

GREENWOOD COMMON COUNCIL

RESOLUTION NO. 23-24

**A RESOLUTION APPROVING AN INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF GREENWOOD AND JOHNSON COUNTY REGARDING
REPLACEMENT OF BRIDGE NUMBER 605**

WHEREAS, it is desirable, advantageous, and of public benefit for the City of Greenwood ("City") and Johnson County ("County") to enter into an interlocal cooperation agreement regarding design and construction for the repair and replacement of Bridge Number 605 located on Fry Road just west of State Road 135 in the City of Greenwood ("Bridge 605"), a bridge used by City and County residents;

WHEREAS, Indiana Code § 36-1-7-1 *et seq.* provides that Indiana political subdivisions that engage in a joint undertaking must do so through an interlocal cooperation agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE GREENWOOD COMMON COUNCIL AS FOLLOWS:

Section 1. The form of the Interlocal Cooperation Agreement between the City of Greenwood and Johnson County concerning the design and construction for repair and replacement of Bridge No. 605, a copy of which Agreement is attached hereto as Exhibit A and incorporated herein, is in all things approved.

Section 2. The Board of Public Works and Safety or the Mayor are hereby expressly authorized to enter into such Agreement. The Mayor is further expressly authorized to make any reasonable amendments in his discretion that do not increase the City's duties, obligations, or create any City financial obligation, and he is expressly authorized to bind the City to such amendments.

Section 3. The fully-executed Interlocal Agreement shall be recorded in the Office of the Recorder of Johnson County and a copy thereof shall be filed with the State Board of Accounts within sixty (60) days of the Agreement taking effect.

Section 4. The sections, paragraphs, sentences, clauses, phrases and words of this Resolution are separable, and if any word, phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs, and sections of this Resolution.

Section 5. This Resolution shall be in full force and effect after its passage and approval by the Mayor of the City of Greenwood.

(Remainder of Page Intentionally Left Blank)

Passed by the Common Council of the City of Greenwood, Indiana, this 3rd day of January, 2023.


Michael Campbell, President
Greenwood Common Council

ATTEST:


I hereby certify that the foregoing within and attached resolution was duly passed by the Common Council of the City of Greenwood, Indiana, at a meeting thereof held on 3rd January, 2024, by the following vote:

	AYE:	NAY:
Erin Betron	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Michael Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Linda S. Gibson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ezra Hill	<input checked="" type="checkbox"/>	<input type="checkbox"/>
J. David Hopper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David Lekse	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Teri Manship	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Steve Moan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Michael Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The foregoing and attached resolution passed by the Common Council of the City of Greenwood, Indiana, on the 3rd day of January, 2024, is presented by me this 4th day of January, 2024, at 8:00 o'clock A.m., to the Mayor of the City of Greenwood, Indiana.


Jeannine Myers, Clerk

The foregoing and attached resolution passed by the Common Council of the City of Greenwood, Indiana, on the 3rd day of January, 2024, is approved by me this 4th day of January, 2024, at 8:00 o'clock A.m.


MARK W. MYERS, Mayor of
the City of Greenwood, Indiana

INTERLOCAL AGREEMENT
CITY OF GREENWOOD
and
JOHNSON COUNTY

For the purpose of design and construction
of Bridge Number 605

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INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT, ("Agreement") made this ____ day of _____, 2023 by and between the City of Greenwood, a municipal corporation, acting by and through its Board of Public Works and Safety (the "City") and Johnson County, Indiana, a political subdivision, acting by and through its Board of Commissioners, (the "County") (collectively, the City and the County are referenced as the "Parties" and individually as a "Party").

RECITALS

WHEREAS, the City and the County have the power, privilege, and authority to expend funds for public improvements projects;

WHEREAS, Indiana Code 36-1-7 *et seq.*, (the "Act") permits a political subdivision to exercise jointly with any other political subdivision any power, privilege, or authority which the political subdivisions share in common and which each might exercise separately by and through interlocal agreements;

WHEREAS, in 2021 the County initiated development of a replacement project for Bridge No. 605 ("the Project") located on Fry Road just West of State Road 135 in the City of Greenwood, Indiana ("Bridge 605") for the citizens of Johnson County; and

WHEREAS, the County currently estimates the total Project costs for engineering design, construction, and construction inspection to be \$2,483,459, comprised of \$750,513 in local funding and \$1,732,946 in federal funding; and

WHEREAS, the County has identified and set aside the estimated local funding for the purpose of completing this project in State Fiscal Year 2024, and

WHEREAS, the County passed Ordinance No. 2022-O-26 on December 5, 2022 repealing Ordinance numbers 2006-O-10 and 2009-O-7 for the Cumulative Bridge Fund; and

WHEREAS, the City and the County disagree about the propriety and effect of the County's actions concerning the Cumulative Bridge Fund and do not intend for this Agreement to affect the rights or claims of either party; and

WHEREAS, the County desires to continue to use the local funds for the purpose of continued design and construction of Bridge 605 as they were intended; and

WHEREAS, the County agrees to be responsible for any price overages should the lowest bid for construction be higher than the engineer's estimate and/or if the bridge inspection consultant's price is higher than the above mentioned amount.

