

**INTERLOCAL COOPERATION AGREEMENT
BY AND BETWEEN
THE INDIANAPOLIS PUBLIC TRANSPORTATION CORPORATION
AND
THE CONSOLIDATED CITY OF INDIANAPOLIS, MARION COUNTY
BY AND THROUGH ITS DEPARTMENT OF PUBLIC WORKS
FOR IMPLEMENTATION OF
THE MARION COUNTY TRANSIT PLAN**

This Interlocal Cooperation Agreement (“Agreement”) is entered into as of the ___ day of _____, 2018 (the “Effective Date”) by and between the Consolidated City of Indianapolis and Marion County, by and through its Department of Public Works (the “City”), and the Indianapolis Public Transportation Corporation (“IPTC” (and commonly known as “IndyGo”)).

WHEREAS, IPTC was created pursuant to Title 36, Article 9, Chapter 4 of the Indiana Code and the Revised Code of Indianapolis and Marion County (“R.C.”), § 116-402 as a distinct municipal corporation in order to establish and maintain an urban mass transportation system in Indianapolis necessary for the welfare of the general public, to expand the economic and social opportunities available to its residents, and to render adequate service essential to relieve traffic congestion which would otherwise prevent the rapid and efficient movement of persons and goods in and about the city (“IPTC’s Purposes”); and

WHEREAS, in furtherance of IPTC’s Purposes, IPTC operates the urban mass transportation system for Indianapolis and Marion County, which serves the general public as the primary public transportation mechanism in Marion County; and,

WHEREAS, IPTC’s operation of an urban mass transportation system has been found to promote significant opportunities for the gainful employment of Marion County citizens, to attract major new business enterprises to Marion County, to retain and expand significant business enterprises within Marion County, including adequate services necessary to properly utilize the factories, stores, warehouses, commercial, professional and governmental offices, schools, recreational facilities and other places where members of the general public congregate, and to facilitate tourism in central Indiana (“Economic Development Activities”); and

WHEREAS, for several years IPTC, the City and other stakeholders have been conducting studies and planning for significant modernization improvements to the urban mass transportation system, including the implementation of bus rapid transit service; and

WHEREAS, as part of its modernization efforts, IPTC opened its newest and most modern facility, the Julia M. Carson Transit Center (the “Transit Center”), on June 26, 2016 in downtown Indianapolis to serve as the central transfer point for all IPTC bus routes through the downtown area; and

WHEREAS, the Central Indiana Transit Task Force was an initiative established in 2008 among the Indianapolis metropolitan area’s business, community, government and elected leaders, along with transit riders and interested residents, to promote the need for improved

public transportation service in the region, which led to a cooperative partnership among public agencies in the region known as “Indy Connect” to study the region’s transit needs and to plan improvements to the urban mass transportation system, and both IPTC and the City were key partners of Indy Connect; and

WHEREAS, included as part of the Indy Connect Plan is the Marion County Transit Plan, a plan to improve the public transportation services in Indianapolis and Marion County, which was adopted by the IPTC’s Board of Directors on March 24, 2016; and

WHEREAS, the Marion County Transit Plan calls for a connected network of bus routes and rapid transit lines, increased service frequency, extended operational hours, and the implementation of three (3) bus rapid transit lines (“BRTs”): the Red Line, the Purple Line and the Blue Line; and

WHEREAS, at the November 8, 2016 general election, the voters of Marion County approved a special purpose income tax to fund the Marion County Transit Plan; and

WHEREAS, pursuant to I.C. §§ 6-3.6-7-27 and 8-25-3-1, the City-County Council of Indianapolis and Marion County (the “Council”) adopted Fiscal Ordinance No. 001, 2017 to enact the special purpose income tax approved by the voters to improve public transportation service in accordance with the Marion County Transit Plan; and

WHEREAS, pursuant to I.C. §§ 6-3.6-7-27 and 8-25-3-7, the revenue raised from the special purpose tax may be used only to purchase, establish, operate, repair, or maintain a public transportation project authorized under I.C. 8-25, which includes the improvements called for by the Marion County Transit Plan; and

WHEREAS, pursuant to I.C. § 8-25-4-2, the Council adopted General Ordinance 52, 2017 authorizing IPTC to carry out the public transportation improvements called for by the Marion County Transit Plan, subject to the Council’s appropriating power and any other powers reserved for the Council; and

WHEREAS, in carrying out the BRT aspects of the Marion County Transit Plan, IPTC has determined it will first implement the proposed Red Line BRT, which is planned to eventually extend from the City of Westfield in Hamilton County at the north end, through downtown Indianapolis, to the City of Greenwood in Johnson County at the south end (the “Red Line”), and which will stimulate further Economic Development Activities in the areas served by the Red Line, among others; and

WHEREAS, the construction and implementation of the Red Line is planned in three (3) phases, with construction of Phase 1 – which will extend from 66th Street on the north end, through downtown Indianapolis, and to Hanna Avenue on the south end – scheduled to begin in 2018 (the “RL 1 Project”); and

WHEREAS, IPTC has developed plans and specifications for construction of the RL 1 Project, which are on file at IPTC's offices and are incorporated herein by reference (the "RL 1 Project Plans"); and

WHEREAS, under R.C. § 261-101 and I.C. §§ 36-3-5-4 and 36-3-4-23, the Department of Public Works ("DPW") is established as the public works agency of the City to, among other things, plan, finance, design, construct and maintain the public transportation infrastructure systems of the City, including public streets, ways, bridges, and pedestrian facilities, and to protect the City's investment in its infrastructure systems and facilities (the "DPW Purposes"); and

WHEREAS, as part of the DPW Purposes, DPW owns, operates, manages and controls the public rights-of-way within the jurisdiction of the City in Marion County; and

WHEREAS, the RL 1 Project Plans provide for the construction of dedicated bus-only lanes, permanent BRT Stations, new and upgraded traffic control devices, new and upgraded pavement, curbs, sidewalks and drainage facilities, and new traffic and parking management measures, all in the public rights-of-way along the route of Phase 1 of the Red Line; and

WHEREAS, the planned improvements to the urban mass transportation system and the continuing and robust operation thereof provides unique, extraordinary and immeasurable public economic, civic and social benefits that mutually further the respective IPTC Purposes and DPW Purposes, including particularly Economic Development Activities; and

WHEREAS, therefore, in furtherance of the respective IPTC Purposes and DPW Purposes, IPTC and DPW have a common interest in construction and implementation of the Marion County Transit Plan, and mutually and specifically desire to enter into this Agreement for the purposes of protecting, furthering, increasing and enhancing the benefits that should result from the implementation of Phase 1 of the Red Line and the Marion County Transit Plan; and

WHEREAS, in addition to the receipts of the economic development income tax, the IPTC has been awarded a \$50,000,000.00 Small Starts Grant from the U.S. Department of Transportation, Federal Transit Administration (the "FTA"), to assist in the funding of the capital costs for the RL 1 Project (the Small Starts Grant and any other funding for the RL 1 Project by the FTA hereinafter referred to collectively as "FTA Funds"); and

WHEREAS, in furtherance of its common interest with IPTC in the Marion County Transit Plan, the City is willing to contribute funding of up to \$6,000,000.00 in parking meter funding through DPW (the "DPW Funds") and \$6,000,000.00 in tax increment financing funds through its Department of Metropolitan Development ("DMD") (the "DMD Funds" and together with the DPW Funds, collectively, the "City Funds") for construction of the three (3) proposed BRTs, including the RL 1 Project, subject to the terms and conditions of this Agreement; and

WHEREAS, under I.C. § 36-1-7-11.5, an "economic development project" includes any project related to, among other things, transportation services and transportation infrastructure;

therefore, the parties agree that the RL 1 Project meets the definition of an economic development project under that statute; and

WHEREAS, the City and IPTC are authorized under I.C. §§ 36-1-7-2 and 36-1-7-11.5 to enter into an interlocal cooperation agreement to cooperatively undertake the RL 1 Project through the transfer of funds after appropriation, the transfer of any property, and the provision of personnel, services and facilities, if such agreement is approved by ordinance or resolution of the Council; and

WHEREAS, the City and IPTC are further authorized pursuant to I.C. §§ 36-1-7-2, 36-1-7-11 and 36-1-7-12 to enter into an interlocal cooperation agreement to undertake the Project cooperatively through the appropriation of funds, the provision of personnel, services and facilities, and the purchase, sale and exchange of services, supplies and equipment, if such agreement is approved by ordinance or resolution of the Council; and

WHEREAS, accordingly, IPTC and DPW desire to enter into this Agreement as an interlocal cooperation agreement to establish their mutual agreements and respective responsibilities in implementing the Marion County Transit Plan, including the construction, implementation, operation and maintenance of the RL 1 Project.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, IPTC and DPW agree as follows:

1. DURATION AND PURPOSE.

(a) **Purpose.** The purpose of this Agreement is to provide a coordinated and unified approach for the design, financing, construction, implementation, operation and maintenance of the BRTs planned as part of the Marion County Transit Plan by establishing the mutual agreements and respective responsibilities of each of the parties, and to protect, further, increase and enhance the benefits that result from the implementation of the Marion County Transit Plan, including, among others, to allow opportunities for synergies and efficiencies related to costs and benefits in respect of utilities, parking, regional promotion and the mutual furtherance of the respective IPTC Purposes and DPW Purposes. This Agreement, including in particular the contribution of City Funds, is contingent upon the availability of the FTA Funds to IPTC, as further set forth in Section 3.

