

AGENDA RESERVATION REQUEST

**CITY OF FRANKLIN
BOARD OF PUBLIC WORKS AND SAFETY**
Please type or print

Date Submitted:	September 13, 2011	Meeting Date:	September 20, 2011
Contact Information			
Requested by:	Krista Linke		
On Behalf of Organization or Individual:		Planning Department	
Telephone:	346-1250		
Email Address:	klinke@franklin-in.gov		
Mailing Address:	70 E. Monroe St.		
Describe Request			
<p>The Redevelopment Commission has paid for the design of wayfinding signage in the City of Franklin (see attached sign illustrations and locations). INDOT has to approve these signs as some of them are located in INDOT right-of-way. As part of the approval process they require a signed agreement before the signs can be installed. The Redevelopment Commission has not yet approved funding for the manufacturing and installation of these signs.</p>			
List Supporting Documentation Provided:			
Agreement, sign illustrations and sign locations map			
Who will present the request?			
Name:	Krista Linke	Telephone:	346-1250

The Franklin Board of Works meets on the 1st and 3rd Tuesday of each month at 9:00 a.m. in the Council Chambers of City Hall located at 70 E. Monroe Street. In order for an individual and/or agency to be considered for new business on the agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 12:00 p.m. on the Wednesday prior to the Board of Works meeting.

**AGREEMENT
INSTALLATION OF WAYFINDING SIGNAGE ON
VARIOUS STATE HIGHWAYS
IN AND NEAR THE CITY OF Franklin
Johnson COUNTY, INDIANA
EDS #A249-12-320189**

THIS AGREEMENT made and entered into this ____ day of _____, 2011, by and between the STATE OF INDIANA through the INDIANA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "INDOT" and the CITY OF FRANKLIN hereinafter referred to as the "CITY" through their duly authorized and undersigned officials.

W I T N E S S E T H

WHEREAS: The CITY has requested the installation of Wayfinding Signage (WFS) on various state highways and city streets in and around the city of Franklin, said signs or informational plaques or shields designed as part of a comprehensive system of signs to provide motorists with directional information to businesses within a community to offer services and activities for tourists; and

WHEREAS: The installation of the WFS guiding motorists to attractions in and around the city will be of special benefit to the CITY; and

THEREFORE: It is agreed by and between INDOT and the CITY that the WFS shall be installed at INDOT approved locations on state highways and city streets under terms and conditions stated herein:

I. TERM OF AGREEMENT

This Term of this Agreement shall be for four (4) years from the date it is approved and signed by the Attorney General of Indiana or an authorized representative. This Agreement may be renewed with the mutual acceptance of both parties for two (2) additional four (4) year terms. The Agreement shall end on the earlier of:

- a. One year from the date the Agreement is approved by INDOT if construction activities on the right-of-way have not begun within one year.
- b. The date the WFS noted by terms of this Agreement are removed from the highway system.

II. DESIGN

- a. The CITY shall retain a consulting engineer acceptable to INDOT to develop plans and specifications for the WFS. The general locations of the signage are listed in "Exhibit A". Prior to designing the signs and installations, the consultant shall meet with the Seymour District Traffic Engineer (DTE) and the CITY, or their representatives, to determine and approve in the field the exact locations where the signs will be installed and the attractions that may be listed. The WFS shall meet all applicable clear zone and/or break away criteria for crash safety.
- b. The plans for the WFS shall be approved by the DTE prior to the contract letting. The CITY shall provide a copy of the approved plans to the DTE. Any field changes to the approved plans shall be approved by the DTE and the CITY prior to construction. The CITY shall provide an "As Built" plan to the DTE for INDOT records.

III. CONSTRUCTION

- a. The sign installations shall be in accordance with the approved plans and approved revisions as well as all rules and regulations of the INDOT and all State and Federal laws pertaining to the use of labor. Said work shall be performed in a manner and quality meeting the satisfaction and approval of the INDOT with regard to proper highway engineering and planning.
- b. The CITY shall schedule a preconstruction conference at a time and place acceptable to the DTE. At a minimum, the DTE, representatives

of the CITY, the consulting engineer, the contractor, and representatives of any affected utilities shall attend the conference. The contractor shall present his schedule for accomplishing the work and plans for traffic control, if needed.

