

## APPENDIX N-2

### ***Addendum 1 to Technical Memorandum: I-69 ORX Section 4(f) Property Recommendations Relative to Parks, Recreation Areas, and Refuges***

**Clarification Note:** This document was completed before the development of Central Alternative 1B Modified (Selected); therefore, the alternative is not included in the document. Applicable information regarding Central Alternative 1B Modified (Selected) is provided in the FEIS.



## MEMORANDUM

**To:** Dan Prevost, Parsons  
**From:** Caroline Ammerman, Stantec  
**Date:** April 27, 2018  
**Subject:** Addendum to August 21, 2017 Memorandum Re: I-69 ORX Section 4(f) Property Recommendations Relative to Parks, Recreation Areas and Refuges

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### Introduction

The Memorandum, "I-69 ORX Section 4(f) Property Recommendations Relative to Parks, Recreation Areas and Refuges," dated August 21, 2017, provides information relevant to the determination of Section 4(f) applicability to parks, recreation areas and refuges within the I-69 Ohio River Crossing (I-69 ORX) review area shown on Figure 1 of the August 21st Memorandum. This Addendum provides information regarding the applicability of Section 4(f) to two additional sites that were not discussed in the original Memorandum. These include: Pigeon Creek Greenway, a multi-use trail in the City of Evansville, and the Green River National Refuge, a potential national wildlife refuge in the confluence of the Green River and Ohio River in Henderson County, Kentucky.

### Pigeon Creek Greenway

The Pigeon Creek Greenway Passage, designated a National Recreational Trail on June 5, 2004, is a multi-use trail in Evansville which follows along the Ohio River and Pigeon Creek. The existing trail stretches approximately 6.75 miles and features scenic resting areas and interesting sculptures with access to parks, neighborhoods and city attractions (2018, Evansville/Vanderburgh website). The existing trail currently extends from an access at Sunset Park in Evansville, Indiana and proceeds north along the Ohio River and Pigeon Creek to its terminus at the Heidelberg boat ramp parking lot as shown on Figure A1 of this addendum (2015, City of Evansville and Evansville MPO). The Pigeon Creek Greenway Passage is publicly owned and maintained by the City of Evansville Parks and Recreation Department (2018, Lutz). The completed section of the Pigeon Creek Greenway Passage is outside of the I-69 review area. However, there are plans to continue the trail to eventually connect to Wesselman Woods Nature Preserve and Angel Mounds on the southeast side of Evansville. Within the I-69 ORX review area,

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the greenway is planned to extend along the south side of I-69 within the existing right-of-way as shown on Figure A2 of this addendum. When completed, the Pigeon Creek Greenway Passage will circle the City of Evansville for a total length of approximately 42 miles, as shown in Figure A1 (2015, City of Evansville and Evansville MPO).

Although funding has not yet been appropriated for the remaining sections of the Greenway, the conceptual route of the Pigeon Creek Greenway Passage is included in the following local plans: *Pigeon Creek Greenway Passage Master Plan* (1994, City of Evansville), the *Evansville Bicycle and Pedestrian Connectivity Master Plan* (City of Evansville/Evansville MPO, 2015), the *Evansville Master Plan for Bicycle and Pedestrian Facilities* (2015, Evansville) and the *Evansville-Vanderburgh County Comprehensive Plan 2015-2035*.

Currently, there is an executed Shared Use Agreement between the City of Evansville and Indiana Department of Transportation (INDOT) allowing the trail to use the I-69 right-of-way. This Agreement, which was originally enacted on June 29, 2001 and effective for a ten-year period, was renewed on June 29, 2011 for an additional ten years. The Agreement states that the land that would be utilized for the bike path would not become subject to Section 4(f) of the Federal-Aid Highway Act of 1988 (2001, 2011, City of Evansville and State of Indiana). This Agreement expires in 2021, but the City will likely request that it be extended again at that time (2018, Evansville-Vanderburgh County Area Plan Commission). The Shared Use Agreement dated June 29, 2001 and the Supplemental Shared Use Agreement dated June 29, 2011 are included as Attachment A of this addendum.

**Recommendation for Section 4(f) Applicability:** Section 4(f) is not applicable to the proposed section of Pigeon Creek Greenway that would occur in the I-69 right-of-way because the Shared Use Agreement in place between the City of Evansville and INDOT stipulates that this section of the Pigeon Creek Greenway would not be subject to Section 4(f). It is anticipated that this agreement will be renewed when it expires in 2021.

### **Proposed Green River National Wildlife Refuge**

The proposed Green River National Wildlife Refuge consists of approximately 24,000 acres, to be acquired willingly from landowners, in the Green River Bottoms area near the confluence of the Green River and Ohio River in Henderson County, Kentucky (2018, Congressional Record). The land included in the refuge would be protected, restored, and managed by the U.S Fish and Wildlife Service (USFWS). The purpose of the refuge would be to restore bottomland hardwood forested wetland habitats to benefit wildlife, migratory waterfowl, and shore birds. In addition, the refuge would provide hunting and fishing opportunities, as well as environmental education,

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interpretation, and wildlife-oriented recreation. A Final Environmental Assessment prepared by the USFWS received a Finding of No Significant Impact (FONSI) in 2001 (2001, USFWS). A map of the proposed acquisition boundary of the refuge is included in Attachment B of this addendum.

