

**Minutes of Meeting of
Members of
Mid-States Corridor Regional Development Authority**

August 22, 2018

Call to Order

Chairman Mark Schroeder called to order the meeting of the members of Mid-States Corridor Regional Development Authority ("Mid-States") at 4:00 P.M., EST, on August 22, 2018, in the Conference Room at the offices of Bingham Greenebaum Doll LLP, at 212 West 6th Street, Jasper, Indiana.

Roll Call

Chairman Mark Schroeder conducted a Roll Call.

Mark A. Schroeder	Present
Scott Blazey	Present
David Drake	Present
Sue Ellspermann	VIA Teleconference
Ken Mulzer, Jr.	Absent

Others present: William J. Kaiser, Jr.,
Legal Counsel

A quorum being present, the meeting was called to order by Mark Schroeder, Chairman.

Approval of Minutes

The first order of business was the approval of the May 11, 2018 minutes. Upon motion made by David Drake, and seconded by Scott Blazey, the following resolution was introduced:

RESOLVED, that the May 11, 2018 minutes are hereby approved.

Chairman Schroeder then conducted a Roll Call to adopt the above resolution.

Mark Schroeder	Yes
Scott Blazey	Yes
Sue Ellspermann	Not Available to Vote
David Drake	Yes
Ken Mulzer, Jr.	Absent

Electronic Communication Policy

The next order of business was the establishment of an electronic communication policy. Upon motion made by David Drake, and seconded by Scott Blazey, the following resolution was introduced:

WHEREAS, pursuant to Indiana Code 5-14-3.6(f)(2), the RDA's Board must adopt a policy governing participation by electronic communication in meetings in order allow for such participation.

WHEREAS, the members of the Board have reviewed the proposed policy, a copy of which is attached hereto as Exhibit A (the "Policy).

NOW, THEREFORE, BE IT RESOLVED, that the RDA shall adopt the Policy.

Chairman Schroeder then conducted a Roll Call to adopt the above resolution.

Mark Schroeder	Yes
Scott Blazey	Yes
Sue Ellspermann	Not Available to Vote
David Drake	Yes
Ken Mulzer, Jr.	Absent

Quarterly Meeting Dates

The first order of business was a discussion among the members as to the scheduling of quarterly meetings. After further discussion, a motion was made to establish quarterly meeting dates. Upon motion made by Scott Blazey, and seconded by David Drake, the following resolution was introduced:

RESOLVED, that the RDA shall meet at least quarterly pursuant to Indiana Code 36-7.6-2-11.

FURTHER RESOLVED, that the RDA shall meet on the first Friday of the second month of each quarter.

NOW, THEREFORE, BE IT RESOLVED, that the RDA shall hold its 3rd Quarterly meeting on August 22, 2018, at 4:00 p.m., and its 4th Quarterly meeting on November 2, 2018, at 4:00 P.M.

Chairman Schroeder then conducted a Roll Call to adopt the above resolution.

Mark Schroeder	Yes
Scott Blazey	Yes
Sue Ellspermann	Yes
David Drake	Yes
Ken Mulzer, Jr.	Absent

Establishment of Checking Account

The next order of business was a discussion among the members to establish a checking account. After further discussion, a motion was made to establish a checking account. Upon motion made by Scott Blazey, and seconded by David Drake, the following resolution was introduced:

WHEREAS, the Mid-States needs to establish a checking account to receive funds from the federal government, the state government, a political subdivision, or any other public or private source and to disburse funds for any and all allowable purposes (pursuant to Indiana Code 36-7.6-3-2).

NOW, THEREFORE, BE IT RESOLVED, that Mid-States shall establish a checking account with German American Bank.

FURTHER RESOLVED, that Sue Ellspermann, is hereby is authorized to sign and/or deposit on behalf of Mid-States all checks, drafts, acceptances and other instruments and/or orders for payment and/or withdrawal of any and all moneys, credits, items and property for the account(s) of Mid-States.

Treasurer Ellspermann then conducted a Roll Call to adopt the above resolution.