WHEREAS, construction activities for the Project require County access to platted public right-of-way for Fry Road within the corporate boundaries of the City, as shown on the Sable Ridge Section 1 subdivision plat, Instrument 1987-000291, Book C, Pages 291-292; and

WHEREAS, notwithstanding the terms of Indiana Code § 36-1-3-9, the Parties have conferred and mutually determined that the continued design and construction of Bridge No. 605 should be conducted pursuant to the terms of this Interlocal Agreement; and

WHEREAS, the continued design and construction of Bridge No. 605 is urgently needed as the Bridge has been identified as needing repair; and

WHEREAS, the County is authorized to enter into this Agreement with the City and desires to use funds for the continued design and construction of Bridge 605 to prevent any delay in the project and assure the continued safety of the Bridge benefiting citizens of both the City and the County; and

WHEREAS, the County may exercise the power to fund public improvements outside its corporate boundaries, pursuant to an interlocal agreement under the Act;

WHEREAS, the Funds provided by the County for the Project as described in this Agreement is for local public improvements within Johnson County;

WHEREAS, entering into the Agreement and providing the Funds for the Project, fosters and encourages interlocal cooperation and allows the continued safe use of Bridge 605 in a manner that best serves the interest of the citizens of the City and County;

NOW THEREFORE, in consideration of the mutual covenants and agreements and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **GENERAL PROVISIONS**

- 1.1 Purpose. This Agreement sets forth the obligations of the County to provide local funding necessary for the Project. This Agreement is not intended and shall not be construed to in any way deprive either Party of its jurisdictional powers.
- 1.2 Incorporation of Recitals. The Recitals are true and accurate in all respects and made a part of this Agreement for all purposes and constitute additional promises, representations and warranties of the Parties.
- 1.3 Mutual Assistance. The Parties agree to obtain the approval all elected and appointed officials necessary to enter into this Agreement and to execute and deliver all documents, instruments, petitions and certifications, as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out the terms, provisions and intent.

1.4 Definitions. All terms printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the documents include references to identified sections, and the titles of other documents or forms:

- (a) "Approved Plans" shall mean the Project's Design and Construction Plans, that have been or will be provided by the County;
- (b) "Force Majeure" means, with respect to a Party: (a) an act or omission of the other Party; or (b) any other cause that is not within the reasonable control of such Party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; (iii) epidemics, pandemics, and other public health circumstances resulting in a governmental declaration of a public health emergency; and (iv) utility or energy shortages or acts or omissions of public utility providers);
- (c) "Laws" means any and all applicable Federal, State, and Local, laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction;

1.5 Authorized Representatives.

- (a) The County designates its Highway Supervisor and its Highway Engineer as the representatives authorized to act on behalf of the County and to implement, manage and be responsible for the County's Obligations described in this Agreement and the communications with the City ("County Representatives"). At any time, the County may designate a replacement of the County Representatives by providing notice of such replacement to the City;
- (b) The City designates its City Engineer, as the representative authorized to act on behalf of the City with respect to the obligations of the City as set forth in this Agreement ("City Representative"). At any time, the City may designate a replacement City Representative by providing notice of such replacement to the County.

1.6 Authority. Both Parties are organized and existing pursuant to the laws of the State of Indiana and have the power and authority to enter into this Agreement and to carry out its obligations and the execution of this Agreement has been duly authorized by the undersigned representative of each Party;

1.7 Relationship of the Parties. It is specifically understood and agreed to by and between the Parties that:

- (a) The Project is a public road improvement; and
- (b) The City and County renounce the existence of any form of agency relationship, joint venture or partnership between the City and County

and agree that nothing contained in this Agreement or in any document executed in connection with it shall be construed as creating any such relationship between the City and County.