No action was taken to approve or establish the refuge until March 22, 2018, when Congress directed USFWS to approve the establishment of the Green River National Wildlife Refuge. The language directs the Service to wait to establish the boundaries of the refuge until the new I-69 interstate bridge corridor is selected. (2018, Congressional Record).

Recommendation for Section 4(f) Applicability: Section 4(f) does not apply to the proposed Green River National Wildlife Refuge because the final boundaries of the Green River National Wildlife Refuge are not established and the property to be included in the refuge is not yet publicly-owned.

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10, 2018**

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**REFERENCES**

**City of Evansville**

1994 *Pigeon Creek Greenway Passage Master Plan*, 1994.

**City of Evansville and Evansville MPO**

2015 *Evansville, Indiana Bicycle and Pedestrian Connectivity Master Plan*, 2015.

**City of Evansville and State of Indiana**

2001 Agreement for Bicycle/Pedestrian Trail, June 29, 2001.

2011 Renewal/Amendment #1 Agreement for Bicycle/Pedestrian Trail, June 29, 2011.

**Congressional Record**

2018 164 Cong. Rec. 569, accessed April 27, 2018 at  
<https://www.congress.gov/crec/2018/03/22/CREC-2018-03-22-bk2.pdf>

**Evansville-Vanderburgh Area Plan Commission**

2016 *Evansville-Vanderburgh County Comprehensive Plan 2015-2035*, June 27, 2016.

2018 Comments on Proposed Alternatives for the I-69 Ohio River Crossing.

**Evansville, Indiana and Vanderburgh County website**

2018 Department of Parks and Recreation, accessed March 2, 2018  
<http://www.evansville.in.gov/Index.aspx>

**Lutz, J., City of Evansville, Department of Parks and Recreation**

2018 Personal communication with C. Ammerman on March 2, 2018.

**U.S. Fish and Wildlife Service**

June 2001 *Final Environmental Assessment and Land Protection Plan, Proposed Establishment of  
Green River National Wildlife Refuge, Henderson County, Kentucky.*