Mark Schroeder	Abstained
Scott Blazey	Yes
Sue Ellspermann	Yes
David Drake	Yes
Ken Mulzer, Jr.	Absent

Approval of INDOT Agreement

The next order of business was the approval of the INDOT Agreement. After further discussion, upon motion was made by Sue Ellspermann, and seconded by Scott Blazey, the following resolution was introduced:

WHEREAS, the RDA has worked closely with the Indiana Department of Transportation ("INDOT") to review the existing 4-lane divided US 231 facility from the Ohio River to the I-64 / Dale Interchange and commence the planning process for the subsequent development of a high-level rural highway through Dubois County originating at the I-64 / Dale Interchange and connecting with I-69;

WHEREAS, a key preliminary step in the review and planning process is to conduct a Tier I Environmental Impact Statement Study (the "EIS Study");

WHEREAS, an Agreement between the RDA and INDOT (the "Agreement") shall outline the project delivery model, project funding, project coordination and the roles and responsibilities for the RDA and INDOT relative to the EIS Study; and

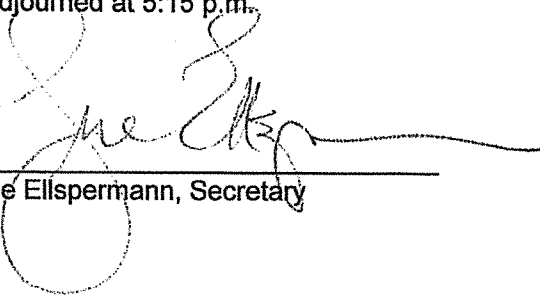
WHEREAS, the members of the Board have reviewed the proposed Agreement, a copy of which is attached hereto as Exhibit B.

NOW, THEREFORE, BE IT RESOLVED, that the RDA shall authorize Mark A. Schroeder, in his capacity as Chairman of the Board, to execute the Agreement on behalf of the RDA.

Chairman Schroeder then conducted a Roll Call to adopt the above resolution.

Mark Schroeder	Yes
Scott Blazey	Yes
Sue Ellspermann	Yes
David Drake	Yes
Ken Mulzer, Jr.	Absent

There being no further business, the meeting adjourned at 5:15 p.m.



Sue Ellspermann, Secretary

EXHIBIT A

MID-STATES CORRIDOR REGIONAL DEVELOPMENT AUTHORITY

ELECTRONIC COMMUNICATION POLICY

Purpose:

Pursuant to Indiana Code 5-14-1.5-3.6, this policy governs participation in meetings of the Mid-States Corridor Regional Development Authority (the "RDA") Board members (the "Board") by means of electronic communication.

Policy

In the spirit of good governance and transparency, the following requirements must be met regarding participation by Board members by electronic communication:

1. The minimum number of members of the Board that must be physically present is two (2).
2. All votes of the Board during a meeting involving participation by means of electronic communication must be taken by roll call vote.

Legal References: IC 5-14-1.5-3.6

Effective Date: This policy shall be in effect immediately upon approval by the RDA.

Ending Date: This policy will end upon rescission by vote of the RDA.

Approval: This policy was approved by vote of the RDA members present at the meeting held on August 22, 2018.

EXHIBIT B

**AGREEMENT
BY AND BETWEEN
MID-STATES CORRIDOR REGIONAL DEVELOPMENT AUTHORITY
AND
INDIANA DEPARTMENT OF TRANSPORTATION**

EDS No. A249-19-_____

THIS AGREEMENT (“**Agreement**”) is entered into this _____ day of _____, 2018, by and between MID-STATES CORRIDOR REGIONAL DEVELOPMENT AUTHORITY (hereinafter referred to as “**Mid-States**”) and the INDIANA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as “**INDOT**”) (jointly referred to as the “**Parties**”).