- c. The CITY shall notify the INDOT Seymour District Office at least five working days prior to beginning installation of the WFS. Installation work must begin within one year of execution of this Agreement or this Agreement will be void and a new Agreement will be needed.
- d. A final inspection of the WFS will be required. Representatives of the DTE shall witness the inspection. The CITY may attend the inspection. The WFS installations shall be found satisfactory by the INDOT and the CITY before the installation is acceptable.
- e. After acceptance of the completed installations, the WFS shall remain the property of the CITY. The CITY shall be responsible for maintenance of the WFS. The CITY shall maintain an adequate inventory of all materials needed to properly maintain the WFS. The CITY shall notify the DTE at least one day prior to beginning repair or maintenance work on the WFS so that an INDOT representative may be present during the repair or maintenance work. In the event of an emergency repair, the CITY shall perform such work immediately and notify INDOT within 1 day of the work. The CITY shall pay all costs associated with maintenance, repair or removal of the parts of the WFS. The CITY shall pay all costs associated with relocation of the WFS necessitated by highway construction undertaken by the INDOT.
- f. Locations may be added to "Exhibit A" by written request of the CITY to the Seymour District Director and written concurrence from the Seymour District Director. At locations added to "Exhibit A", all provisions of this Agreement shall apply. The CITY may remove any

WFS at any time with the concurrence of the Seymour District Director. The CITY will notify the Seymour District of said intended removal in writing. An attraction may not be added to an existing WFS without written approval of the Seymour District Director. If the INDOT receives a request for separate signs for an attraction that may be appropriate for inclusion on the WFS, upon written request from INDOT, the CITY will add the attraction to the WFS at no cost to the INDOT.

g. A WFS on INDOT routes may be permanently removed and returned to the CITY by the INDOT when in the opinion of the INDOT the WFS is not adequately maintained. Adequate maintenance shall include but not be limited to removal of the name of any attraction that ceases to do business at the location directed by the WFS.

h. This Agreement for WFS does not supersede any previous Agreements between the parties for WFS except as said Agreements may pertain to installation of signs which offer duplicate messages to those on the WFS. Signs with duplicate messages shall be removed. If the removed sign is the property of INDOT, said sign shall be returned by the CITY to the INDOT Seymour District Traffic Office.

IV. RIGHTS OF ENTRY

The INDOT hereby grants the CITY permission to enter upon the INDOT right-of-way for the purpose of installation, inspection, maintenance, repair or removal of the WFS.

V. CITY RESPONSIBILITIES

The CITY responsibilities shall include but is not limited to:

a. Wherever in this contract any obligation or responsibility is assumed by the CITY, same shall be deemed an obligation of said CITY.

VI. General Provisions

1. Assignment

The CITY binds its successors and assignees to all terms and conditions of this Agreement. The CITY shall not assign or subcontract the whole or any part of this Agreement without INDOT's prior written consent.

2. Authority to Bind CITY

The CITY warrants that it has the necessary authority to enter into this Agreement. The signatory for the CITY represents that he/she has been duly authorized to execute this Agreement on behalf of the CITY, and has obtained all necessary or applicable approval to make this Agreement fully binding upon the CITY when his/her signature is affixed and accepted by INDOT.

3. Compliance with Laws

- a. The CITY 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 of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Agreement shall be reviewed by INDOT and the CITY to determine whether formal modifications are required to the provisions of this Agreement.
- b. The CITY 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 Indiana Code § 4-2-6, et seq., Indiana Code § 4-2-7, et. seq., the regulations promulgated thereunder, and Executive Order 05-12, dated January 12, 2005. If the CITY is not familiar with these ethical requirements, the CITY should refer any questions to the Indiana State Ethics Commission, or visit

the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>>. If the CITY or its agents violate any applicable ethical standards, the State may, at its sole discretion, terminate this Agreement immediately upon notice to the CITY. In addition, the CITY may be subject to penalties under Indiana Code §§ 4-2-6 and 4-2-7, and under any other applicable state or federal laws.