## FIGURES

## PIGEON CREEK GREENWAY PASSAGE

- EXISTING
- PLANNED
- DESIGN/CONSTRUCTION

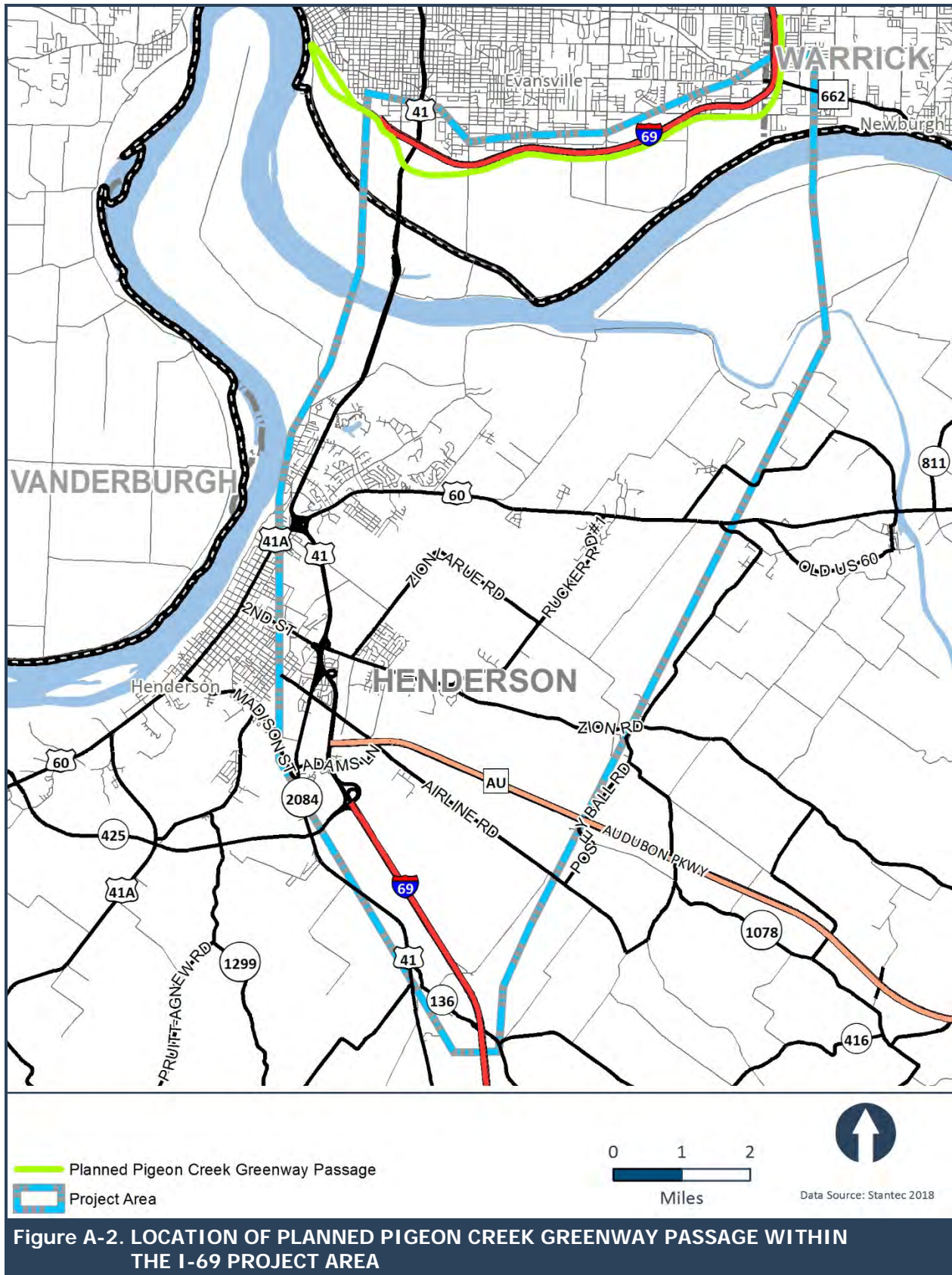


Source: Evansville, Indiana Bicycle and Pedestrian Connectivity Master Plan, 2015.

Figure A1  
Pigeon Creek Greenway Passage



ADDENDUM TO MEMORANDUM – I-69 ORX SECTION 4(F) PROPERTY RECOMMENDATIONS  
RELATIVE TO PARKS, RECREATION AREAS AND REFUGES





**ATTACHMENT A**

**AGREEMENT FOR PIGEON CREEK GREENWAY PASSAGE TRAIL**

*Stensaa*



## Evansville Urban Transportation Study

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Civic Center Complex, Room 316, 1 N.W. Martin Luther King, Jr. Blvd. Evansville, IN 47708-1833 (812) 436-7833  
FAX-(812) 436-7834 Hearing Impaired/TDD (812) 436-4925 e-mail: euts@evansville.net

ROSE M. ZIGENFUS, M.P.A.  
EXECUTIVE DIRECTOR

**TO:** The City of Evansville Board of Park Commissioners  
**FROM:** *R.M.Z.* Rose M. Zigenfus  
**SUBJECT:** Agreement for Bicycle/Pedestrian Trail  
**DATE:** July 16, 2001

Enclosed you will find the Agreement for Bicycle/Pedestrian Trail. If you have any further questions, please contact Pamela Drach or me at (812) 436-7833.



## INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue  
Room N755  
Indianapolis, Indiana 46204-2249  
(317) 232-5533 Fax: (317) 232-0238

FRANK O'LANNON, Governor  
CRISTINE M. KLIKA, Commissioner

Writer's Direct Line

July 11, 2001

317-232-5653

Ms. Rose Zigenfus, Executive Director  
Evansville Urban Transportation Study  
316 Civic Center  
Evansville, IN 47708

Dear Rose:

Attached you will find the long awaited signed agreement between the Indiana Department of Transportation and the City of Evansville Board of Park Commissioners that permits use of a portion of the I-164 right-of-way for development of the Pigeon Creek Greenway Passage Trail. This is certainly uncharted territory for all of us in Indiana.

Please make a copy for your files and forward the original to the Evansville Parks Department. I want to thank you and Pam Drach for your help in bringing this agreement about. Now the City and local interest groups can move forward on the trail project. For your information, the effective date of this agreement is June 29, 2001.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Michael O'Loughlin".

Michael O'Loughlin  
Bicycle & Pedestrian Program Manager

JUL 12 2001

## **AGREEMENT FOR BICYCLE/PEDESTRIAN TRAIL**

THIS AGREEMENT is made and entered into by and between the State of Indiana, acting by and through the Indiana Department of Transportation (hereinafter referred to as "INDOT") and the City of Evansville Board of Park Commissioners, acting by and through its proper officials (hereinafter referred to as "CITY").

### **WITNESSETH**

**WHEREAS**, the CITY desires to construct a multi-use trail for bicycle and pedestrian usage as part of the Pigeon Creek Greenway Passage System of public use trails in the City of Evansville and Vanderburgh County, Indiana (hereinafter referred to as "Facility"); and

**WHEREAS**, the CITY has submitted plans, attached hereto as Exhibit "A" and made a part hereof, that represent the entire scope of the Facility; and

**WHEREAS**, the CITY has submitted an application for Transportation Enhancement money, attached hereto as Exhibit "B" and made a part hereof, to complete the Facility; and

**WHEREAS**, the CITY and INDOT have determined that no feasible alternative route exists in which the CITY can construct the Facility outside of the Interstate 164 limited access right-of-way (hereinafter referred to as "LA R/W"), between Veterans Memorial Parkway and Pollack Avenue in the City of Evansville and Vanderburgh County; and

**WHEREAS**, INDOT has, in conjunction with the Federal Highway Administration (hereinafter referred to as "FHWA"), determined that the Facility shall be located within those parts of the Interstate 164 LA R/W, between Veterans Memorial Parkway and Pollack Avenue in the City of Evansville and Vanderburgh County; and

**WHEREAS**, the construction of the Facility in the City of Evansville and Vanderburgh County shall be referred to as the "Project."



