

CONTRACT PRICE \$ _____

P.C. #: _____

Project #: _____

**AGREEMENT FOR CONSTRUCTION OF
STREETS, BRIDGES, CURBS, AND/OR SIDEWALKS
(TRANSPORTATION SYSTEMS) UNDER PRIVATE CONTRACT**

This Agreement made and entered into this _____ day of _____, 20____,

by and between _____

“DEVELOPER” (DEVELOPER’S NAME & MAILING ADDRESS) and

1. _____

2. _____

3. _____

“CONTRACTOR” (CONTRACTOR’S NAME & MAILING ADDRESS) and

the Consolidated City of Indianapolis, Department of Public Works (“CITY”);

WITNESSETH THAT:

WHEREAS, DEVELOPER has requested permission to construct under private contract the transportation system(s) described under Provision 1 of this Agreement, and to connect the transportation system(s) to CITY’s Transportation System within the public right-of-way, with all work to be done at the DEVELOPER’s sole expense; and

WHEREAS, DEVELOPER has designated the above-referenced CONTRACTOR to construction and install such transportation system(s); and

WHEREAS, CITY is willing to grant its permission for the construction and connection of the transportation system(s) by DEVELOPER, at DEVELOPER’s sole expense, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is agreed between the parties as follows:

1. DEVELOPER and CONTRACTOR are authorized to construct at DEVELOPER’s sole expense a transportation system located and more particularly described as follows, to wit:

2. Such construction shall be made in strict accordance with the plans approved by CITY under date of _____, 20____, the standard specifications of CITY pertaining to transportation system construction file in the Department of Public Works,

Chapters 561 and 691 of the Revised Code of the Consolidated City and County, and all other applicable laws, rules and regulations. Said plans, specifications, Code and all other applicable laws, rules and regulations are made a part of this Agreement by reference. Such construction and connection shall be subject at all times to the inspection, approval, and acceptance of CITY.

3. All excavations over which pavement, curbs, or walks are to be built or replaced within six (6) months after the backfilling thereof, shall be backfilled with granular material as directed by CITY or other proper governmental authority.

4. It is understood by the parties that this system, and the connection thereto, shall be used only for and as a transportation system.

5. DEVELOPER shall pursue the construction of the transportation system without delay to its final completion.

6. No liability of any kind for any part of the transportation system prior to its acceptance by CITY, shall attach to CITY. DEVELOPER and CONTRACTOR hereby indemnify and hold CITY harmless against all claims, demands, actions, causes of action, loss and expense of every nature and kind (including attorneys' fees) at any time asserted against CITY for or on account of any person, arising out of, or in any way connected with, the location, installation and construction of the transportation system, prior to its acceptance by CITY. This indemnity shall not be limited by reason of the enumeration of any insurance coverage required herein. Prior to the commencement of the construction authorized by this Agreement, CONTRACTOR shall furnish to CITY evidence of a public liability insurance policy in the minimum amount of One Hundred Thousand Dollars (\$100,000.00), each occurrence, Three Hundred Thousand Dollars (\$300,000.00), each aggregate, for bodily injury limits, and Fifty Thousand Dollars (\$50,000.00), each occurrence, One Hundred Thousand Dollars (\$100,000.00), each aggregate, for property damage limits.

7. DEVELOPER and/or CONTRACTOR may furnish a suitable irrevocable letter of credit or guarantee construction bond made payable to the City of Indianapolis, Department of Public Works and to the County of Marion with good and sufficient surety thereon, conditioned on the performance by the DEVELOPER and CONTRACTOR of the obligations set forth under this Agreement.

8. DEVELOPER and/or CONTRACTOR shall also, in the event any part of the transportation system is to be constructed across, over, on, through or under any public highway or right-of-way, furnish CITY suitable evidence of authority so to do, in a form acceptable to CITY, procured from the proper governmental agency having jurisdiction and control over such public highway or right-of-way. All necessary easements and related instruments pertaining to privately-owned property shall also be in a form acceptable to CITY.

9. The parties agree that inspection of the transportation system construction shall be handled in the following manner:

- a) At DEVELOPER's sole expense, CITY shall provide contract Inspection Services during the construction of the transportation system to determine whether the

system is constructed in accordance with approved plans and specifications and Chapters 561 and 691 of the Revised Code of the Consolidated City and County.