W I T N E S S E T H

WHEREAS, this Mid-States Corridor project was highly rated by the 2014 Blue Ribbon Panel Report on Transportation Infrastructure (“**Blue Ribbon Panel Report**”) as a project of statewide significance. The Mid-States Corridor Project also has a great deal of broad support from business leaders and public officials, more so than any other southern Indiana project in the Blue Ribbon Panel Report; and

WHEREAS, this Mid-States Corridor project continues the prior new/upgraded four-lane road from the Ohio River at Rockport to I-64, which includes the existing 26 miles of four-lane US 231 from the Ohio River Bridge in Spencer County (Rockport); and

WHEREAS, this Mid-States Corridor project was identified as a significant priority in the final report of the Blue Ribbon Panel Report. The panel both prioritized shorter-term transportation projects and provided a vision for long-term transportation projects. It evaluated priorities for Indiana’s entire transportation system. These included highways, intermodal facilities, inland waterways, air travel/regional airports, air freight, passenger rail and freight rail. Projects were evaluated using five metrics to arrange them among “tiers” to indicate their relative significance. These five performance metrics are:

- Economic Impact. Increases in economic activity, labor force earnings, and employment;
- Capacity to Meet Demand. Reductions in congestion and delays.
- Multimodal Integration and Synergy. Improved accessibility to other modes.
- National/International Market Access. Decreased transportation costs for out-of-state freight; and

- Quality of Life. Improvements to environment, safety, energy use, congestion, emissions and highway maintenance; and

WHEREAS, INDOT and Mid-States desire to cooperate to review the existing 4-lane divided US 231 facility from the Ohio River to the I-64 Dale interchange and develop a high level rural highway through Dubois County originating at the I-64 Dale interchange and connecting with I-69 (possibly via SR 37); and

WHEREAS, INDOT and Mid-States wish to cooperate in funding and completing the necessary Tier 1 Environmental Impact Statement (“EIS”) for this highway under the National Environmental Policy Act (these Tier 1 studies are referred to as the “Project”); and

WHEREAS, Mid-States has agreed to contribute local (non-Federal) funds in the total amount of **\$7,000,000.00** towards the cost of the Project (as described in **Section 1.5** of this Agreement); and

WHEREAS, INDOT has agreed to add the Project to the State Transportation Improvement Plan (“STIP”) in order to secure matching Federal-aid highway funds towards eligible costs of the Project; and

WHEREAS, Mid-States has been an integral partner with INDOT in the development of the Project, and the financial participation of all Parties is essential to ensure the successful completion of the Project.

NOW, THEREFORE, in consideration of the premises and the mutually dependent covenants herein contained, the Parties hereto agree as follows:

Article I.

1.1. Project Description. The Parties understand and agree that the Project concept is preliminary and that the Tier 1 Environmental Impact Statement (EIS) document must be completed and approved by the Federal Highway Administration before any design can be finalized, but at this time anticipate that the design will ultimately meet the criteria described herein. As an EIS, the Project will be managed using the *Indiana Department of Transportation and Federal Highway Administration Streamlined Environmental Impact Statement Procedures (September 2007)* (hereinafter referred to as the “EIS Procedures”) and in accordance with all applicable state and federal laws and regulations.

The Project will provide the required environmental and engineering studies which may support future design, preliminary engineering (including right-of-way acquisition, utility relocation, etc.) and construction of a project to improve safety and traffic flow on US 231 and its local intersecting roads in Dubois County by providing an high-level, rural highway (which may provide grade-separated intersections). The Parties anticipate that this new highway would be a continuation of the existing multi-lane US 231 from Rockport to I-64 at the Dale interchange, and would be located in the vicinity of US 231 through Dubois County serving Huntingburg and Jasper. From there it may connect to I-69 (possibly via SR 37). Alternative routes for this connection would be

determined during project scoping for the Tier 1 EIS. The Parties further anticipate that the Project may include other improvements, such as the removal of at-grade intersections on US 231 through Spencer County. Mid-States has prepared a preliminary Project estimate, which INDOT has reviewed, and the Parties expect the cost of the Tier 1 EIS Project to be approximately \$7,000,000.00.