**NOW THEREFORE**, in consideration of the promises and the mutual agreements and covenants herein contained (the adequacy of which consideration as to each of the parties to this Agreement is hereby mutually acknowledged), and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, INDOT and the CITY hereby covenant and agree as follows:

**ARTICLE I**  
**CITY RESPONSIBILITIES**

- 1.01** The CITY shall be responsible for all maintenance required by the Facility within the boundaries as defined by its right-of-way fence and the outer limits of the LA R/W, including, but not limited to, the fence, pavements, vegetative cover, drainage, removal of flood deposits, and repair of vandalism.
- 1.02** The CITY shall post and enforce rules regarding use of the trail and prohibition of trespass beyond the shared right-of-way limits at all trail entry points, and at appropriate locations as warranted should any problems develop.
- 1.03** The CITY shall assume the entire cost of Facility construction and maintenance, including, but not limited to, costs of preliminary and construction engineering, and environmental documentation, less the amount of any federal funds administered by INDOT on behalf of the Project.
- 1.04** Prior to any construction activities within the LA R/W, the CITY shall submit all construction documents for review and approval by INDOT and FHWA, and all necessary permits and approvals secured from any Federal or State agencies having statutory jurisdiction and interest in the Project area. All subsequent changes to those documents or to the Facility, other than those changes associated with routine



maintenance, will be subject to approval by the Evansville Urban Transportation Study, INDOT and FHWA.

- 1.05 The CITY agrees to locate the Facility as close as possible to the existing INDOT right-of-way line.
- 1.06 The CITY agrees to take all applicable measures to ensure that there is no impact to the geometric configuration of the U.S. 41 and I-164 interchange.
- 1.07 The CITY shall, at its own expense, procure and maintain a public liability insurance policy, that shall remain in effect during the duration of this Agreement, in an amount of not less than Three Hundred Thousand Dollars (\$300,000.00), against the claim of one person, and in an amount of not less than Five Million Dollars (\$5,000,000.00), against the claims of two or more persons, resulting from any one accident. Said policy shall be procured from a company or companies approved by the INDOT and provided in order to protect both INDOT and the CITY, and their officers, agents and employees separately and severally as named insured against any liability incident to the use of, or resulting from any cause occurring in or about, the Facility. Said policies shall cover the contingent liabilities, if any, of the INDOT, including its officers, agents and employees, and shall obligate the insurance carrier(s) to notify INDOT in writing not less than fifteen (15) days prior to cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured CITY, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the State of Indiana, its officers, agents, or employees. The CITY shall furnish to INDOT, by the effective date of this Agreement, a Certificate of Insurance for each and every such policy.

- 1.08** If the CITY lets the contract for construction of the facility, a payment and performance bond in an amount sufficient to cover one hundred percent (100%) of the proposed Project costs is required. This performance bond shall be used to guarantee that the CITY fulfills the obligations enumerated in this Agreement. The form and terms of this performance bond shall be in accord with those commonly accepted by INDOT to ensure performance of work or obligations.

## **ARTICLE II**

### **INDOT RESPONSIBILITIES**

- 1.01** INDOT shall retain responsibility for maintenance specific to INDOT's facilities. Should INDOT need to access and repair any portion of the roads or right-of-way under its control that will impact the Facility, INDOT will provide sufficient notification of such operations to the CITY, unless an emergency situation dictates immediate action. All reasonable efforts shall be made by INDOT to minimize any damage to the Facility during maintenance of its facilities.
- 1.02** INDOT shall have the right to access and inspect the Facility once per year to ensure that the City continues to fulfill the obligations enumerated in this Agreement.

## **ARTICLE III**

### **FACILITY SPECIFICATIONS**

- 1.01.** No automobile parking facilities, permanent structures or advertising devices in any form or size shall be constructed, placed or permitted to be constructed or placed upon the LA R/W, nor shall any commercial activities be allowed within the LA R/W.
- 1.02.** Maintenance and emergency access to the Facility shall be entirely from city or county roads.

- 1.03. The Facility shall be located entirely outside of Interstate and State Highway clear zones, and separated from those clear zones by an INDOT-approved continuous right-of-way fence or other suitable retaining device as approved by INDOT.
- 1.04. The Facility shall not create impediments to INDOT right-of-way maintenance operations and right-of-way entry for such operations will be retained by INDOT.
- 1.05. The Facility shall have no adverse impact on maintenance of traffic on Interstate 164 or U.S. 41 during or after construction. All construction activities for the Facility shall be confined to areas beyond travel lanes, shoulder, and clear zones. Construction access for the Facility shall be confined to city or county roads.
- 1.06. The Facility shall have no adverse impact on existing drainage, cause erosion or otherwise impact the integrity of existing slopes, highway structures, or drainage structures.
- 1.07. Erosion control measures, which meet INDOT standards, shall be employed during construction and shall be maintained until permanent vegetative cover is reestablished during and after construction, and for the life of this Agreement.
- 1.08. All design and construction shall be based on INDOT and AASHTO standards and specifications.
- 1.09. This Agreement shall be for a ten (10) year period, commencing as of the date it is approved by the Attorney General of Indiana, or an authorized representative, as to form and legality, and shall be subject to renewal upon the same terms for four (4) successive ten (10) year periods. This Agreement shall be subject to cancellation and termination by either party upon giving the other party ninety (90) days written notice of such action. Upon cancellation of the Agreement, the CITY shall restore the LA R/W to a condition

acceptable to INDOT within one hundred twenty (120) work days at no cost to INDOT or FHWA. If this Agreement is cancelled or terminated by INDOT, INDOT will cooperate and work with the CITY to find an alternative location for a similar facility.