- c. The CITY certifies by entering into this Agreement, that neither it nor its principal(s) are presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana.
- d. The CITY warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify INDOT of any such actions.
- e. If a valid dispute exists as to the CITY's liability or guilt in any action initiated by the State of Indiana or its agencies, and INDOT decides to delay, withhold, or deny placement of the WFS, the CITY may request that the WFS be fabricated and erected, without delay. The CITY must submit, in writing, a request for review to INDOT. A determination by INDOT shall be final and binding on the parties and not subject to administrative review. Any work that INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.
- f. The CITY represents and warrants that the CITY shall obtain and maintain all required permits, licenses, registrations

and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INDOT. Failure to do so may be deemed a material breach of this Agreement and grounds for termination and denial of further work with the State.

g. The CITY hereby represents and warrants that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

h. As required by IC 5-22-3-7: (1) the CITY and any principals of the CITY certify that (A) the CITY, 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 CITY will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law. (2) The CITY and any principals of the CITY certify that an affiliate or principal of the CITY and any agent acting on behalf of the CITY or on behalf of an affiliate or principal of the CITY: (A) except for de minimis and nonsystematic violations, 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 the Agreement, even if IC 24-4.7 is preempted by federal law.

- i. As required by IC 4-13-2-14.8: Notwithstanding any other law, rule, or custom, a person, company or CITY whom has a Agreement with the State or submits invoices to the state for payment shall authorize, in writing, the direct deposit, by electronic funds transfer, of all payments by the state to the person or company. The written authorization must designate a financial institution and an account number to which all payments are to be credited. For forms and additional information, the Attraction may visit the Auditor of State's website at www.in.gov/auditor/forms

4. Disputes

- a. Should any disputes arise with respect to the Agreement, the CITY and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- b. The CITY agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Agreement that are not affected by the dispute. Should the CITY fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the CITY as a result of such failure to proceed shall be borne by the CITY, and the CITY shall make no claim within ten (10) working days following notification in written by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of this dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the CITY and INDOT within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration or mediation for the determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

5. Drug-Free Workplace

The CITY hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The CITY will give written notice to the STATE within ten (10) days after receiving actual notice that an employee has been convicted of a criminal drug violation occurring in the CITY's workplace within the state of Indiana.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the CITY for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total set forth in this Agreement is in excess of \$25,000.00, the CITY hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following certification:

Pursuant to Executive Order No. 90-5, April 12, 1990, issued by Governor of Indiana, the Indiana Department of Administration requires the inclusion of this certification in all Agreements with and grants from the State of Indiana in excess of \$25,000.00. No award of an Agreement shall be made, the total amount of which exceeds \$25,000.00, shall be valid unless and until this certification has been fully executed by the CITY and attached to the Agreement as part of the Agreement documents. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of the Agreement payments, termination of the Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

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

a. Publishing and providing to all of its employees within the state of Indiana a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CITY's workplace within the state of Indiana and specifying the actions that will be taken against employees for violations of such prohibition;

b. Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the CITY's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

c. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

d. Notifying in writing the Indiana Department of Transportation and the Indiana Department of Administration within ten (10) days after receiving notice from an employee under subdivision (C) (2) above or otherwise receiving actual notice of such conviction;

e. Within thirty (30) days after receiving notice under subdivision (C) (2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

f. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

6. Force Majeure.

In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not

the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

7. Funding Cancellation Clause.

When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Agreement, this Agreement shall be canceled. A determination by either Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

8. Governing Laws.

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana.

9. Headings

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

10. Indemnification

The CITY agrees to indemnify, defend, and hold harmless INDOT, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the CITY and/or its contractors in the performance of this Agreement. The State shall not provide such indemnification to the CITY.

11. Non-Discrimination.

Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the CITY and its agents and subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of the work under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement. Acceptance of this Agreement also signifies compliance with applicable Federal laws, regulations and Executive Orders prohibiting discrimination in the provision of services based on sex, disability or status as a veteran.