- 1.8 Conflict of Interest; Parties Representatives not Individually Liable. No member, official, or employee of the Parties shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official, or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested. No member, official, or employee, or agent of the Parties shall be personally liable to the other, or any successor in interest, in the event of any default or breach by the Parties or for any amount which may become due to City or successor or assign or on any obligations under the terms of the Agreement.

2. **CITY OBLIGATIONS**

- 2.1 In consideration of and as a material inducement for the design and construction of the Project described in this Agreement and the taking of certain other actions by the County as described in Section 3; the City shall fully satisfy each of the following commitments ("City Obligations") :

- (a) City Participation. The City will not participate, nor have any responsibility as to the funding, design, construction or inspection of the Project and have no obligation to participate in change orders initiated by the County. The City will not bear any responsibility for any costs associated with the project;
- (b) Response. The City shall respond to any notification or submittal by the County within fourteen (14) days of the notification or submittal.
- (c) Access to Platted Right-of-way. The City will grant the County, its agents and assigns including, but not limited to, the Indiana Department of Transportation ("INDOT") and selected contractor(s), access to the platted public right-of-way for Fry Road within the reasonable limits of the project for the express purpose of construction of the Project, through the completion of construction and final close-out of project documentation as typically required by INDOT for federal-aid projects. Access shall continue until this agreement terminates for any reason or until the completion of construction and final close-out of project documentation as typically required by INDOT for federal-aid projects, whichever occurs first. Should this agreement be terminated for any reason, access to the platted right-of-way shall be revoked upon the date the Notice of Termination was effective.

3. **COUNTY OBLIGATIONS**

- 3.1 County Obligations. In consideration of and as a material inducement for the County to

use the funds allocation for the Project, the County shall, subject to further proceedings required by the Laws, the County will use its best efforts to complete the following ("County Obligations"):

- (a) The County shall be entirely responsible for all aspects of and will complete all work necessary to prepare for letting and construction of the Project, including all preliminary engineering, design, right-of-way acquisition, utility relocation, environmental work, permitting, construction, and inspection;
- (b) The County shall submit Approved Plans to the City for review and comment prior to letting, provided however, the City understands and agrees that the County shall make all final decisions concerning project design, construction, project schedule, inspections and specifications;
- (c) The County shall coordinate with INDOT to let and award the Project for construction through INDOT's usual processes for federal-aid projects consistent with the bid letting schedule published by INDOT;
- (d) The County will manage, administer, inspect and supervise the Project on a day-to-day basis in accordance with applicable Laws and County policies, procedures and specifications, and the County agrees to pursue the construction of the Project in accordance with the Approved Plans; and
- (e) Nothing shall be construed to impose a duty upon the County to construct other improvements not specified in this Agreement nor restrict the County's ability to manage available funding sources in providing funds for the Project. The obligations of the County under this Agreement shall continue through the completion of construction and final close-out of project documentation as typically required by INDOT for federal-aid projects.

4. **TERM OF THE AGREEMENT AND TERMINATION**

4.1 Effective Date. This Agreement shall take effect and be in full force and effect on the date that the last of the following events has occurred:

- (a) Execution by the Parties;
- (b) Approval by the City and County's fiscal bodies;
- (c) The passage of appropriate resolutions and ordinances;
- (d) Recording this Agreement with the Johnson County Recorder; and
- (e) Filing this Agreement with the Indiana State Board of Accounts, Johnson County Auditor and State Auditor.

4.2 Term. The term ("Term") of this Agreement, and its effectiveness, shall commence as of the Effective Date and shall continue in full force and effect until the County completes the Project or the County completes all of the County Obligations, whichever occurs first.

4.3 Termination. This Agreement may be terminated as follows:

(a) This Agreement shall terminate four (4) years after its Effective Date if the Agreement has not otherwise terminated or been extended; *provided that*, once construction has commenced, the Agreement shall not be terminated until construction is completed;

4.4

(a) This Agreement may otherwise be terminated or extended only by a written agreement signed by the Parties.

5. **DELEGATION OF DUTY**

5.1 Pursuant to Indiana Code 36-1-7-4(a)(3), the Parties delegate the duty to receive, disburse, and account for all monies associated with this Agreement to the Johnson County Treasurer.

6. **DISPUTE RESOLUTION**

6.1 Any disputes that may arise under this Agreement shall be resolved by the Parties' respective executive officers or their designees;

6.2 In the event the Parties are unable to resolve their claims through the executive officers or their designees, the Parties shall endeavor to resolve their claims by mediation administered pursuant to the Indiana Rules for Alternative Dispute Resolution in effect on the date of the Agreement. The Parties shall equally share the mediator's fees and any filing fees. The mediation shall be held in Franklin, Indiana, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof;

7. **INDEMNIFICATION BY COUNTY**

7.1 The County shall indemnify and hold harmless the City from and against any and all claims arising from or connected with: (i) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project of any party acting on behalf of the County; (iii) the negligence or willful misconduct of the County or any party acting by, under, through, or on behalf of the County; or (iv) Project inspections conducted by the County.