1.10. This Agreement is non-exclusive and is subject to the rights of others, including but not limited to the Evansville Vanderburgh Levee Authority District (EVLAD), Texas Gas Transmission, or other public utilities which share the LA R/W through covenant, easement, or agreement.

1.11. This Agreement does not grant any interest in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge facility that would become subject to Section 4(f) of the Federal-Aid Highway Act of 1988, nor does it establish a shared use facility which would require replacement pursuant to INDOT use of the property for highway purposes.

1.12. Any use permitted by this Agreement remains secondary to the interest of INDOT to use the LA R/W for other transportation purposes. The CITY shall surrender any part of the shared right-of-way that is required for future expansion, modification, or maintenance of Interstate 164 or its connecting facilities.

#### **ARTICLE IV**

##### **GENERAL PROVISIONS**

1.01. **Non-Discrimination.** Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the Lessee and its subcontractors, including consultants, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of 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 this 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.

**1.02. Modification/Entire Agreement.** This Agreement may be amended from time to time hereafter only in writing executed by INDOT and the CITY, and submitted to the Attorney General of Indiana 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. The provisions hereof constitute the entire agreement between the parties and supersede any verbal statements, representations or warranties stated or implied.

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

**1.04. Maintaining a Drug-Free Workplace, Exec. Order #90-5.**

A. The CITY or its consultant, hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement a drug-free workplace, and that it will give written notice to the Indiana Department of Transportation and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the CITY, or its consultant, has been convicted of a criminal drug violation occurring at the CITY's workplace.



B. In addition to the provisions of subparagraph (A) above, if the total contract amount set forth in this Agreement is in excess of \$25,000.00, the CITY, or its consultant, hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations contained in the Drug-Free Workplace certification executed by the CITY in conjunction with this Agreement and which is appended as an Attachment hereto.

C. It is further expressly agreed that the failure of the CITY, or its consultant, to in good faith comply with the terms of subparagraph (A) above, or falsifying or otherwise violating the terms of the certification referenced in subparagraph (B) above shall constitute a material breach of this Agreement.

**1.05. Subsequent Acts.** 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.

**1.06. Non-Waiver.** 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.

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

**1.08. Assignment.** This Agreement shall be binding upon and shall inure to the benefits of the parties, their legal representatives, successors and assigns, provided, however, because this Agreement is personal to each of the parties hereto, no party may sell, assign,

delegate, or transfer this Agreement or any portion thereof, including, without limitation, any rights, title, interests, remedies, powers, and/or duties hereunder without the express written consent of the other party.

- 1.09. Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 1.10. Attorney General Approval.** This Agreement shall not be effective unless and until approved by the Attorney General of Indiana, or an authorized representative, as to form and legality.
- 1.11. Authorizations.** Any person executing this Agreement in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 1.12. Force Majeure, Suspension and Termination.** 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, actions or decrees of governmental bodies or communication line failure 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 receipt of notice of the Force

Major Event, the party whose ability to perform has not been so affected may be given written notice to terminate this Agreement.

**1.13. Substantial Performance.** This Agreement shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.

**1.14. Multi-Term Funding Cancellation.** 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 a multi-term contract, the multi-term contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**1.15. Indemnification.** The CITY, or its contractor agrees to indemnify, defend, exonerate, and hold harmless the State of Indiana, its agencies, officials and employees from any liability, loss, damage, injuries, or other casualties of whatever kind, or by whosoever caused, due to the performance of any of the obligations under this Agreement, whether due in whole or in part to the negligent acts or omissions of the State of Indiana, its agencies officials, or employees; or the CITY, or its contractor, agents or employees, or other persons engaged in the performance of the work; or the joint or several acts or omissions of any of them; including any claims arising out of the Worker's Compensation Act or any other law, ordinance, order, or decree. The CITY, or its contractor, further agrees to pay all reasonable expenses and attorneys fees incurred by or imposed on the State of Indiana in connection herewith in the event that the CITY, or its contractor, shall default under the provisions of this Section.

1.16. The provisions of Indiana Code 34-13-3 et seq. with regard to tort claims against governmental entities applies to any claim(s) arising from the obligations and duties enumerated herein.


**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement.

**THE CITY OF EVANSVILLE**  
**Board of Park Commissioners**

Recommended for Approval

By:

  
\_\_\_\_\_  
Park Board President  
Vick

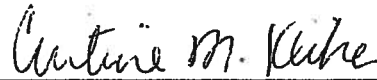
**STATE OF INDIANA**  
**Department of Transportation**

Recommended for Approval

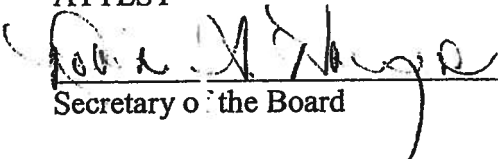
By:

  
\_\_\_\_\_  
Richard K. Smutzer  
Chief Engineer

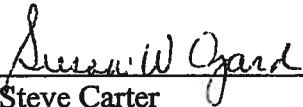
BY:

  
\_\_\_\_\_  
Cristine M. Klika  
Commissioner

ATTEST

  
\_\_\_\_\_  
Secretary of the Board

APPROVED AS TO FORM AND  
LEGALITY:

  
\_\_\_\_\_  
Steve Carter (for)  
Attorney General of Indiana

Dated: 6-29-01



### ACKNOWLEDGMENT

STATE OF INDIANA           )  
  ) SS:  
VANDERBURGH COUNTY       )

Before me, the undersigned Notary Public in and for said County personally  
appeared Jay Ritter  
(Name of signers, their official  
Vice Park Board President  
capacity and agency name)

and each acknowledged the execution of the foregoing Agreement on this 5<sup>th</sup>  
day of April, 2001.