- b) Such Inspection Services shall not include construction engineering or construction stake out. DEVELOPER or its designated representative shall be solely responsible for the performance of construction engineering, stake out, and all construction work.
- c) DEVELOPER and/or CONTRACTOR shall notify the assigned “INSPECTING ENGINEER” at least seventy-two (72) hours in advance of the commencement of each of the following construction phases:
 - 1) Installation of transportation system, including but not limited to, subsurface drains, preparation of sub-base, pouring of concrete surface, sidewalks, curbs, and placement of asphalt base, binder, or surface;
 - 2) Backfilling of structures within the existing or proposed public right-of-way; and
 - 3) Testing of materials used in the construction of the transportation system.
- d) Any person working on or having control of the construction of the transportation system shall cooperate fully with the INSPECTING ENGINEER and shall have available on site a copy of the approved plans and specifications used to obtain the construction permit.
- e) DEVELOPER shall reimburse INSPECTING ENGINEER for the cost of the Inspection Services as follows: **Sixty-five dollars** (\$65.00) per hour of actual time spent on the project by the assigned INSPECTING ENGINEER performing the Inspection Services.
- f) Under this Agreement, the total cost of the Inspection Services is based upon an average estimated time of twenty (20) to thirty (30) hours per week per construction crew per project on each of the phases of construction set forth above, with the hourly rate set forth above.
- g) DEVELOPER must submit the balance of the total actual cost of the Inspection Services to INSPECTING ENGINEER prior to acceptance of the transportation system by CITY.
- h) Failure to follow the requirements of this Section 9 may result in CITY not accepting the transportation system and denying a transportation-related permit.

10. Upon completion of the proposed transportation system, a set of “as built” tracings including all curb and structure inverts and rim elevations, street grades, radii, curves, and tangents, shall be prepared by DEVELOPER and filed with CITY, before such system will be accepted into CITY’s Transportation System.

11. Upon completion of the proposed transportation system, CONTRACTOR or DEVELOPER shall furnish a completion affidavit in a form prescribed by CITY, and DEVELOPER or CONTRACTOR shall also furnish a suitable irrevocable letter of credit or guarantee maintenance bond made payable to the City of Indianapolis, Department of Public Works and to the County of Marion with good and sufficient surety thereon and acceptable to CITY in an amount of twenty percent (20%) of the total contract price for said improvement. The letter of credit or bond shall be in the form required by CITY and shall guarantee material and construction for a period of three (3) years from the date of final acceptance. DEVELOPER or CONTRACTOR shall furnish a performance bond for placement of final surface layer and sidewalks for one hundred percent (100%) of the contract price until such time as the final surface and sidewalks have been approved by the CITY.

12. After approval and acceptance by CITY and the Board of Public Works, the transportation system shall become a part of the Transportation System of the Transportation District of CITY and shall be thereafter under control, authority and jurisdiction of CITY, to the same extent and in the same manner as though the system had been originally constructed by CITY under a public improvement contract.

[REST OF PAGE LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties acting by and through their authorized representatives have executed this instrument on the day and year written above, and affirm that no unauthorized alterations of this document have taken place.

DEVELOPER:

Name of Corporation (If Applicable)

Signature (Of Officer)

Printed Name and Title

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE ME, the undersigned a Notary Public in and for said County and State, personally appeared _____, DEVELOPER, who acknowledged the execution of the foregoing Agreement to be his/her free and voluntary act and deed.

WITNESS my hand and Notarial seal this ____ day of _____, 20 ____ .

COUNTY OF RESIDENCE

SIGNATURE

COMMISSION EXPIRATION DATE

PRINTED NAME

RECOMMENDED FOR APPROVAL:

(signature)

(print)

Project Manager,
Department of Code Enforcement

APPROVED AS TO LEGAL FORM:

Office of Corporation Counsel

CITY:

David Sherman, Director by designee
Department of Public Works

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, on the _____ day of _____, 20 _____.

COUNTY OF RESIDENCE

SIGNATURE

COMMISSION EXPIRATION DATE

PRINTED NAME

This instrument was prepared by the Office of Corporation Counsel, 200 E. Washington Street, Suite 1601, Indianapolis, Indiana 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Office of Corporation Counsel, 200 East Washington Street, Suite 1601, Indianapolis, Indiana 46204

S:\Common\PRMT\INFRASTR\LEGAL DOCUMENTS 1/12/10