(b) **Incorporation of Recitals.** The recitals set forth above at the outset of this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

(c) **Living Document.** IPTC and the City agree that this Agreement is a living document providing the framework for the parties' respective obligations, and that future amendments to this Agreement will be necessary to further clarify and expand the roles and responsibilities of the parties as the Marion County Transit Plan is implemented, including in particular future phases of the Red Line as well as the Purple Line and the Blue Line.

(d) **Duration.** This Agreement shall remain in full force and effect until the earlier of: (i) one (1) year after the “Useful Life” (as defined in Schedule II, attached hereto and incorporated herein) of any Project Infrastructure (as defined in Section 4(c)(i)) constructed and installed under the provisions of this Agreement; or (ii) termination in accordance with the terms hereof, including Section 3(b) and Section 10(e).

2. APPLICATION OF FTA REQUIREMENTS. This Agreement and the activities contemplated hereunder are subject to the requirements of the FTA’s regulations and related agreements, including any terms and conditions of FTA Funds awarded to IPTC for the RL 1 Project authorized by 49 U.S.C § 5301 et seq., or other applicable Federal legislation. The use of any FTA Funds shall be in accordance with FTA Circular 4220.1F and the requirements of the Master Agreement between IPTC and the FTA (the “FTA Master Agreement”), to the lowest applicable tier of subcontractors. The FTA Master Agreement is updated annually, is on file at IPTC’s offices, and is incorporated herein by this reference, including any updates. In the event of a conflict between the FTA Master Agreement and this Agreement, the applicable term of the FTA Master Agreement shall control.

3. APPLICATION OF STATE AND LOCAL REQUIREMENTS.

(a) **State and Local Laws.** The activities contemplated under this Agreement are subject to the requirements of applicable laws of the State of Indiana and local ordinances of the Consolidated City of Indianapolis and Marion County. In particular, contracts for goods, services and construction related to implementation of the RL 1 Project must meet the requirements of applicable provisions of the Indiana Public Purchasing Law, I.C. 5-22, the Indiana Public Works Law, I.C. 36-1-12, and the duties of the City’s Controller and Purchasing Division as set forth in R.C. §§ 202-202 through 202-204. These state and local requirements shall be complied with in addition to, and not in the place of, any FTA requirements and the provisions of the FTA Master Agreement.

(b) **Termination for Failure of Funding.** Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. The City agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

4. CITY AUTHORITY AND OBLIGATIONS. The City agrees to take the actions set forth in this Section 4, by and through DPW, unless another City department or agency is identified herein with specificity as being responsible for carrying out the obligation. The City reserves all rights to transfer assignments and responsibilities in connection with the City’s obligations hereunder to any City department or agency. No grant of authority in relation to nor any funding provided by the City to IPTC for any of the planned BRTs under this Agreement shall render the City liable or responsible in any way for the failure by IPTC or its agents and

contractors to adhere to the Approved Project Plans (as defined in Section 4(b)(v)) for construction of any portion of any of the BRTs, including, without limitation, for defects in design, the quality of materials used, or the quality of workmanship.

(a) City Funding.

(i) As stated in the recitals hereto, the City has conditionally agreed to provide the City Funds to assist in the funding of construction of IPTC's three (3) planned BRTs. The parties hereby agree that \$2,000,000.00 of the DPW Funds (the "DPW RL 1 Project Funds") and the total \$6,000,000.00 of the DMD Funds shall be utilized for construction of the RL 1 Project, subject to the conditions hereof and as detailed in Schedule I, attached hereto and incorporated herein. The remaining \$4,000,000.00 of the DPW Funds will be utilized to assist in funding the construction of the Purple Line, the Blue Line and Red Line Phases 2 and 3 as detailed in Schedule I.

(ii) Other than the DPW RL 1 Project Funds portion of the City Funds, the City's obligation to provide any of the remaining City Funds is contingent upon the availability to IPTC of the Small Starts Grant FTA Funds for the RL 1 Project, which have been awarded but not yet made available by the FTA. IPTC shall provide the City with written notice that the Small Starts Grant FTA Funds for the RL 1 Project has been made available for expenditure by IPTC before any of the remaining City Funds may be disbursed. **In the event that the Small Starts Grant FTA Funds for the RL 1 Project are not forthcoming to IPTC for whatever reason, then the City shall no longer be obligated to provide any of the remaining City Funds, and the City and IPTC shall renegotiate the terms and conditions of this Agreement relating to the use of the remaining City Funds.**

(iii) The City Funds shall be used solely by IPTC for expenditures directly related to and for the construction of infrastructure improvements in accordance with Approved Plans (as defined in Section 4(b)(v)).

(iv) IPTC agrees that DPW may deduct from the DPW Funds an amount not to exceed \$350,000.00 in 2018 and 2019 to defray DPW's considerable costs incurred in reviewing plans, coordinating with IPTC and its contractors, and for an engineering firm contracted by DPW (the "DPW Inspector") to assist DPW with the foregoing and to monitor construction of the RL 1 Project, including in particular the construction of City Infrastructure (as defined in Section 4(c)(i)), on behalf of DPW.

(v) The DPW Funds shall be payable as set forth in Schedule I.

(vi) The DMD Funds shall be payable within 60 days after receipt by DMD of an invoice from IPTC, the form and substance of which may be prescribed by the City. IPTC shall submit such invoice to: Department of Metropolitan Development, Attention: Chief Financial Officer, 200 East Washington Street, Suite 2042, Indianapolis, Indiana 46204.

(vii) The City's Controller shall be the disbursing officer tasked with disbursing and accounting for all City Funds expended pursuant to this Agreement.

(b) City Authority and Cooperation.

(i) City Cooperation. Subject to the terms and conditions of this Agreement, the City shall work cooperatively with IPTC to implement the Marion County Transit Plan.

(ii) City Contacts.

(A) DPW Design Representative. DPW shall assign a representative to serve as IPTC's primary City contact with regard to design review and approval for each of the BRTs.

(B) DPW Construction Representative. DPW shall assign a representative to serve as IPTC's primary City contact with regard to construction of each of the BRTs.

(C) DPW Operations Representative. DPW shall assign a representative to serve as IPTC's primary City contact with regard to ongoing operation and maintenance of the Project Infrastructure (as defined in Section 4(c)(i)) installed as part of the construction of each of the BRTs.

(D) DPW Inspector. The engineering firm that DPW contracts pursuant to Section 4(a)(iv).

(iii) Availability of the Public Rights-of-Way. DPW shall make available for IPTC's use and improvement in connection with construction of each of the BRTs, and the subsequent operation thereof, the public rights-of-way along the planned routes of each of the BRTs in accordance the Approved Project Plans (as defined in Section 4(b)(v)); provided, however, under no circumstances shall DPW or the City be required to acquire any additional rights-of-way that may be necessary for the construction and operation of any of the BRTs.

(iv) Approvals. The DPW Construction Representative shall provide assistance to IPTC as necessary in securing all approvals and permits necessary to carry out the construction and operation of each of the BRTs. The DPW Construction Representative shall take all reasonable action to expedite a permit request or permit modification request submitted by an IPTC contractor in relation to the construction of the BRTs.

(v) Project Plans and Work Plans. Prior to the Effective Date, DPW has cooperated with IPTC in the development of the plans for the RL 1 Project and has approved those plans (the "Approved RL 1 Project Plans"). DPW shall continue in its cooperation with IPTC to review plans for the Purple Line, the Blue Line and Red Line Phases 2 and 3 as they are developed and refined. All plans for all of the BRTs, including the Approved RL 1 Project Plans, are collectively referred to herein as "Project Plans", and those

Project Plans approved by DPW are collectively referred to herein as “Approved Project Plans”. No public request for bids or quotes for construction of any of the BRTs, or any portion thereof, shall be published by IPTC until the Project Plans for that BRT, or the portion thereof in question, have been approved by DPW. All Approved Project Plans shall be incorporated into this Agreement by this reference.