Witness my hand and seal the said last named date.

My Commission Expires

May 17, 2008

Sharon Evans  
Notary Public

Vanderburgh  
County of Residence

Sharon Evans  
Typed or Printed Name

### ACKNOWLEDGEMENT

STATE OF INDIANA       )  
  ) SS:  
MARION COUNTY        )

Before me, the undersigned Notary Public in and for said County personally  
appeared Cristine M Klika, Commissioner of the  
Indiana Department of Transportation, and acknowledged the execution of the foregoing Agreement on this  
2nd day of May, 2001.

Witness my hand and seal the said last named date.

My Commission Expires

9-13-2008

JoAnn M Weaver  
Notary Public

Marion  
County of Residence

JoAnn M Weaver  
Typed or Printed Name

to the Agreement for Bicycle/Pedestrian Trail, between the State of Indiana (INDOT) and the City of Evansville Board of Park Commissioners (CITY)

## STATE OF INDIANA - DRUG-FREE WORKPLACE CERTIFICATION

Pursuant to Executive Order No. 90-5, April 12, 1990, issued by Governor Evan Bayh, 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 a Agreement shall be made or be valid, the total amount of which exceeds \$25,000.00, unless and until this certification has been fully executed by the City of Evansville Department of Parks and Recreation, ("Lessee"), 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.

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

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Lessee's workplace 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) Lessee'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.

The undersigned affirms, under the penalties for perjury, that he or she is authorized to execute this certification on behalf of the designated organization.

City of Evansville, Department of Parks and Recreation

By:



Date 4-5-2001

RENEWAL/AMENDMENT #1

AGREEMENT FOR BICYCLE/PEDESTRIAN TRAIL

*EDS #A249-12-320163*

This supplemental agreement is made and entered into       , 2011, by and between the State of Indiana, acting by and through the Indiana Department of Transportation (hereinafter referred to as "INDOT") and the City of Evansville, acting by and through its proper officials (hereinafter referred to as the "CITY").

WITNESSETH

WHEREAS, INDOT and the CITY entered into an Agreement entitled "Agreement for Bicycle/Pedestrian Trail" with an effective date of June 29, 2001, ("Agreement") for construction of the Facility in Evansville, Indiana, herein attached and incorporated by reference as **Attachment A**; and

WHEREAS, the parties desire to renew the Agreement for an additional ten (10) years; and

WHEREAS, the parties also desire to amend the Agreement as provided herein; and

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

1. The following three WHEREAS clauses shall be inserted immediately before the last WHEREAS clause in the Agreement:

**WHEREAS**, the CITY and INDOT agree that construction of the Facility within any part of the Interstate 164 LA R/W will not create a property subject to Section 4(f) of the Department of Transportation Act as provided for in 23 CFR 774.11(h); and

**WHEREAS**, the CITY and INDOT agree that the Facility and future use of the Interstate 164 LA R/W have been developed concurrently and are the result of joint planning as provided for in 23 CFR 774.11(i); and

**WHEREAS**, the City and INDOT agree that the Facility and any future extension of Interstate 69 from Interstate 164 south to the Indiana/Kentucky border shall be

considered as part of a concurrent or jointly planned development as provided for in 23 CFR 774.11(i);

2. Section 1.01 of Article IV. of the Agreement shall be replaced in its entirety with the following:

**Section 1.01     Non-Discrimination**

A. This Agreement is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Agreement, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of CITY.

B. CITY understands that INDOT is a recipient of federal funds. Pursuant to that understanding, CITY agrees that if CITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt; CITY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. 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 Agreement.

C. During the performance of this Agreement, CITY, agrees as follows:

1. **Compliance with Regulations:** CITY shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to in this part as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** CITY, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of sub-contractors, if any. CITY shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when this Agreement covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Sub-contractors, Including Procurements of Materials and Equipment:** In all solicitations either by letters of interest or negotiation made by CITY for work to be performed under a subcontract, each potential sub-contractor shall be notified by CITY of CITY's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** CITY shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by INDOT or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information

required of CITY is in the exclusive possession of another who fails or refuses to furnish this information, CITY shall so certify to INDOT, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of CITY's noncompliance with the nondiscrimination provisions of this Agreement, INDOT shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding of payments to CITY under this Agreement until CITY complies, and/or (b) cancellation, termination or suspension of this Agreement, in whole or in part.
6. **Incorporation of Provisions:** CITY shall include the provisions of paragraphs (1) through (6) in every subcontract, unless exempt by the Regulations, or directives issued pursuant thereto.

CITY shall take such action with respect to any subcontract as INDOT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided however, that, in the event CITY becomes involved in, or is threatened with, litigation with a sub-contractor as a result of such direction, CITY may request the State to enter into such litigation to protect the interests of the INDOT, and in addition, CITY may request the United States to enter into such litigation to protect the interests of the United States."