The CITY understands that the State is a recipient of federal funds. Pursuant to that understanding, the CITY agrees that if the CITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CITY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CITY shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

12. NOTICE

a. Wherever in or under this agreement notice must or may be given by INDOT to the CITY, such notice shall be deemed given when transmitted verbally or in writing, including electronic communications to the CITY, at 70 E Monroe Street, Franklin, INDIANA, 46131 and deposited postage paid in the US Mail system of collection.

- b. Wherever in or under this Agreement notice must or may be given by INDOT to the Project Engineer, such notice shall be deemed given when transmitted verbally or in writing including electronic communications to the Project Engineer by INDOT.
- c. Wherever in or under this Agreement notice must or may be given by the CITY to INDOT, such notice shall be deemed given when received, verbally or in writing including electronic communications, by the Traffic Engineer at the Seymour District Office, 185 Agrico Lane Seymour, IN 47274

13. PAYMENTS

This Agreement requires no direct or indirect payments between the parties to the Agreement. The parties to the Agreement acknowledge that the intangible benefits to traffic flow, upon the roadways within the City, is sufficient consideration.

To providers other than INDOT,

- a. The CITY shall pay all costs associated with maintenance, repair or removal of the individual components of the WFS.
- b. The CITY shall pay all costs associated with relocation of the WFS necessitated by highway construction undertaken by the INDOT.

14. Miscellaneous

- a. This Agreement may be amended from time to time hereafter only in writing executed by the parties hereto and submitted to the Indiana Attorney General for approval as to form and legality. No verbal change, modification, or amendment shall be effective unless in writing and signed by the parties and approved by the Attorney General or his authorized representative. Except, elements of the WFS design may be added or deleted in the normal course of plan review without submittal to the Attorney General for approval. The provisions hereof constitute the entire agreement between the

parties and supersede any verbal statement, representations, or warranties, stated, or implied.

- b. The parties agree that they will, at any time and from time to time, from and after the execution of this Agreement, upon request, perform or cause to be performed such acts, and execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such documents as may be reasonably required for the performance by the parties of any of their obligations under this Agreement.
- c. No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
- d. This Agreement shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.
- e. This Agreement supersedes and revokes any previous Agreement between said parties hereto pertaining to WFS installation at this location. Such above terms and conditions as they apply to INDOT shall remain in effect only so long as the location mentioned herein is a part of the State Highway System.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Non-Collusion - The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

In Witness Whereof, ATTRACTION and the State of Indiana have, through duly authorized representatives, entered into this Supplement. The parties having read and understand the forgoing terms of the Contract do by their respective signatures dated below hereby agree to the terms thereof.

City of Franklin's Board of Works

STATE OF INDIANA
Indiana Department of Administration

Name/ Title

Robert D. Wynkoop, Commissioner (For)

Date: _____

Date: _____

Name/ Title

Indiana State Budget Agency

Date: _____

Adam M. Horst, Director (For)

Name/ Title

Date: _____

Date: _____

Approved as to Form and Legality:

STATE OF INDIANA
Indiana Department of Transportation

Gregory F. Zoeller (For)
Attorney General of Indiana

Ryan Gallagher
Director, Traffic Management

Date: _____

Date: _____

EXHIBIT "A"
Wayfinding Sign Locations

Sign Number	Sign Location
1	SR 44 & Eastview intersection, panel faces: East
2	SR 44 (Jefferson St.) & Forsythe St. intersection, panel faces: North
3	SR 44 (Jefferson St.) & Water St. intersection, panel faces: West
4	SR 44 (Jefferson St.) & E Court St. intersection, panel faces: East
5	SR 44 (Jefferson St.) & W Court St. intersection, panel faces: West
6	SR 44 (Jefferson St.) & Morton St. intersection, panel faces: South
7	SR 44 (Jefferson St.) & Morton St. intersection, panel faces: North
8	SR 44 & Forsythe St. intersection, panel faces: East
9	SR 44 (Jefferson St.) near college entrance, panel faces: East

Notes

1. Sign # 10 is not part of the wayfinding sign agreement; City will apply for it separately as a city boundary sign or under the INDOT Permit Process.
2. All signs must be located in such a manner that they do not obstruct the existing regulatory & warning signs