1.2. Project Delivery Model.

A. In the interest of ensuring that design and construction of the Project meets the needs of the traveling public on both the State and Local highway systems and in order to provide the best value for taxpayers, the Parties have agreed that Mid-States will serve as a Participating Agency for the Project. As such, it will have designated roles in preparing a Request for Proposal (RFP) to secure consultant services, reviewing proposals and selecting a consultant, and in review of major project findings, as well as a member of the Project Management Team. These roles are further described in **Exhibit A**, and subject to INDOT approvals where necessary and in accordance with the terms contained herein.

B. Due to the size and complexity of the Project, and in an effort to limit impacts of construction on the communities and the traveling public, the Parties anticipate that any Project that may be selected in the Tier 1 EIS would be let and constructed in phases to be determined through Tier 1 and Tier 2 NEPA processes. Under FHWA regulations, a Tier 1 EIS specifies Sections of Independent Utility (SIUs) for the entire Tier 1 project. These SIUs would serve an independent, stand-alone transportation purpose. Each SIU would have its own Tier 2 NEPA document. Tier 2 sections might proceed on independent schedules to satisfy funding requirements and transportation priorities.

C. The Parties understand and agree that because Federal funds would be used for any subsequent phases of the Project, and because INDOT would maintain any facility constructed using Federal aid funds, the Project must remain eligible for Federal funding participation. For these reasons, the Parties shall comply with all applicable Federal and State laws, regulations and processes throughout all phases of the Project (including, without limitation, all activities relating to environmental studies, project design, development, right-of-way acquisition, utility relocation, construction and inspection).

D. The Parties understand and agree that the advancement of subsequent phases of the Project (including any Tier 2 environmental studies, project design, development, right-of-way acquisition, utility relocation, construction and inspection) will require inclusion in INDOT's long-range transportation plan and major project capital program.

E. The Parties anticipate that as the Project development process progresses and the Project scope is more fully defined, amendments to this Agreement will be necessary. All such amendments to this Agreement shall be in writing by all Parties and submitted for required State approval.

1.3. Responsibilities of Mid-States. Mid-States will complete or cause to be completed all the work and/or be responsible for all of the requirements set out in **Exhibit A, Mid-States' Responsibilities**, herein attached to and made an integral part of this Agreement.

1.4. **Responsibilities of INDOT.** INDOT will complete or cause to be completed all of the work and/or be responsible for all of the requirements set out in **Exhibit B, INDOT's Responsibilities**, herein attached to and made an integral part of this Agreement.

1.5. **Project Funding.**

A. **Funding Contribution from Mid-States.** Mid-States agrees to provide funding in the amount of \$7,000,000.00 from local (non-Federal) funding sources for costs of the Project (the "**Local Funding Contribution**"). At this time, the Parties contemplate that all funds contributed by Mid-States will be applied first to the cost of the Tier 1 EIS. Any portion of the local contribution remaining shall be applied to the Tier 2 EIS process. The Local Funding Contribution will be set forth in a written commitment by Mid-States to INDOT within thirty (30) business days of the final execution of this Agreement. Mid-States and INDOT shall agree upon a schedule of funding as part of this Agreement in order to properly meet the obligations for the costs of the Tier 1 EIS as such costs are incurred. Mid-States shall also agree to provide initial funding of not less than Five Hundred Thousand Dollars (\$500,000.00) to INDOT before INDOT enters into a contract with the selected consultant for work on the Project.

B. **Funding Contribution from INDOT.** Consistent with all decisions and outcomes of the Tier 1 EIS, and subject to INDOT's usual statewide project planning and prioritization processes, INDOT anticipates providing Federal-aid highway funds for subsequent phases of the Project, including Tier 2 environmental studies, design, development, right-of-way acquisition, utility relocation, construction, and inspection (the "**INDOT Contribution**"). Nothing in this Agreement shall be deemed to restrict INDOT's ability to manage available funding sources and providing funds for the Project, and nothing in this Agreement shall be understood to mandate or require any particular decision or outcome from the Tier I NEPA process. Further, the Parties understand and agree that amendments to this Agreement will be necessary before INDOT may commit any funds to the Project.