3. Section 1.11 of Article III the Agreement shall be replaced in its entirety with the following:

1.11. This Agreement does not grant any interest in land, nor does it establish a permanent part, recreation area or wildlife or waterfowl refuge facility that would become subject to Section 4(f) of the Federal-Aid Highway Act of 1988. The intent of the City and INDOT is to allow for the interim placement of the facility on and near to the Interstate 164 LA R/W as provided for in 23 CFR 774.11(h). The CITY and INDOT agree that this Agreement does not establish a shared use facility which would require replacement pursuant to INDOT use of the property for highway purposes. Additionally, to the extent that land that is currently considered I-164 R/W becomes part of the I-69 R/W, such change from 164 to I69 shall have no affect for Section 4(f) purposes.

4. The Section 1.14 of Article IV of the Agreement shall be replaced in its entirety by the following:

**Section 1.14 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. The CITY may seek recovery from the State for any amounts unpaid for Services rendered or goods delivered through the date of cancellation.



5. The following language shall be added to the Agreement as a new Section 1.17 of Article IV:

**Section 1.17. 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. If the CITY violates such rules, laws, regulations and ordinances, the CITY shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. 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 represents to INDOT that, to the best of the CITY'S knowledge and belief after diligent inquiry and other than as disclosed in writing to INDOT prior to or contemporaneously with the execution and delivery of this Agreement by the CITY:

- i. *Required State of Indiana Payments.* Neither the CITY nor the CITY'S 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. Further, the CITY agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the CITY. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the CITY becomes current in its payments and has submitted proof of such payment to INDOT.
- ii. *State of Indiana Actions.* The CITY 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. During the term of such actions, CITY agrees that INDOT may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Agreement.
- iii. *Professional Licensing Standards.* The CITY, its employees and contractors have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CITY pursuant to this Agreement.
- iv. *Work Specific Standards.* The CITY and its contractors, if any, have obtained, will obtain and/or will 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.
- v. *Secretary of State Registration.* If the CITY is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
- vi. *Debarment and Suspension of CITY.* Neither the CITY nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency

or political subdivision of the State and will immediately notify INDOT of any such actions. The term "principal" for purposes of this 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 CITY or who has managerial or supervisory responsibilities for the Services.

- vii. *Debarment and Suspension of any of CITY's Contractors.* The CITY's contractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. The CITY shall be solely responsible for any recoupment, penalties of costs that might arise from the use of a suspended or debarred contractor. The CITY shall immediately notify the State if any contractor 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 contractor for work to be performed under this Agreement.

C. *Ethics.* The CITY and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, 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, and any of the ethical requirements referenced in Appendix A, if any (collectively, "Ethical Standards"). 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 <<[>>>. If the CITY or its agents violate any of the Ethical Standards, INDOT 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.](http://www.in.gov/ethics/)

D. *Telephone Solicitation.* 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.

E. *Violations.* In addition to any other remedies at law or in equity, upon CITY'S violation of any of Section 7(A) through 7(D), INDOT may, at its sole discretion, do any one or more of the following:

- i. terminate this Agreement; or
- ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Agreement; or
- iii. bar the CITY from contracting with the State of Indiana.

F. *Disputes.* If a 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 work to the CITY, the CITY may request that it be allowed to continue, or receive work, without delay. The CITY must submit, in writing, a request for review to INDOT. A determination by INDOT under this Section 7.F shall be final and binding on the parties and not subject to administrative review. Any payments INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

6. The following language shall be added to the Agreement as a new Section 1.18 of Article IV:

**Section 1.18. Payments.** All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the CITY in writing unless a specific waiver has been obtained from the Indiana Auditor of State.

7. The following language shall be added to the Agreement as a new Section 1.19 of Article IV:

**Section 1.19. Employment Eligibility Verification**

The CITY affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The CITY shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The CITY is not required to participate should the E-Verify program cease to exist. Additionally, the CITY is not required to participate if the CITY is self-employed and does not employ any employees.

The CITY shall not knowingly employ or contract with an unauthorized alien. The CITY shall not retain an employee or contract with a person that the CITY subsequently learns is an unauthorized alien.

The CITY shall require his/her/its Contractors who perform work under this Agreement, to certify to the CITY 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 CITY agrees to maintain this certification throughout the duration of the term of a contract with a Contractor.

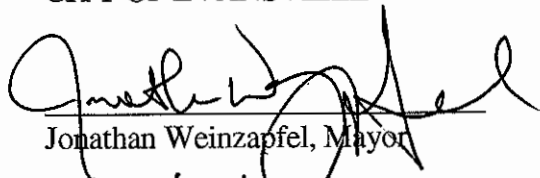
The State may terminate for default if the CITY fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

8. All terms defined herein shall have the meaning set forth in the Agreement. Except as herein modified, changed and supplemented, all terms of the Agreement signed by the Indiana Attorney General on June 29, 2011, shall continue in full force and effect.

**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, CITY and the State of Indiana, acting by and through INDOT have, through duly authorized representatives, entered into this supplement. The parties having read and understand the forgoing terms do by their respective signatures dated below hereby agree to the terms thereof.