For the avoidance of doubt, the Approved RL 1 Project Plans have been approved by DPW and IPTC has publicly bid the construction of the RL 1 Project prior to the Effective Date of this Agreement.

(vi) Work Plans and Schedules. DPW shall have the authority to review, request changes to and approve the construction work plan and schedule, including plans for the maintenance of traffic during construction (“Project Work Plans”) for each of the BRTs, in DPW’s reasonable discretion, prior to commencement of construction on any of the BRTs, or any portion thereof.

(vii) Communications Plan. DPW shall have the authority to review and request changes to IPTC’s plan for public communications, branding, and response to complaints during design and construction (“Project Communications Plans”) for each of the BRTs, in DPW’s reasonable discretion and in accordance with the provisions of Section 5(a)(iv).

(viii) Construction Change Directives and Change Orders. DPW acknowledges that there may be changes to the Project Plans and Work Plans necessitated by site conditions and unforeseen circumstances during construction of any of the BRTs, or portions thereof, which may require timely direction to IPTC’s contractor to revise the Project Plans or its Work Plans (a “Construction Change Directive” or “CCD”) and corresponding revisions to the project documents and contractor’s construction contract (a “Change Order” or “CO”). DPW may review and request reasonable changes to any CCDs and COs related to IPTC Infrastructure (as defined in Section 5(c)(i)). DPW shall have the authority to review, require changes to and approve any CCDs and COs related to City Infrastructure (as defined in Section 4(c)(i)), in DPW’s sole discretion. DPW acknowledges that time is of the essence with regard to Construction Change Directives and Change Orders, and agrees to cooperate with IPTC to institute a system for the review and approval thereof which will strive to ensure all decisions are made in an expedited fashion, in accordance with the provisions of Section 5(a)(vi).

(ix) Construction Inspection.

(A) City’s Right to Inspect. The City, through DPW, shall have the right to monitor and inspect all construction activities of each of the BRTs, including in particular the City Infrastructure (as defined in Section 4(c)(i)).

(B) Construction Progress Meetings. The DPW Construction Representative and/or the DPW Inspector shall attend regular progress meetings during construction of each of the BRTs with representatives of the IPTC and its

construction contractor. Any other authorized representative of the City may also attend construction progress meetings.

(C) City Authority. DPW shall have the right to stop work or order revisions to the work or Work Plans on the construction of any of the BRTs: (I) in the event of an emergency; (II) if it determines that a condition or method is dangerous to the health and safety of those working on the project or to the public; (III) if it determines that work is not being done in accordance with Approved Project Plans, any addenda thereto, then current Work Plans, Construction Change Directives, or Change Orders; or if it determines that the work will conflict with or have an adverse effect on a civic event. The foregoing notwithstanding, the authority of the City's Mayor, any other agency of the City, or any other local, state or federal agency, to take appropriate action in accordance with their respective legal authority, jurisdiction and general police powers shall not be abridged by this Agreement.

(c) City Infrastructure and Services.

(i) City Obligation to Maintain City Infrastructure. The infrastructure to be constructed and installed as part of each of the BRTs shall be referred to herein as "Project Infrastructure". Subject to the cost sharing provisions of Section 5(b), the City, through DPW, shall maintain or cause to be maintained and repaired/replaced those components of Project Infrastructure that are to be owned by the City pursuant to this Agreement and/or the Approved Project Plans (the "City Infrastructure") for not less than the Useful Life thereof.

The Useful Life of, and DPW's maintenance obligations with regard to, the City Infrastructure to be constructed and installed as part of the RL 1 Project are set forth in Schedule I, which will be amended as necessary as Project Plans for the other BRTs are finalized and approved.

(ii) Availability. DPW shall make all City Infrastructure available to serve the BRT for which it was constructed and installed for not less than the Useful Life thereof.

(iii) FTA Funding Obligations. The City acknowledges that any component of the City Infrastructure constructed or installed with the use of any FTA Funds carry a federal interest for their Useful Life, or until the FTA approves the disposition thereof, and that repayment of FTA Funds may be necessary if disposed of prior to the end of its Useful Life.

5. IPTC OBLIGATIONS. IPTC agrees to take the actions set forth in this Section 5. IPTC shall be primarily responsible for all aspects of design, financing, construction, implementation and operation of each of the BRTs, including in particular those obligations expressly stated herein, all at IPTC's sole cost and expense (other than the FTA Funds and the City Funds).

(a) Design and Construction.

(i) IPTC Responsible. IPTC shall be responsible for each and every aspect of the design and construction of each of the BRTs, including preparation of Project Plans, addenda thereto, Work Plans, Construction Change Directives and Change Orders, all subject to the City's review and approval, as applicable, as set forth in Section 4(b).

(ii) Approvals. IPTC shall secure or cause to be secured all approvals and permits, and the adoption of all resolutions and ordinances, necessary to carry out the construction of each of the BRTs and the implementation and operation of bus service thereon.

(iii) Additional Public Rights-of-Way. IPTC shall acquire any additional right-of-way required to construct any portion of each of the BRTs and to implement and operate bus service thereon. Following completion of construction of the RL 1 Project, IPTC shall transfer any right-of-way acquired for the project to DPW. IPTC shall likewise transfer any right-of-way acquired for the subsequent BRT projects upon completion of construction thereof. Any written instruments to effectuate such transfer shall be in form and substance as approved by the City, and IPTC shall bear all costs associated with recording such instruments in the records of the Office of the Marion County Recorder.

(iv) Communications Plan. IPTC shall establish a Communications Plan for public communications, branding, and response to complaints prior to and during construction of each of the BRT, subject to DPW's review as set forth in Section 4(b)(vii). At minimum, each Communications Plan shall include:

(A) Branding. IPTC shall brand each of the projects to construct the BRTs such that, where possible and appropriate, signage, literature, internet and social media communications and public announcements concerning construction of the project includes IPTC's logo and contact information for the submission of questions and concerns about the project.

(B) Public Meetings. IPTC shall advertise and hold public meetings prior to commencement of construction of each of the BRTs, or any phase of construction thereof if the project is planned in stages, to inform residents and businesses of the scope of the Project Plans and proposed Work Plans and to answer questions and listen to concerns from residents and businesses about the project. The number and location of such public meetings will be determined jointly by DPW and IPTC based upon the geographic size of the project limits and the number of residents and businesses impacted as a result of the construction and subsequent implementation of bus service; provided, however, that in the event of a disagreement as to the number of public meetings to be held, IPTC shall defer to DPW's experience with large public construction projects in the public right-of-way and hold the number of meetings that is recommended by DPW.

(C) Telephone Customer Service. IPTC shall establish and advertise a telephone customer service telephone line that will include a recorded message

for updates and information regarding the BRT projects, as well as an option where residents may reach a customer service representative during business hours or may leave a message after hours (to be returned by a customer service representative) to ask questions or express concerns about the projects or the bus service to be provided when the BRT is open for service.

(D) Public Project Updates. IPTC shall provide weekly updates to residents, businesses and media via email and social media platforms during construction of each of the BRTs, including a recap of work completed the previous week and a forecast of work to be done the next week (or several weeks).

(E) City Project Updates. IPTC shall provide weekly updates via email to the DPW Construction Representative, DPW's Chief Communications Officer, the Mayor's Action Center and the Mayor's Neighborhood Advocates during construction of each of the BRTs, including a recap of work completed the previous week and a forecast of work to be done the next week (or several weeks).

(F) Changes to Work Plans. IPTC shall notify the DPW Construction Representative, the DPW Inspector, DPW's Chief Information Officer and the media any time that there is a significant change to the Work Plans during construction of any of the BRTs, particularly if the changes may affect traffic or access to residents or businesses.

(v) Construction Per Approved Project Plans. IPTC shall cause the construction and installation of Project Infrastructure in each BRT project to be completed in accordance with the Approved Project Plans.

(vi) Changes During Construction. IPTC shall promptly communicate with the DPW Construction Representative and the DPW Inspector with regard to all CCDs and COs in accordance with Section 4(b), and shall refrain from releasing its contractor to perform any work under a CCD or CO concerning IPTC Infrastructure (as defined in Section 5(c)(i)) until it has received DPW's comments, if any, and concerning City Infrastructure until it has received DPW's approval, all in accordance with Section 4(b).

(vii) Construction Inspection. IPTC shall monitor and inspect construction of each of the BRTs through both its own staff and by a designated third-party contracted construction inspector to ensure that each BRT project is constructed in accordance with the Approved Project Plans and to ensure that all construction of and improvements to City Infrastructure are completed in accordance with the Approved Project Plans, any addenda thereto, CCDs and COs.