INDOT shall take all reasonable actions to allocate funds sufficient to provide the INDOT Contribution to subsequent phases of the Project and meet INDOT's other obligations under this Agreement consistent with decisions taken in the Tier 1 EIS and INDOT's usual statewide project planning and prioritization processes. Any future funding commitments shall be made in accordance with INDOT's statewide transportation plan development process (the Annual Program Development Process for State (APDP-S) Projects, available at https://www.in.gov/indot/files/INDOT_APDP_2015.pdf), or any successive plan development process in use by INDOT for making statewide project planning and funding decisions at the time a decision on a Tier 2 project is taken. Prior to identifying funding or providing the INDOT contribution for subsequent phases of the Project, an amendment to this Agreement or subsequent agreements between the Parties will be required.

C. **Funding Contribution from Mid-States.** Mid-States agrees to secure additional long-term funding from local sources (both public and private) once the Project cost and delivery mechanism is known, to assist INDOT in securing federal and state matching funds for post-environmental phases of the Project.

1.6. **Term and Renewal of Agreement.** The term of this Agreement shall be from the date upon which the Agreement is approved by the Office of the Indiana Attorney General through December 31, 2022, or completion of final audit of the Project by INDOT, whichever occurs first, unless terminated pursuant to **Section 1.9** of this Agreement. This Agreement may be renewed or extended under the same terms and conditions subject to the approval of all signing Parties.

1.7. **Project Coordination.** The Parties agree to review and coordinate all plans and schedules pertaining to the Project.

1.8. **Public Statements or Disclosures.** The Parties shall consult with each other and must agree as to the timing, content, and form before issuing any press release or other public statements or disclosures related to the Project or this Agreement. However, this Section does not prohibit either of the Parties from making a public statement or disclosure regarding this Agreement or the Project if, in the opinion of a Party's legal counsel, such a disclosure is required by law, including, but not limited to, Indiana's Access to Public Records Act (IC 5-14-3), legal process or directive of a regulatory authority having jurisdiction over either Party.

1.9. **Termination.** Either Party may terminate this Agreement for any reason upon sixty (60) days' notice to the other party. In the event that any portion of the Local Funding Contribution is unexpended upon termination of the Agreement, INDOT will return the unexpended funds to Mid-States as soon as possible after final consultant invoices are paid and final audit of the Project is complete.

Article II. General Provisions

2.1. Compliance with Laws.

A. Mid-States 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 or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the State and Mid-States to determine whether the provisions of this Agreement require formal modification.

B. Mid-States 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 IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. **If Mid-States has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Agreement, Mid-States shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Agreement.** If Mid-States is not familiar with these ethical requirements, Mid-States should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If Mid-States or its agents violate any applicable ethical standards, the State may, in its sole discretion,

terminate this Agreement immediately upon notice to Mid-States. In addition, Mid-States may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. [Omitted – Not Applicable.]

D. [Omitted – Not Applicable.]

E. [Omitted – Not Applicable.]

F. [Omitted – Not Applicable.]

G. [Omitted – Not Applicable.]

H. As required by IC § 5-22-3-7:

(1) Mid-States and any principals of Mid-States certify that:

(A) Mid-States, 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) Mid-States 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) Mid-States and any principals of Mid-States certify that an affiliate or principal of Mid-States and any agent acting on behalf of Mid-States or on behalf of an affiliate or principal of Mid-States, except for de minimis and nonsystematic violations,

(A) 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.

2.2. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, Mid-States hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Mid-States will give written notice to the State within ten (10) days after receiving actual notice that Mid-States, or an employee of Mid-States in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of \$25,000.00, Mid-States certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Mid-States' 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 its employees of: (1) the dangers of drug abuse in the workplace; (2) Mid-States' 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 Mid-States of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing 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) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring 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.

2.3. 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 or as soon as is reasonably possible under the circumstances 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.