CITY OF EVANSVILLE

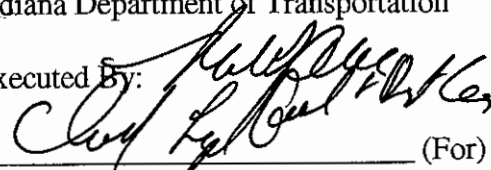
  
Jonathan Weinzapfel, Mayor

Date: 6/29/11

ATTEST:

  
Katy Nimnicht, Communications Director

STATE OF INDIANA  
Indiana Department of Transportation

Executed By:   
Michael B. Cline, Commissioner

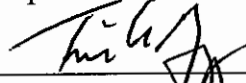
Date: 9/1/11

STATE OF INDIANA  
State Budget Agency

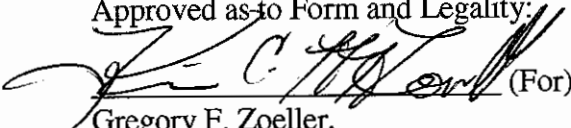
  
Adam Horst, Director

Date: 9-9-11

STATE OF INDIANA  
Department of Administration

  
Robert D. Wynkoop, Commissioner

Date: 9/8/11

Approved as to Form and Legality:  
  
Gregory F. Zoeller,  
Attorney General of Indiana

Date Approved: 12 Sept 11

**ATTACHMENT B**

LOCATION OF PROPOSED GREEN RIVER NATIONAL WILDLIFE REFUGE



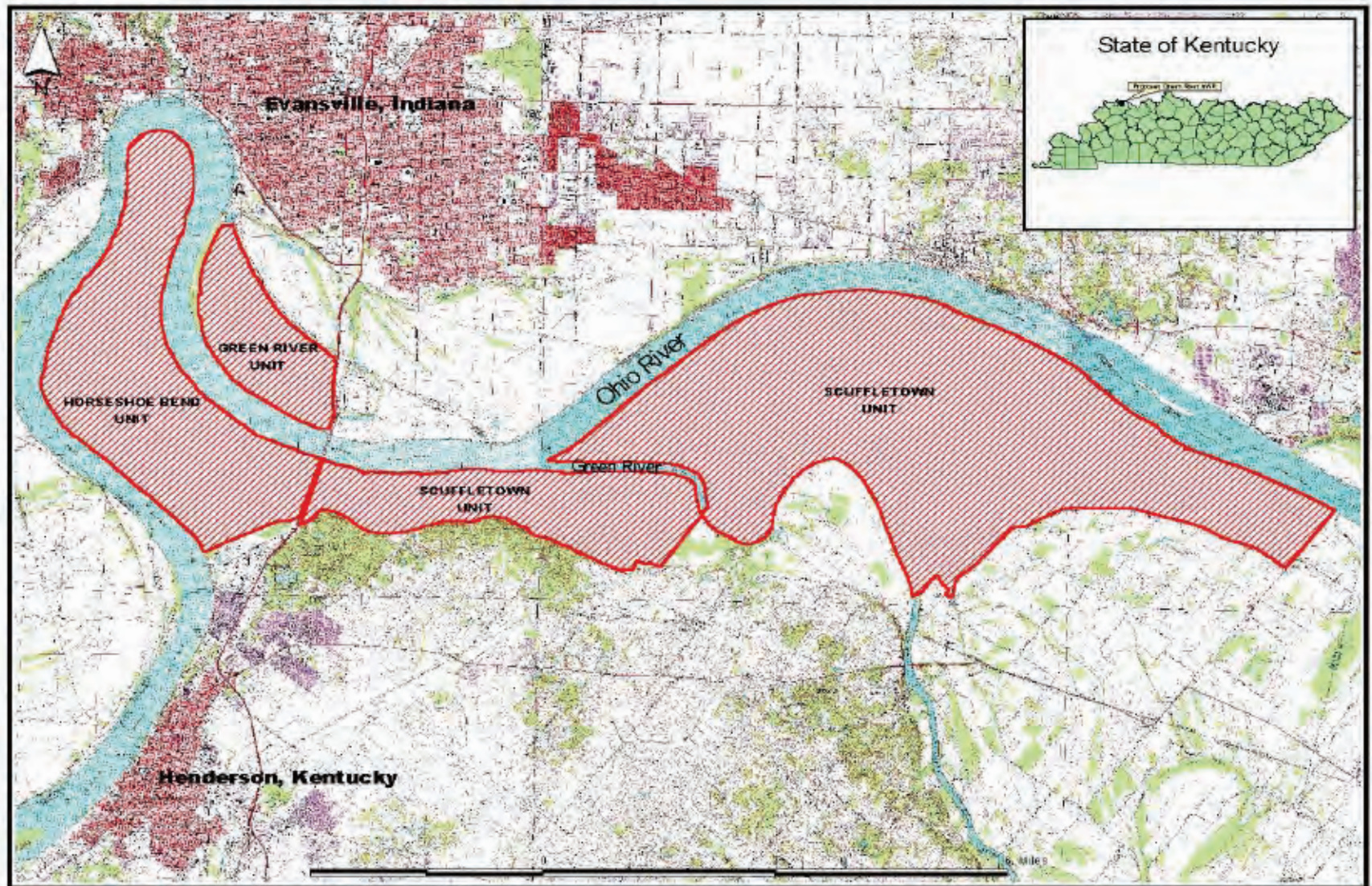


Figure1. Location of the proposed Green River National Wildlife Refuge, Henderson County, Kentucky