(viii) Construction Progress Meetings. IPTC shall schedule and coordinate regular progress meetings with its construction and inspection contractors during construction of each BRT, and shall invite to each such meeting the DPW Construction Representative and the DPW Inspector as provided for under Section 4(b)(ix).

(ix) Trash Collection During Construction. Where construction activities for any portion of any of the BRTs will impede access to the curb or other location where residents place their household trash for collection, as determined by DPW in its sole discretion, IPTC shall require its general contractor to collect and dispose of the impacted residents' trash. The contractor shall be required to place residents' trash collection bins in the residents' front yards after emptying them into a container provided by the contractor. In addition, where construction activities for any portion of any of the BRTs will impede access to trash receptacles located in the public right-of-way serviced by the City or its contractors, IPTC shall require its general contractor to collect and dispose of the trash in those receptacles. The contractor shall dispose of all collected trash in accordance with the City's codes, ordinances, rules and standards for solid waste disposal.

(x) Work in the Right-of-Way; Street Closures; Access. IPTC shall ensure that its construction contractor on each of the BRT projects comply with all applicable City codes, ordinances, rules and standards for work in the public rights-of-way, including but not limited to the following:

(A) Work Hours. No work shall be performed except during DPW's normal working hours in the public rights-of-way, which are from 6:00 a.m. to 7:00 p.m., Monday through Friday. IPTC's contractor shall not work on Saturday and Sunday, and on the following official City holidays: New Year's Day, Martin Luther King, Jr. Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the day following, Christmas Eve, and Christmas Day. On authorized working days, IPTC's contractor shall not perform activities which restrict traffic flows during the hours from 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., other than when a traffic lane has been authorized through an appropriate City-issued permit for closure. DPW acknowledges that there will be instances in which it is beneficial for work to be performed outside of the above parameters, and IPTC or its contractor may request to work on days or at times not otherwise permitted, which request shall be submitted in writing to the DPW Construction Representative and the DPW Inspector at least seventy-two (72) hours in advance, and no such work shall be performed until after DPW approves the request in writing.

(B) Street Closures. Best efforts shall be made to minimize the time that any public street, sidewalk, alley or way is closed to traffic and/or pedestrians during construction of any of the BRTs. No public street, sidewalk, alley or way shall be closed to traffic and/or pedestrians without first coordinating such closure with DPW, obtaining DPW's written approval for the closure, and obtaining a City-issued permit authorizing the closure.

(C) Maintenance of Reasonable Access. Any time that the closure of any public street, sidewalk, alley or way is permitted by the City, IPTC shall ensure that reasonable access is maintained for disabled persons, school buses, local

residents and businesses in accordance with the Approved Project Plans, any addenda thereto, any CCDs and any COs,

(D) Detour Routes. IPTC shall ensure that any traffic and pedestrian detour routes implemented during construction of any portion of any of the BRTs are clearly marked with appropriate signage.

(E) Additional Maintenance of Traffic Measures. If during construction of any portion of any of the BRTs either DPW or IPTC determines, in their reasonable discretion, that any construction activities, maintenance of traffic measures, or street closures related to the BRT project require additional measures for the maintenance of traffic on other streets, alleys or ways within one-half (½) mile of the project's limits, then IPTC shall implement such measures. If it is determined that such measures include the installation of one (1) or more temporary or additional traffic signals, then DPW and IPTC shall cooperatively discuss the need for, extent of and financing for the implementation of such traffic signals.

(xi) Parking Meters. In the event that the construction of any portion of any of the BRTs or implementation/operation of bus service thereon should require the removal, relocation or replacement of a parking meter, such meter shall not be removed, relocated or replaced without DPW's prior approval, and IPTC shall bear all costs associated with the removal, relocation or replacement of such meter, including any costs or fees that the City may owe to its parking meter vendor as a result thereof. The City and DPW shall work with IPTC to add, relocate or replace parking meters at no cost to either party wherever possible.

(xii) Contractor Non-Discrimination. IPTC shall require of each of its general contractors performing construction activities on any portion of any of the BRT projects to certify to IPTC that the contractor and its officers, agents, employees and subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of work on the project, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

(xiii) Contractor Indemnification of City. IPTC shall require of each of its general contractors performing construction activities on any portion of any of the BRT projects to indemnify, defend, and hold harmless the Consolidated City of Indianapolis and Marion County and its officers, agents, officials and employees from any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission of the contractor or its officers, agents, employees or subcontractors. Such indemnity shall include attorneys' fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be

limited by reason of the enumeration of any insurance coverage required herein. However, such contractor(s) shall be relieved of this indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omissions of the City/County, its officers, agents, officials, or employees.

Notwithstanding the above, with regard to the RL 1 Project the City accepts the indemnification provisions provided in the Approved RL 1 Project Plans, as amended by addenda, which has also been accepted by IPTC's general contractor for the RL 1 Project via an executed contract for construction with IPTC.

(xiv) Contractor Insurance. IPTC shall require of each of its general contractors performing construction activities on any portion of any of the BRT projects to purchase and maintain such commercial general liability and other insurance as is appropriate for the work being performed and furnished and shall protect the contractor, DPW, IPTC and their respective construction inspectors and design engineers, and their respective employees, officers, or agents in such form and including such coverage as set forth on Schedule IV, attached hereto and incorporated herein.

Notwithstanding the above, with regard to the RL 1 Project, the City accepts the insurance provisions provided in the Approved RL 1 Project Plans, as amended by addenda, which has also been accepted by IPTC general contractor for the RL 1 Project via an executed contract for construction with IPTC.

(xv) Warranty on City Infrastructure. IPTC shall require each of its general contractors constructing, installing or improving any City Infrastructure on any portion of any of the BRT projects to:

(A) Warranty. Warrant to the City for a period of at least three (3) years from the date of substantial completion of the BRT project the workmanship and all materials, signage and equipment used in the construction, installation and completion of the City Infrastructure, including all improvements and installations thereof, to be of good quality and constructed and completed in a workmanlike manner in accordance with the Approved Project Plans, any addenda thereto, any CCDs, any Cos, and all local, state and federal laws, ordinances, rules, standards and regulations applicable to such work, materials, signage and equipment.

(B) Warranty Work. During said three (3) year warranty period, promptly and properly repair, replace, restore, or rebuild, as DPW determines, any finished work, materials, signage and equipment related to City Infrastructure in which defects of materials or workmanship may appear or damage may occur because of such defects.

(C) Warranty Bond. Supply in favor of the Consolidated City of Indianapolis and Marion County a three (3) year warranty bond effective as of the date of substantial completion of the BRT project in an amount equal to ten percent (10%) of the contractor's contract amount, as adjusted for Change Orders, or such

different percentage as may be agreed to by DPW, issued by a surety licensed to conduct business in the State of Indiana and named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Audit Staff Bureau of Government Financial Operations, U.S. Treasury Department.

Notwithstanding the above, with regard to the RL 1 Project, the City accepts the warranty provisions provided in the Approved Project Plans, as amended by addenda, which has also been accepted by IPTC’s general contractor via an executed contract for construction with IPTC.

(b) IPTC Cooperation.

(i) IPTC Cooperation. Subject to the terms and conditions of this Agreement, IPTC shall work cooperatively with the City to implement the Marion County Transit Plan.

(ii) IPTC Contacts.

(A) IPTC Design Representative. IPTC shall assign a representative to serve as DPW’s primary IPTC contact with regard to design review and approval for each of the BRTs.

(B) IPTC Construction Representative. IPTC shall assign a representative to serve as DPW’s primary IPTC contact with regard to construction of each of the BRTs and to regularly coordinate with the DPW Construction Representative throughout the course of construction of each of the BRT projects.

(B) IPTC Operations Representative. IPTC shall assign a representative to serve as DPW’s primary IPTC contact with regard to ongoing operation and maintenance of the Project Infrastructure constructed and installed as part of each of the BRT projects, and to regularly coordinate with the DPW Operations Representative.

(C) IPTC Communications and Public Outreach Representative. IPTC shall assign a representative as the City’s primary IPTC contact with regard to all communications and outreach matters, including media relations, neighborhood and public meetings, advertising, and general updates to the public, for each of the BRT projects, and to regularly coordinate with DPW’s Chief Communications Officer regarding messaging, branding, signage, communications plans, and outreach.

(iii) Operations and Maintenance Cost Sharing. In consideration for IPTC’s use of the public rights-of-way for constructing and operating the BRTs, including exclusive use in the case of dedicated bus-only lanes and permanent BRT Stations, IPTC agrees to share in the costs to the City in fulfilling its obligations to maintain and make available

the City Infrastructure as set forth in Section 4(b) and Section 4(c). IPTC's cost sharing obligations with regard to the City Infrastructure to be constructed and installed as part of the RL 1 Project are set forth in Schedule II, and this Agreement shall be amended by the parties to adjust the cost sharing provisions as necessary as Project Plans for the Purple Line, the Blue Line and Red Line Phases 2 and 3 are finalized and approved.