2.4. Funding Cancellation. As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, 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 this Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

2.5. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

2.6. Merger and Modification. This Agreement constitutes the entire agreement between the Parties. No understandings, agreements or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, except by written agreement signed by all necessary Parties.

2.7. Nondiscrimination.

A. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, Mid-States covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("**Protected Characteristics**"). Mid-States certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of Mid-States or any subcontractor.

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

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial

assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran.)

C. During the performance of this Agreement, Mid-States, for itself, its assignees and successors in interest (hereinafter referred to as the "EMPO") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

1. Compliance with Regulations: Mid-States shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the "**Regulations**"), which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: Mid-States, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Mid-States shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulation, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Mid-States for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Mid-States of Mid-States' obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.
4. Information and Reports: Mid-States 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 and FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Mid-States is in the exclusive possession of another who fails or refuses to furnish this information, Mid-States shall so certify to INDOT or FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

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

Mid-States shall take such action with respect to any subcontract or procurement as INDOT or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event Mid-States becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Mid-States may request INDOT to enter into such litigation to protect the interests of INDOT, and, in addition, Mid-States may request the United States of America to enter into such litigation to protect the interests of the United States of America.

2.8. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised:

If to INDOT:

INDOT Project Manager TBD
ADDRESS
TBD
Email:
Phone:

With copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of
Transportation 100 North Senate
Avenue, IGCN 758
Indianapolis, IN 46204

If to Mid-States:

Mid-States Corridor Regional Development Authority
Attn: Mark A. Schroeder, Chairman
212 West 6th Street
Jasper, IN 47546

With copy to: William J. Kaiser, Jr., Esq.
Bingham Greenebaum Doll LP
212 West Sixth Street
Jasper, IN 45746
Email: bkaiser@bgdlegal.com
Phone: (812) 482-5500

2.9. Public Record. Mid-States acknowledges that the State will not treat this Agreement as containing confidential information, and will post this Agreement on the transparency portal as required by Executive Order 05-07. Use by the public of the information contained in this Agreement shall not be considered an act of the State.

2.10. Renewal Option. This Agreement may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration of the State Budget Director in compliance with IC Section 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

2.11. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

2.12. Status of Claims. Mid-States shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against Mid-States resulting from services performed under this Agreement.

2.13. Taxes. The State is exempt from most state and local taxes and many Federal taxes. The State will not be responsible for any taxes levied on Mid-States or its contractors as a result of this Agreement.

2.14. Waiver of Rights. No right conferred on either Party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the Party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the work performed under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Mid-States shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by Mid-States' negligent performance of any of the services furnished under this Agreement.

2.15. General. The headings are inserted into this Agreement for convenience only and do not constitute part of this Agreement.

2.16. Recitals. The Parties acknowledge and agree that the recitals contained in the preamble of this Agreement are true and correct and are incorporated into this Agreement by this reference.

2.17. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the *2018 OAG/ IDOA Professional Services Contract Manual* or the *2018 SCM Template*) in any way except as follows:

