminate this Agreement in whole or in part for cause, which shall include:

(1) Failure, for any reason, of the Contractor to fulfill in a timely and proper manner its obligations under this Agreement.

(2) Submission by the Contractor to the County of reports that are incorrect or incomplete, in any material respect;

(3) Ineffective or improper use of funds provided under this Agreement;

(4) Suspension or termination of the INDOT Contract with the County under which this Agreement is made, or the portion of it delegated by this Agreement; provided, however, that if the INDOT Contract is merely

reduced, the Contractor may adjust its budget and recommend Agreement amendments to the County.

- B. By giving thirty (30) days written notice specifying the effective date and the cause, the Contractor may terminate this Agreement in whole or in part for cause.
- C. This Agreement may also be terminated by either the County or the Contractor in whole or in part, by mutual agreement setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the County determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the County may terminate the award in its entirety.

11. CLAIMS AGAINST THE COUNTY: The Contractor agrees to defend, indemnify and save harmless the County from any and all claims of any nature whatsoever which may arise from the Contractor's performance of this Agreement; provided, however, that nothing contained in this Agreement shall be construed as rendering the Contractor liable for acts of the County, its officers, agents or employees. The Contractor further agrees to include the County as co-insured parties under all policies of liability insurance maintained by the Contractor respective to the subject Grant-funded Project.

12. GENERAL PROVISIONS

12.01 Independent Contractor. The parties agree that Contractor is an independent Contractor as that term is commonly used and is not an employee of Tippecanoe County. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by the County for any loss of any kind whatsoever. The Contractor has no authority, express or implied, to bind or obligate the County in any way.

12.02 Insurance Contractor shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect it and County from the claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor or by its subcontractors, if any, or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

- 1) Claims under Worker's Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work (unless Contractor has no employees or provides County with Certificate of Exemption under IC 22-3-2-14.5 and/or IC 22-3-7-34.5);
- 2) Claims for damages because of bodily injury and personal injury, including death, and;
- 3) Claims for damages to property.

Contractor's insurance (unless Contractor has provided shall be not less than the amounts shown below:

- A. If Contractor has any employees (unless Contractor has provided County with Certificate of Exemption under IC 22-3-2-14.5 and/or IC 22-3-7-34.5)
 - 1. Worker's Compensation & Disability: Statutory
 - 2. Employer's Liability:
 - Bodily Injury Accident \$100,000 each accident
 - Bodily Injury by Disease \$ 500,000 policy limit
 - Bodily Injury by Disease \$100,000 each employee
- B. Comprehensive automobile liability insurance with \$500,000 Combined Single Limit
- C. Comprehensive General Liability \$500,000 each occurrence and aggregate

With the prior approval of County, Contractor may substitute different types of coverage for those specified. Contractor shall be responsible for all deductibles.

Notwithstanding any other provision of this Agreement, Contractor shall provide all insurance coverage required the documents provided by County.

- 13. NON-DISCRIMINATION: Pursuant to IC 22-9-1-10, Contractor and its subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of the covenant may be regarded as a material breach of this Agreement.
- 14. VERIFY EMPLOYMENT ELIGIBILITY VERIFICATION: In accordance with IC 22-5-1.7, if Contractor has any employees or subcontractors, and the E-Verify program as defined in IC 22-5-1.7-3 is in existence, Contractor shall enroll in and verify the work eligibility status for all of Contractor's newly hired employees through the E-Verify program. Contractor shall not knowingly employ or contract with an unauthorized alien, nor shall Contractor retain an employee or contract with a person that Contractor subsequently learns is an unauthorized alien.

Contractor shall:

- 1. Sign and deliver to County a sworn affidavit that affirms that Contractor has enrolled and is participating in the E-Verify program;
- 2. Provide documentation to County substantiating that Contractor has enrolled and is participating in the E-Verify program; and

3. Sign and deliver to County an affidavit affirming that Contractor does not knowingly employ an unauthorized alien.

Contractor shall require all subcontractors, who perform work under this contract, to certify to Contractor in a manner consistent with federal law that the subcontractor, at the time of certification, does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of each subcontract.

County may terminate the contract immediately if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified thereof by County or another state agency or political subdivision. In accordance with IC 22-5-1.7, any challenge by Contractor to a termination pursuant to this provision must be made in Tippecanoe County Superior or Circuit Court not later than twenty (20) days after Contractor receives notice of such termination.

IN WITNESS WHEREOF, the County and the Contractor have executed this Agreement as of the date first above written.

CONTRACTOR

Signature: _____
Brian J. Fahey

COUNTY OF TIPPECANOE
STATE OF INDIANA

BY: _____
Tracy A. Brown, President
Board of Commissioners

Date: _____

Attest:

Robert A. Plantenga, Auditor

Date: _____

Exhibit A

1. Grant Agreement Concerning Federal Highway Funds for Metropolitan Planning between the Indiana Department of Transportation and the Area Plan Commission of Tippecanoe County (APCTC)
2. Small Urban and Rural Transportation Planning Assistance Program Proposal FY 2020 for Traffic Counting and Planning Support for Carroll County

Exhibit B

Summary of Deliverables

1. Up to sixty-five (65) usable traffic counts obtained from the locations approved by the Carroll County Highway Engineer and provided by APCTC. Twelve (12) locations selected by Contractor Brian J. Fahey will be counted as part of the training of new Contractor Robert Dunlap. The remaining Fifty-three (53) locations will be counted as part of the regular traffic counting program. Traffic count data shall be classified counts based on the thirteen (13) vehicle types as defined within the Federal Highway Administration's "Traffic Counting Guide". The counts shall be hourly, per lane, by direction, for a minimum of forty-eight (48) hours. Traffic count procedures shall conform to the "INDOT Traffic Counting Standards" for Small and Rural Planning Traffic Counting.
2. Contractor will download files from the traffic counters and provide the files to APCTC on a USB drive or the Contractor may bring the counters to the offices of APCTC where the files will be downloaded and submitted to the Carroll County Highway Engineer for approval.
3. Attend relevant meetings, site visits and conference calls as necessary.
4. Should an Executive Order by the Governor of the State of Indiana or a Tippecanoe County or Carroll County emergency resolution impede or interrupt the ability to perform all sixty-five (65) counts by June 30, 2020, counts may be performed under a new contract executed for FY2021.