(c) IPTC Infrastructure.

(i) IPTC Obligation to Maintain IPTC Infrastructure. IPTC shall maintain or cause to be maintained and repaired/replaced those components of Project Infrastructure to be constructed and installed as part of each of the BRTs that are to be owned by IPTC pursuant to this Agreement and/or the Approved Project Plans ("IPTC Infrastructure") for not less than the Useful Life thereof. The IPTC Infrastructure shall include the BRT Stations constructed on each of the BRTs, the maintenance of which is more particularly addressed in Section 5(e).

The Useful Life of, and IPTC's maintenance obligations with regard to, the IPTC Infrastructure to be constructed and installed as part of the RL 1 Project are set forth in Schedule II, which will be amended as necessary as Project Plans for the other BRTs are finalized and approved.

(ii) Availability. IPTC shall make all IPTC Infrastructure available to serve the BRT for which it was constructed and installed for not less than the Useful Life thereof.

(iii) FTA Funding Obligations. IPTC acknowledges that any component of the IPTC Infrastructure constructed or installed with the use of any FTA Funds carry a federal interest for their Useful Life, or until the FTA approves the disposition thereof, and that repayment of FTA Funds may be necessary if disposed of prior to the end of its Useful Life.

(d) Implementation of BRT Service. IPTC shall be solely and exclusively responsible for all aspects implementing bus service on each of the BRTs constructed pursuant to the Marion County Transit Plan and this Agreement, including the purchase of appropriate mass transit vehicles, service vehicles and equipment, and the employment of adequate personnel to provide such services.

(e) Operation and Maintenance of BRT Service.

(i) IPTC Responsible. IPTC shall be solely and exclusively responsible for all aspects of ongoing operation of bus service once implemented following construction of each of the BRTs.

(ii) Approvals. IPTC shall secure or cause to be secured all approvals and permits, and the adoption of all resolutions and ordinances, necessary to operate each of the BRTs, including, but not limited to, approvals and permits for any advertising and other signage on the BRT Stations and related amenities, and on BRT buses.

(iii) BRT Stations.

(A) Maintenance and Upkeep Obligations. IPTC shall cause the BRT Stations and related amenities (including, but not limited to, equipment, roof, walls, lighting, trees, shrubs, plants and landscaping) constructed and installed as part of each of the BRT projects to be and remain in good order and repair, to be and remain clean and sanitary, be cleared of ice and snow as needed, and to be safe and accessible for use by all persons. IPTC shall promptly remedy any damage and defacing (e.g., graffiti) that occurs to or on the BRT Stations and related amenities.

(B) Trash Receptacles. IPTC shall provide trash receptacles at each of the BRT Stations. In addition, IPTC acknowledges that increased pedestrian activity near the BRT Stations on each of the BRTs could result in increased litter in those areas. Therefore, IPTC agrees to provide and install trash receptacles on street corners near BRT Stations as requested by the City, through DPW, in its sole discretion. IPTC shall be responsible for emptying the trash receptacles both at the BRT Stations and at the additional locations where they are installed at the request of the City preferably on a daily basis, but at minimum with sufficient frequency to prevent receptacles from overflowing with trash, and for disposing of the trash so collected in accordance with the City's codes, ordinances, rules and standards for solid waste disposal. In those areas where there is not sufficient space in the public right-of-way to place additional trash receptacles, DPW shall assist IPTC in obtaining an easement or other right to utilize other property for the placement of the receptacle. In the event that no such easement can be reasonably acquired, then IPTC agrees to pick up litter in the vicinity of the affected BRT Station on a regular basis in conjunction with its normal BRT Station maintenance activities.

(C) Utilities. IPTC shall be responsible for all utility services required to operate and maintain the BRT Stations, including in particular any electrical service required for lighting and informational displays at the BRT Stations.

(iv) Stormwater Fees. IPTC acknowledges in those instances where it has exclusive use of the public rights-of-way, such as for bus-only lanes and the BRT Stations, that those areas may be subject to the assessment of stormwater user fees by the Marion County Stormwater Management District, which is operated and managed by DPW. In the event that such stormwater management fees are assessed on such areas exclusively used by IPTC, then IPTC agrees to timely pay such fees at the time that they are due and owing in accordance with the codes, ordinances, rules and policies of the Marion County Stormwater Management District.

(f) Traffic Studies. Between six (6) and twenty-four (24) months following completion of the RL 1 Project, IPTC shall engage the services of a qualified traffic engineer acceptable to DPW to perform a study on the impacts to traffic and traffic patterns resulting from

operation of Phase 1 of the Red Line, which study shall include recommendations for traffic control measures that should be implemented to minimize any negative effects on traffic, as determined by the study. IPTC shall share the findings and recommendations of the study with DPW. In the event that DPW determines that additional traffic control measures or other improvements are required to minimize any negative impacts to traffic as borne out by the study, then DPW shall determine the reasonable costs of instituting such measures or making such improvements (including design, construction, installation, and inspection of such measures and improvements) and share that information with IPTC. IPTC and DPW shall thereafter cooperatively discuss the need for, extent of and financing for the implementation of such measures or improvements.

(g) Other Transit Related Projects Funding. DPW acknowledges that there are certain infrastructure improvement projects that IPTC has recommended, which IPTC believes will be beneficial to the efficient implementation and operation of BRT service and in furtherance of the implementation of the Marion County Transit Plan. IPTC has proposed to financially contribute toward the costs of such projects, as outlined in Schedule III, attached hereto and incorporated herein. DPW and IPTC agree to continue discussions in good faith with regard to planning, designing, financing and undertaking such projects; provided, however, any final decisions as to whether these projects will be undertaken, their timing and their financing, shall be left to the sole discretion of DPW. Any decision to undertake any, all or any part of these projects shall be, if necessary, subject to amendment of the Agreement to memorialize the parties' understandings.

(h) Indemnification of City. IPTC agrees to indemnify, defend, and hold harmless the Consolidated City of Indianapolis and Marion County and its officers, agents, officials and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission in relation to the design, financing or construction of each of the BRTs, the implementation, operation and maintenance of bus service on each BRT following construction, the breach of any provision of this Agreement, or otherwise arising out of activities undertaken pursuant to this Agreement by IPTC or its contractors or any of their respective officers, agents, employees, or subcontractors. Such indemnity shall include attorneys' fees and all costs and other expenses arising therefrom or incurred in connection therewith. The City shall not provide such indemnification to IPTC; provided, however, that IPTC shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omissions of the City or its officers, agents, officials, or employees.

6. ANTI-DISCRIMINATION. IPTC and the City agree that neither of them shall discriminate against any employee or applicant for employment to be employed in the performance of services or work under this Agreement with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

7. **NOTICE.** The DPW and IPTC representatives designated hereunder may communicate in any manner which is most expedient and efficient when addressing routine matters in relation to the design, financing or construction of the BRTs, the operation and maintenance thereof, and the operation of bus service thereon.

Any more formal notice, claim or demand made under this Agreement shall be sent by internationally recognized overnight courier, certified mail, or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To IPTC:

President & Chief Executive Director
Indianapolis Public Transportation Corporation
1501 West Washington Street
Indianapolis, IN 46222

With a copy to:

General Counsel
Indianapolis Public Transportation Corporation
1501 West Washington Street
Indianapolis, IN 46222

To the City:

Director
Department of Public Works
200 East Washington Street, Suite 2460
Indianapolis, IN 46204

With a copy to:

Corporation Counsel
Office of the Corporation Counsel
City of Indianapolis
200 East Washington Street, Suite 1601
Indianapolis, IN 46204

8. **APPLICABLE LAWS; FORUM.**

(a) **Applicable Laws.** The parties each agree to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by IPTC and the City to determine whether the provisions of the Agreement require formal modification.

(b) **Controlling Law.** This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the Consolidated City of Indianapolis, County of Marion.

(c) **Forum.** Suit, if any, shall be brought in a court of competent jurisdiction in the State of Indiana, County of Marion.

9. **DISPUTE RESOLUTION.**

(a) **Informal Resolution.** Any and all disputes that may arise between the parties shall be handled in a reasonable and respectful manner. The complaining party shall provide notice of its complaint to the other party in writing. The respective DPW and IPTC construction or operations representatives, as the case may be, shall confer within five (5) business days of such notice to discuss a joint resolution of the complaint. In the event that those representatives fail to resolve the dispute or lack the authority to resolve the dispute, then the Director of DPW and the Chief Executive Officer of IPTC shall meet within ten (10) business days after the initial meeting of the representatives to discuss a joint resolution of the complaint.