- A. **Access to Records.** [OMITTED – NOT APPLICABLE.]
- B. **Assignment; Successors.** [OMITTED – NOT APPLICABLE.]
- C. **Assignment of Antitrust Claims.** [OMITTED – NOT APPLICABLE.]
- D. **Audits.** [OMITTED – NOT APPLICABLE.]
- E. **Authority to Bind Contractor.** [OMITTED – NOT APPLICABLE.]
- F. **Changes in Work.** [OMITTED – NOT APPLICABLE.]
- G. **Compliance with Laws.** [SUBSECTIONS C, D, E, F, & G OMITTED – NOT APPLICABLE.]
- H. **Condition of Payment.** [OMITTED – NOT APPLICABLE.]
- I. **Confidentiality of State Information.** [OMITTED – NOT APPLICABLE.]
- J. **Continuity of Services.** [OMITTED – NOT APPLICABLE.]
- K. **Debarment and Suspension.** [OMITTED – NOT APPLICABLE.]
- L. **Default by State.** [OMITTED – NOT APPLICABLE.]
- M. **Disputes.** [OMITTED – NOT APPLICABLE.]
- N. **Employment Eligibility Verification.** [OMITTED – NOT APPLICABLE.]
- O. **Employment Option.** [OMITTED – NOT APPLICABLE.]
- P. **Force Majeure.** [OMITTED – NOT APPLICABLE.]
- Q. **HIPAA Compliance.** [OMITTED – NOT APPLICABLE.]
- R. **Indemnification.** [OMITTED – NOT APPLICABLE.]
- S. **Independent Contractor; Workers' Compensation Insurance.** [OMITTED – NOT APPLICABLE.]
- T. **Indiana Veteran Owned Small Business Enterprise Compliance.** [OMITTED – NOT APPLICABLE.]
- U. **Information Technology Enterprise Architecture Requirements.** [OMITTED – NOT APPLICABLE.]
- V. **Insurance.** [OMITTED – NOT APPLICABLE.]
- W. **Key Person(s).** [OMITTED – NOT APPLICABLE.]
- X. **Licensing Standards.** [OMITTED – NOT APPLICABLE.]
- Y. **Minority and Women's Business Enterprises Compliance.** [OMITTED – NOT APPLICABLE.]
- Z. **Nondiscrimination.** [EDITED TO CONFIRM WITH FEDERAL ASSURANCE LEGALLY REQUIRED TO ENSURE FEDERAL FUNDING ELIGIBILITY.]
- AA. **Order of Precedence; Incorporation by Reference.** [OMITTED – NOT APPLICABLE.]
- BB. **Ownership of Documents and Materials.** [OMITTED – NOT APPLICABLE.]
- CC. **Payments.** [OMITTED – NOT APPLICABLE.]
- DD. **Penalties/Interest/Attorney's Fees.** [OMITTED – NOT APPLICABLE.]
- EE. **Progress Reports.** [OMITTED – NOT APPLICABLE.]
- FF. **Public Record.** [OMITTED – NOT APPLICABLE.]

- GG. **Substantial Performance.** [OMITTED – NOT APPLICABLE.]
- HH. **Termination for Convenience.** [OMITTED – NOT APPLICABLE.]
- II. **Termination for Default.** [OMITTED – NOT APPLICABLE.]
- JJ. **Travel.** [OMITTED – NOT APPLICABLE.]
- KK. **Work Standards.** [OMITTED – NOT APPLICABLE.]

NON-COLLUSION AND ACCEPTANCE

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Party, or that the undersigned is the properly authorized representative, agent, member or officer of the Party. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Party, directly or indirectly, has entered into or been offered any sum of money or other considering for the execution of this Agreement other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC Section 4-2-6-1, has a financial interest in the Agreement, the party attests to compliance with the disclosure requirements in IC section 4-2-6-10.5.**

In Witness Whereof, the Parties have, through their duly authorized representatives, entered into this Agreement. The Parties, having read and understood the foregoing terms of this Agreement, do, by their respective signatures dated below, agree to the terms hereof.

**MID-STATES CORRIDOR
REGIONAL DEVELOPMENT
AUTHORITY**

Executed by:

Mark A. Schroeder, Chairman

Date: _____

Attest:

Date: _____

STATE OF INDIANA

Department of Transportation

Recommended for Approval by:

Chris Kiefer,
Deputy Commissioner and Chief of Staff

Date: _____

Executed by:

Joseph McGuinness,
Commissioner

Date: _____

STATE OF INDIANA APPROVALS

STATE OF INDIANA
State Budget Agency

Jason D. Dudich, Director

Date: _____

STATE OF INDIANA
Department of Administration

Lesley A. Crane, Commissioner

(for)

Date: _____

Approved as to Form and Legality:

Attorney General Curtis T. Hill, Jr.