(b) **Mediation.** Should the parties fail to reach an agreement through the informal process outlined above, then the complaining party may submit the dispute to mediation. The mediation process shall be as follows:

(i) **Notice of Mediation.** Should the parties fail to reach an agreement within five (5) business days from the conclusion of their final meeting under Section 9(a), then the complaining party may give written notice to the other party that it is submitting the dispute to mediation by a neutral third party. The notice shall: (A) identify the dispute at issue; (B) designate an official who will represent the party at the proceeding, which person must possess the authority to settle the matter; (C) state whether the party will be represented by legal counsel at the mediation; and (D) include a list of three (3) persons to serve as mediator, each of which must be a certified civil mediator in Indiana, and a designation of which of the mediators that the complaining party desires to use.

(ii) **Response to Notice of Mediation.** Within ten (10) business days after receipt of the notice of mediation, the other party shall give a response in writing to the complaining party. The response shall: (A) designate an official who will represent the party at the proceeding, which person must possess the authority to settle the matter; (B) state whether the party will be represented by legal counsel at the mediation; and (C) state that the party accepts the complaining party's desired mediator, in which case that person shall mediate the dispute, or, if it does not accept the complaining party's desired mediator, then it shall state which of the other two (2) mediators it desires to use.

(iii) **Notice of Mediator Selection and Scheduling.** Within five (5) business days of the non-complaining party's response, the complaining party shall give written notice that either: (A) it accepts the non-complaining party's desired mediator, in which case that person shall mediate the dispute; or, (B) it does not accept the non-complaining party's desired mediator, in which case the remaining person on the list of three (3) mediators shall be selected to mediate the dispute. No later than ten (10) days from the date of the notice of the selection of the mediator, the complaining party shall contact the selected mediator to schedule a date, time and place for the mediation. The mediation shall be held within 120 days after the notice by the complaining party that it desires to mediate the dispute, unless extended by mutual consent of the parties.

(c) **Mediation as Condition Precedent to Litigation.** Submission of a dispute to mediation shall be a condition precedent to filing litigation on any dispute under this Agreement. Failure to comply with this condition precedent shall be in contravention of the parties' express

intention to implement this alternative means of dispute resolution and constitute a breach of this Agreement, unless both parties agree otherwise in writing.

(d) Applicability. The provisions of this Section 9 shall not be applicable in any case where this Agreement provides that the City or any agency thereof has sole discretion, in which case the determination by the City or the applicable agency shall be final. The provisions of this Section 9 shall also not be applicable with regard to any action by any governmental entity or authority, including the City or any agency thereof, to enforce a statute, regulation, ordinance, rule or standard within its jurisdiction to enforce.

10. GENERAL PROVISIONS.

(a) Modification. IPTC and the City may, by mutual written agreement, modify or amend the terms and conditions hereof. Although this Agreement was approved by the Council, by approving this Agreement the Council authorizes IPTC and the City to make any modification or amendment hereto as deemed necessary by the Director of DPW, so long as any such modification or amendment does not result in an increase in the City Funds to be contributed hereunder, in which case such increase shall be subject to the approval of the Council.

(b) Assignment. No party to this Agreement shall assign or transfer any part or all of their respective obligations or interests without the other party's prior written approval. If any party shall assign or transfer any part of its obligations or interests under this Agreement without such prior approval, it shall constitute a material breach of this Agreement. The foregoing notwithstanding, the City reserves all rights to transfer assignments and responsibilities in connection with the City's obligations hereunder to any City department or agency, as provided for in Section 4 above.

(c) Independent Actors. The respective obligations of the parties under this Agreement render the activities contemplated hereunder a joint undertaking within the meaning of I.C. § 36-1-7-2(a). The foregoing notwithstanding:

(i) Independent Contractors. The parties agree that each is an independent contractor with respect to all obligations and services performed under this Agreement. As such, each party shall be solely responsible and liable for all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under and state or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed to perform any services or work under this Agreement.

(ii) No Business Relationship. The parties agree that they are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, acts, errors, omissions, debts, obligations or undertakings of any kind or nature of the other party other than as expressly stated in this Agreement or in the performance of this Agreement.

(iii) **No Third-Party Beneficiaries.** Nothing in this Agreement nor any act of the City or IPTC shall be deemed or construed to create any third-party beneficiary or principal-agent association or relationship with the other party. No party hereto is an agent of the other, and no party has authority, express or implied, to take any action, execute any documents, bind or obligate the other party in any way.

(d) **Supplemental Documents.** IPTC and the City agree to execute any and all supplementary documents and to take any and all supplementary steps as are reasonable and appropriate to accomplish the purposes and carry out the provisions of this Agreement.

(e) **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 fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party’s reasonable control (a “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended. If the period of nonperformance exceeds 60 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.

(f) **Complete Agreement.** This Agreement constitutes the entire and complete agreement between the parties with respect to its subject matter; supersedes any prior discussions, negotiations, and understandings between them (including in particular that Interlocal Cooperation Agreement regarding Phase 1 of the Red Line entered into by and between IPTC and DPW effective September 21, 2015, as amended by Amendment No. 1 thereto effective January 26, 2017 and which, by its terms, expired effective December 31, 2017). The parties acknowledge that neither IPTC nor the City, nor any of their employees, agents, or other representatives have made any representations relied upon by any other party other than the agreements contained herein.

(g) **Severability.** The provisions in this Agreement are hereby deemed to be severable to the effect that if any provision shall be declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

(h) **Binding Effect.** IPTC and the City each certify that they have the power and authority to execute and deliver this Agreement, subject to the approval hereof by the Council, and to perform this Agreement in accordance with its terms. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors.

(The remainder of this page left blank intentionally)

IN WITNESS WHEREOF, IPTC and DPW have executed this Agreement as of the Effective Date.

INDIANAPOLIS PUBLIC TRANSPORTATION CORPORATION

By: _____
Michael A. Terry, President
and Chief Executive Officer

Date: _____

**CONSOLIDATED CITY OF INDIANAPOLIS AND MARION COUNTY,
DEPARTMENT OF PUBLIC WORKS**

By: _____
Daniel J. Parker, Director

Approved as to Legal Form and Adequacy:

Date: _____

By: _____
Robert M. Frye
Assistant Corporation Counsel

Date: _____

Approved:

By: _____
Fady Qaddoura, City Controller

Date: _____

Approved by the City-County Council of the Consolidated City of Indianapolis and Marion County by Special Ordinance ____, 2018 adopted _____, 2018.

ATTEST:

Clerk of the City-County Council

SCHEDULE I

Disbursement of DPW Funds

Subject to Section 4(a) of this Agreement, the DPW Funds are to be disbursed to IPTC to assist in the financing of the construction of the BRTs planned for under the Marion County Transit Plan as set forth in Table I-1, below.

Table I-1

BRT Project	Lead Agency	Target Completion	DPW Funds Disbursement to IPTC	*Conditions
Red Line BRT, Phase 1 (the “RL 1 Project”)	IPTC	Summer 2019	\$2,000,000.00 in 2018	A, E
Purple Line BRT	IPTC	Fall 2020	\$1,500,000.00 in 2019	B, E
Blue Line BRT	IPTC	Fall 2021	\$1,500,000.00 in 2020	C, E
Red Line BRT, Phases 2 and 3	IPTC	2022	\$1,000,000.00 in 2021	D, E, F

***Conditions:**

- A: The Approved Project Plans for the RL 1 Project have been agreed to between DPW and IPTC, as acknowledged in Section 4(b)(v) of the Agreement, as have the various IPTC contractor requirements set forth in this Agreement, including in particular Section 5(a)(xiii) (indemnification by contractor), Section 5(a)(xiv) (contractor insurance) and Section 5(a)(xv) (contractor warranty and warranty bond).
- B: DPW consents to moving forward with the design as shown in the 10% plans dated August 2017.
- C: The western limits of this Project may be Holt Road, or it may be extended beyond Interstate 465, depending upon the availability of Federal or other funding.
- D: This Project will include installation of sidewalks where none exist along Madison Avenue on the south side and in the vicinity of 86th Street on the north side of Indianapolis. Determinations as to whether BRT Stations will be curbside or center configuration and whether there will be dedicated bus lanes have not been made as of the Effective Date of this Agreement.
- E: The DPW Funds due to be disbursed in each year shall be subject to the deduction set forth in Section 4(a)(iv), and shall be payable within 60 days after receipt by DPW of an invoice from IPTC, the form and substance of which may be prescribed by the City. IPTC shall submit such invoice to: Department of Public Works, Attention: Chief Financial Officer, 200 East Washington Street, Suite 2460, Indianapolis, Indiana 46204.
- F: The DPW Funds may be expended in only those areas of Phases 2 and 3 of the Red Line will be within the borders of Marion County.

SCHEDULE II

Useful Life, RL 1 Project Infrastructure, and Operations and Maintenance Cost Sharing

1. Useful Life.

Any component of Project Infrastructure constructed, installed or improved as part of the Marion County Transit Plan with the use of FTA Funds shall be maintained and made available for use to such projects during the Useful Life of such components, as defined in by the FTA in FTA Circular 5010.D., which is incorporated herein by this reference as it exists on the Effective Date and as it may be amended or replaced by the FTA from time to time during the term of this Agreement.

Each party acknowledges that its failure to maintain the Project Infrastructure components for which it is responsible during the Useful Life thereof inconsistent with this Agreement may result in the requirement of that party to reimburse the FTA for that part of the FTA Funds used to construct or install the component. Any Project Infrastructure components not addressed in this Schedule II shall be the subject of future amendments to this Agreement.

2. RL 1 Project Infrastructure.

The Project Infrastructure components to be constructed and installed as part of the RL 1 Project are listed below in Table II-1, which table also identifies which of those components are (A) City Infrastructure for which the City is responsible for maintenance and repair/replacement, or (B) IPTC Infrastructure for which IPTC is responsible for maintenance and repair/replacement.

Table II-1

Project Infrastructure Component	City Infrastructure or IPTC Infrastructure	*Conditions
BRT Stations (including platforms, utility connections, snow melt system, walkways, ramps, bollards, railings, roof & wall structures, station signage, trash receptacle replacement and servicing, lighting, landscaping, and electronic equipment)	IPTC	None
Traffic Signal Priority Equipment, Bus-Only Signage, and Bus-only Signal Heads	IPTC	A
Pavement Surface, Markings, Signage, & Traffic Control Devices for Bus-Only lanes (including mountable medians, MMA Markings, and other bus related pavement markings)	IPTC	B, C

Traffic Signal Equipment (excluding Transit Signal Priority and Bus-only signal heads)	City	A, B
Pavement Surface, Markings, Signage, & Traffic Control Devices for Bus-and-Turn (BAT lanes), Mixed Traffic Lanes, and Pedestrian Crosswalks	City	B, C
Curbs, Gutters, Sidewalks, & ADA Ramps	City	B
Drainage Structures (including Catch Basins, Inlets, Manholes & Pipes, Stormwater Detention/Flow Regulation Facilities)	City	B, D
Snow / Ice Treatment and Removal of all travel lanes (Bus-only, Bus-and-turn, and mixed traffic)	DPW	E

***Conditions:**

- A: IPTC shall engage the services of a contractor acceptable to DPW and be responsible for all costs associated with the maintenance and repair/replacement of transit traffic signal priority equipment.
- B: It is in the interest of both parties to keep the corridor pavement in good condition. DPW and IPTC anticipate that the pavement condition should last up to 10 years, but it is possible that pavement could deteriorate to a level that DPW finds unacceptable within a shorter period time, particularly in those travel lanes which are open to use by non-BRT traffic. When pavement reaches an unacceptable condition to either party and it is determined by either party that it requires repaving or reconstruction, then DPW will plan, design and undertake such a project, and IPTC shall contribute funding to the project in an amount proportional to the impact of traffic increases in travel lanes which are not dedicated for BRT use resulting from the IPTC’s exclusive use of Bus-only lanes.

If it can be demonstrated, in DPW’s reasonable discretion, that IPTC’s buses or other uses of the public right-of-way significantly contributed to the need for components other than pavement to be repaired or replaced as part of the project, then IPTC shall be subject to contribution to the costs of repairing or replacing such other components.
- C: In cases BRT Stations are located in the center of a street near an intersection and the crosswalk markings at that intersection must be re-marked, the costs of the crosswalk re-marking from the intersection corner to the center BRT Station may be included in the DPW O&M Costs (as defined below in Section 3 of this Schedule II).
- D: The cleaning and maintenance of the separated storm sewer infrastructure installed as part of the RL 1 Project may be included in the DPW O&M Costs (as defined below in Section 3 of this Schedule II).
- E: The treatment of pavement surfaces for snow and ice and the plowing of snow in Bus-Only Lanes shall be included in the DPW O&M Costs (as defined below in Section 3 of this Schedule II) and will be charged at DPW’s then-current costs (including labor, materials and equipment costs) when performed per lane mile of Bus-Only lanes so treated or plowed.

3. Operations and Maintenance Cost Sharing.

(i) Generally. As provided for in Section 5(b) of the Agreement, IPTC agrees to share in the costs to the City in fulfilling its obligation to make available and maintain the City Infrastructure of Phase 1 of the Red Line as listed in this Table II-1. This Agreement shall be amended by the parties to adjust the cost sharing provisions as necessary as Project Plans for the Purple Line, the Blue Line and Red Line Phases 2 and 3 are finalized and approved.

(ii) Annual Appropriation. Beginning with fiscal year 2020, the annual budget of the Consolidated City of Indianapolis, Marion County will include an allocation of the special purpose income tax revenue in the amount of \$1,500,000.00 (the “IPTC O&M Cost Share”) to DPW for use in fulfilling the City’s obligation to maintain and repair/replace the City Infrastructure of Phase 1 of the Red Line (the “DPW O&M Costs”).

(iii) Record of the DPW O&M Costs. DPW shall track and keep record of the funds expended for the DPW O&M Costs, and shall allow IPTC to review such records upon request.

(iv) Notice of Actual Expenditures. On or about the last day of April and of October of 2020 and each year thereafter, DPW shall give IPTC written notice of the actual expenditures to date for the DPW O&M Costs.

(v) Review and Adjustment of IPTC O&M Cost Share. DPW and IPTC shall cooperate in good faith to review the adequacy of the IPTC O&M Cost Share during their respective annual budget process, and to adjust the IPTC O&M Cost Share as appropriate to reflect actual expenditures for the DPW O&M Costs in the prior year and estimated costs for the ensuing year.

SCHEDULE III

Transit Related Infrastructure Improvements

Pursuant to Section 5(g) of the Agreement, DPW acknowledged IPTC’s recommendation that certain infrastructure improvement projects to benefit the efficient implementation and operation of BRT service and in furtherance of the implementation of the Marion County Transit Plan, and that IPTC has proposed to financially contribute toward the costs of such projects. Those recommended projects and IPTC’s offer of financial contributions are listed in Table III-1, below.

DPW and IPTC agree to continue discussions in good faith with regard to planning, designing, financing and undertaking such projects; provided, however, any final decisions as to whether these projects will be undertaken, their timing and their financing, shall be left to the sole discretion of DPW. Any decision to undertake any, all or any part of these projects – or any other project IPTC may request in the future – shall be, if necessary, subject to amendment of the Agreement to memorialize the parties’ understandings.

Table III-1

Project	Lead Agency	Target Completion	Offer of Funds Transfer from IPTC	*Notes
Michigan St. Two-Way Conversion	DPW	Summer 2019	Lesser of \$4,253,680.00 or total project costs	A, G, H
30th St. Two-Way Conversion	DPW	Summer 2019	Lesser of \$2,171,889.00 or total project costs	B, G, H
Central Avenue Two-Way Conversion	DPW	Summer 2018	Lesser of \$1,748,465.00 or total project costs	C, G, H
Downtown Super Stops	IPTC	Summer 2019	None – IPTC to bear all costs	D, H
Citywide Bus Stops & Shelters	IPTC	Summer 2019	None – IPTC to bear all costs	E, H
Transit Signal Priority and Timing Changes	IPTC	2022	IPTC to bear all costs and pay DPW \$250 per intersection	F, G, H

***Notes:**

- A: The project corridor is from College Avenue to Ellenberger Park. DPW believes that a conversion of New York Street will also be necessary. Prior to commencement of any project design, IPTC will conduct a traffic study to analyze these possible conversions.
- B: The project corridor is from the White River to Meridian Street. DPW believes that a conversion of 29th Street will also be necessary. Prior to commencement of any project design, IPTC will conduct a traffic study to analyze these possible conversions.
- C: The project corridor is from Fall Creek Parkway to 10th Street.

D: The project is proposed to include enhanced shelters and signal priority on:

- Delaware Street from Maryland Street to Ft. Wayne Avenue
- Alabama Street from Maryland Street to Ft. Wayne Avenue
- Ft. Wayne Avenue from Delaware Street to 10th Street/East Street/Central Avenue
- 10th Street from Ft. Wayne Avenue/Central Avenue/East Street to the Monon Trail
- Vermont Street from Indiana Avenue to Alabama Street

The project is also proposed to convert Ft. Wayne Avenue from one-way to two-way between Delaware Street and Alabama Street, with dedicated transit-only signal phases installed on Delaware Street to allow the buses to turn left from a right-side lane at Ohio Street and Vermont Street.