(for)

Date Approved: _____

EXHIBIT A

MID-STATES' RESPONSIBILITIES

Mid States' responsibilities shall be generally allocated as follows. These will be in accordance with its designation as a Participating Agency for the Project:

- 1) Mid-States will review and provide input to INDOT for the Request for Proposals ("RFP") to select a consultant for the Project. This input will be in portions of the RFP which describe the consultant scope of services and consultant selection criteria.
- 2) Mid-States will provide selection committee members to review and score proposals and participate in the interviews for the Tier 1 Environmental Study once INDOT issues solicitation through its RFP process. Mid-States and INDOT will each provide an equal number of scorers to evaluate responses, and both Parties must concur in the final selection of a consultant. The size of the selection committee as well as Mid-States representation will be finalized in discussions between INDOT and Mid-Sates.
- 3) Mid-States will participate formally in the agency review processes at major study milestones. These milestones are cited on Page 11 of EIS Procedures as:
 - a. Purpose and Need/Conceptual Solutions
 - b. Range of Preliminary Alternatives Screening
 - c. Preferred Alternative and Mitigation
- 4) Mid-States will participate as a member of the Project Management Team, as described on Page 7 of EIS Procedures, to include project management activities, including attending any Project meetings, reviewing major project documents, and offering input and comments. INDOT will take the comments and advice offered by Mid-States into consideration during all phases of project development. The Project Management Team will meet at least monthly, unless otherwise agreed upon by INDOT and Mid-States.
- 5) Mid-States will be responsible for raising the funds from both local private and public sources to pay for the Tier 1 Environmental study and have funding commitments in place for the anticipated 3 year timeframe to complete the study. Sufficient funds as identified in **Section 1.5(A)** must be on hand in order to issue Notice to Proceed ("NTP") for the selected consultant team to begin the study. Any and all funds contributed for the study will count towards the overall match for the Project.
- 6) Mid-States will secure long-term funding commitments from local sources (both public and private) once the Project cost and delivery mechanism is known to assist INDOT in securing federal and state matching funds for the Project after the completion of the Tier 1 Environmental Study.

EXHIBIT B

INDOT'S RESPONSIBILITIES

INDOT's responsibilities shall be as follows:

- 1) INDOT will designate Mid-States as a Participating Agency for the Project.
- 2) INDOT will be the Lead Agency on the Project. The Parties understand that as the Lead Agency, INDOT is ultimately responsible for decisions on the Project.
- 3) INDOT will solicit consulting proposals for the Tier 1 Environmental Study through its regular Request for Proposal ("RFP") process and in accordance with applicable law. INDOT will identify qualifications required to complete study and pre-qualification categories required for the RFP. Mid-States may suggest additional pre-qualification categories for the RFP in its discretion, and INDOT will take any such suggestions under advisement. INDOT will coordinate with Mid-States on weighting and categories for scoring proposals submitted by consultants. INDOT will use its usual and ordinary processes for scoring proposals.
- 4) INDOT will furnish appropriate project management services. INDOT's Project Manager shall be identified pursuant to INDOT's standard internal procedures. If at any time Mid-States wishes to hire a private consultant to act as co-project manager, it may request that INDOT procure such a consultant and shall have final approval rights over selection. The hiring of a private co-project manager shall be at Mid-States' sole expense, and would be a cost in addition to the Local Funding Contribution as provided in **Section 1.5(A)** of the Agreement.
- 5) INDOT will consult with Mid-States regarding the timing, content and form of any press release or other public statement related to the Project.
- 6) At conclusion of the Project (Tier 1 EIS) and consistent with all decisions, conclusions, and outcomes of the Tier 1 EIS, INDOT work with Mid-States on planning next phases of Project, including Tier 2 environmental studies, project design, development, right-of-way acquisition, utility relocation, construction, and inspection.
- 7) INDOT will amend the current State Transportation Improvement Plan (STIP) to include the Project and submit to Federal Highway Administration (FHWA) and other federal agencies as necessary to add the Project to STIP. Process will include assignment of project description number (DES#) to facilitate use of federal matching funds for future phases of the Project. INDOT will also coordinate with Indiana 15 Regional Planning Commission.