E: The project is proposed to include shelters, signs, sidewalks, ramps, and bus pads as needed throughout IPTC's service territory.

F: If approved by DPW, IPTC may install Transit Signal Priority equipment at any traffic signal. It is acknowledged by the parties that the bus priority parameters will vary by intersection and must be justified through traffic analysis. IPTC shall be responsible for maintenance of any Traffic Signal Priority equipment installed through a third-party contractor approved by DPW.

If approved by DPW, IPTC may also request signal timing changes at various intersections to better move buses. Any approved timing changes would be implemented by a third-party contractor approved by DPW employed and paid by IPTC.

G: IPTC funds shall be payable within 60 days after receipt by IPTC of an invoice from DPW, the form and substance of which may be prescribed by IPTC. DPW shall submit such invoice to: IndyGo, Attention: Controller, 1501 West Washington Street, Indianapolis, Indiana 46222.

H: IPTC shall be responsible for maintenance of any Traffic Signal Priority Equipment installed as part of the project through a third-party contractor approved by DPW.

SCHEDULE IV

Contractor Insurance Requirements

1. Contractor's Liability Insurance.

(a) Each contractor shall purchase and maintain such commercial general liability and other insurance as is appropriate for the work being performed and furnished and shall protect the contractor, DPW, IPTC and their respective construction inspectors and design engineers and their respective employees, officers, or agents from (i) claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts; (ii) claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees; (iii) claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees; (iv) claims for damages insured by personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the contractor, or by any other person for any other reason; (v) claims for damages, other than to the work itself, because of physical injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; (vi) claims arising out of operation of laws or regulations for damages because of bodily injury or death of any person or for damage to property; and (vii) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle, which may arise out of or result from the contractor's other obligations under the Project contract documents, whether it is to be performed or furnished by the contractor, by any subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the work, or by anyone for whose acts any of them may be liable.

(b) The insurance required by this Section shall be written for not less than the limits of liability and coverages as provided herein or as required by law, whichever is greater. The Commercial General Liability Insurance shall include coverage of (i) Premises and operations; (ii) Contractual liability as applicable to any indemnification hold harmless agreements in the Contract; (iii) Products and Completed Operations, with completed operations coverage being maintained for a period of one (1) year after final payment and the contractor shall continue to provide evidence of such coverage to DPW and IPTC during the aforementioned period; (iv) Broadform Property Damage - including completed operations; (v) Fellow Employee claims under Personal Injury; and (vi) Independent contractors. Such insurance shall specifically include coverage for property damage from explosion, collapse, and underground operations. Coverage for explosion, collapse, and underground operations shall include blasting or explosion, collapse of structures or structural injury due to grading of land, excavation, filling, back filling, tunneling, pile driving, caisson work, moving, shoring, underpinning, raising of or demolition of any structure, or removal or rebuilding of any structural support of a building or structure. Such insurance shall further include coverage for damage to wires, conduits, pipes, mains, sewers, or other similar apparatus encountered below the surface

of the ground when such damage is caused by any occurrence arising out of the performance of the work, performed by the contractor or by any subcontractor or anyone directly or indirectly employed by either.

(c) The contractor’s insurance shall be written for not less than the following limits of liability:

Workers Compensation: Statutory Limits

Employer’s Liability:

- (i) Bodily Injury by Accident: \$100,000 each accident
- (ii) Bodily Injury by Disease: \$500,000 policy limit
- (iii) Bodily Injury by Disease: \$100,000 each employee

Commercial General Liability (Occurrence Basis) Bodily injury, personal injury, property damage, contractual liability, products-completed operations.

NOTE: GENERAL AGGREGATE TO APPLY
PER LOCATION/PROJECT

- (i) General Aggregate Limit
(other than Products/Completed Operations): \$2,000,000
- (ii) General Aggregate Limit
(other than Products/Completed Operations): \$2,000,000
- (iii) Products/Completed Operations: \$2,000,000
- (iv) Personal & Advertising Injury
Limit: \$1,000,000
Each Occurrence Limit: \$1,000,000
Damage to Rental Premises: \$ 150,000
Medical Expense Limit (any one person): \$ 5,000
- (v) Comprehensive Auto Liability: \$1,000,000
(single limit; owned, hired and non-owned) each accident
- (vi) Umbrella Excess Liability: \$5,000,000
(deductible shall be not each occurrence
more than \$10,000) and aggregate

(d) The contractor shall be responsible for paying all deductible amounts.

(e) Before commencing work, the contractor shall submit a “Certificate of Insurance” indicating the above necessary coverages as well as naming the

Consolidated City of Indianapolis and Marion County, its employees and representatives, including but not limited to the DPW Construction Inspector as "Additional Insureds" on all policies except Workers' Compensation to DPW for review and approval. Such insurance shall be carried with financially responsible insurance companies authorized to do business in the State of Indiana, have a general policyholder's rating of A or better in the latest edition of Alfred M. Best's Insurance Reports, and be satisfactory in form and coverage to DPW. Such coverages shall be kept in force until final payment and at all times thereafter when the contractor may be correcting, removing or replacing defective work in accordance with its warranty. The contractor's insurer(s) shall provide by Certified Mail to DPW and to the DPW Construction Inspector with sixty (60) days' prior written notice in the event of cancellation, non-renewal or material change in the policies. If required by DPW, the contractor shall also provide copies of all underlying insurance policies for certificates required above.

(f) The Commercial General Liability insurance required by this Section shall include contractual liability insurance applicable to the contractor's indemnity and hold harmless obligations under Section 5(a)(xii) of the Agreement.

2. Owner's Protective Insurance. The Contractor shall procure and maintain Owner's Protective Insurance as will, in DPW's opinion, protect the City from any contingent liability to others or damages because of bodily injury, including death and property damage, which may arise from operations under the contractor's contract for work on the Project. Said insurance shall be procured from the same insurance company as is providing insurance for the contractor's Commercial General Liability insurance. The limits of the insurance to be procured shall be \$5,000,000 per occurrence and \$5,000,000 aggregate. The contractor shall furnish DPW the original policy.

3. Property Insurance. The contractor shall purchase and maintain a combination Installation/Builder's Risk Insurance to the full insurable value to the initial contract cost and any subsequent modifications thereto on an all risks policy form against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, false work, testing, temporary buildings and debris removal including demolition work occasioned by enforcement of any applicable legal requirements and shall cover reasonable DPW and DPW Construction Inspector services and expenses required as a result of such insured loss on a replacement cost basis without any deduction for depreciation or voluntary deductibles. This property insurance shall cover work stored off site as well as any work in transit. The contractor shall be responsible for the satisfaction of any deductible level it selects. DPW is given the privilege to occupy and use the City Infrastructure as completed pending acceptance by DPW and IPTC of the entire Project. The insurance specified by this section shall include as named insureds the contractor and its subcontractors and all other parties named as insureds, as their interest may appear. This insurance is not intended to cover the tools, equipment and other such property of the contractor or its subcontractors in performing the work which is normally covered by such person's own property insurance and which are not incorporated in the Project. The risk of loss as to all such property shall be borne by those parties, and they shall carry such insurance on such property as they shall determine.

4. Waiver of Subrogation. The City and the contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire and other perils to the extent covered by property insurance obtained pursuant to this Schedule IV, except such rights as they have to proceeds of such insurance held by the contractor as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The contractor shall require similar waivers from its subcontractors prior to their commencing operation. This provision shall not release the contractor from its obligation to complete the Project according to the Project Plans and contract documents and the contractor and its surety shall be obligated to full performance of the contractor's undertaking.

5. Acceptance of Insurance. If the City has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by the contractor in accordance with this Schedule IV on the basis of it not complying herewith, DPW will notify IPTC and the contractor in writing thereof within ten (10) days of the date of delivery of such certificates to DPW. The contractor shall provide to IPTC and DPW such additional information in respect to insurance provided by the contractor as IPTC or DPW may reasonably request. Failure by the City to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the contractor as complying herewith. With the prior approval of the City, the contractor may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.

6. Partial Utilization Property Insurance. If DPW finds it necessary to occupy or use a portion or portions of the City Infrastructure prior to substantial completion of all the work, the insurers providing the property insurance shall first acknowledge notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

7. No Limit to Liability. Nothing in this Schedule IV shall operate or be construed as limiting the amount of liability of the contractor to the above enumerated amounts.