7.2 The County shall indemnify and hold harmless the City from and against any and all claims arising from or connected with: (i) breaches by the County under agreements to which the County is a party other than this Agreement, to the extent that such agreements relate to the performance of any work on the Project by the County or any party acting on behalf of the County; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of the any work on the Project by the County or

any party acting on behalf of the County; or (iii) the negligence or willful misconduct of the County or any party acting on behalf of the County.

7.3 Notwithstanding anything to the contrary set forth in this Agreement, the Parties' obligations under this Section shall survive the termination of this Agreement.

8. **NOTICE**

8.1 All notices, requests, demands and other communications that are required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation by the transmitting Party if by facsimile transmission; (c) on the third (3rd) day after mailing if mailed by first class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 9; or (d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section 9 as follows:

City:

Mayor
City of Greenwood
300 South Madison Avenue
Greenwood, Indiana 46142

With copy to:

City of Greenwood
Corporation Counsel
300 South Madison Avenue
Greenwood, Indiana 46142

County:

Johnson County Board of Commissioners
86 West Court Street
Franklin, Indiana 46131

With copy to:

Adam Gadberry
County Attorney
86 West Court Street Franklin,
Indiana 46131

9. **COVENANT OF FURTHER ASSURANCES**

9.1 The Parties agree that from the Effective Date, each will, upon the request of the other, execute and deliver such other documents and instruments and take such other action as may be reasonably required to carry out the purpose and intent of this Agreement.

10. **ENTIRE AGREEMENT; AMENDMENT**

10.1 The written terms and provisions of this Agreement shall supersede all prior verbal statements of any officer or other representative of the Parties and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

10.2 This Agreement contains and constitutes the entire agreement of the Parties regarding the subject matter and there are no other agreements, written or oral, between the Parties affecting the subject matter.

10.3 No amendment of this Agreement shall be effective unless the same is made in writing and signed by the Parties.

11. **SEVERABILITY**

11.1 Any provision of this Agreement prohibited by law or invalid under any law shall be ineffective only to the extent of such prohibition, without in any manner invalidating or affecting the remaining provisions of this Agreement such provisions being deemed severable.

12. **ASSIGNMENT**

12.1 No Party shall assign this Agreement without the prior written approval of the other Parties: *provided that*, either Party may assign this Agreement to another agency or instrumentality of the assigning Party that is able to perform that Party's obligations.

12.2 In the event has a Party assigns its obligations, it shall remain liable to perform all of the terms and conditions under this Agreement, and the approval of assignment by the other Party shall not release the assigning Party, from its obligations to perform.

13. **GOVERNING LAW; CONSTRUCTION**

13.1 This Agreement shall be interpreted and enforced according to the laws of the State of Indiana;

13.2 The Parties agree that all actions arising directly or indirectly from this Agreement shall be litigated in the circuit or superior court of Johnson County, Franklin, Indiana, or the United States District Court for the Southern District of Indiana.

13.3 All headings of sections of this Agreement are inserted for convenience only and do not form part of this Agreement or limit, expand or otherwise alter the meaning of any provision.

- 13.4 The terms "hereof", "herein" and "hereunder", and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular paragraph or provision, unless expressly stated.
- 13.5 The word "person" shall mean any natural person, partnership, limited liability company, corporation and any other form of business or legal entity.
- 13.6 All words or terms used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.
- 13.7 The provisions of this Agreement are intended to be for the sole benefit of the Parties and their successors and assigns. None of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party;
- 13.8 This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing the instrument to be drafted;

14. **FORCE MAJEURE**

- 14.1 Notwithstanding anything to the contrary set forth herein, if any Party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the Party asserting Force Majeure shall deliver written notice to the other Party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

15. **COUNTERPARTS**

- 15.1 This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one Agreement.

16. **ELECTRONIC APPROVAL**

- 16.1 This Agreement together with any document contemplated to be executed in connection herewith may be transmitted between the Parties electronically or digitally. The Parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on the Parties. The original documents shall be promptly executed and/or delivered.

IN WITNESS WHEREOF, the Parties have executed this Agreement, the day and year indicated below.

CITY OF GREENWOOD

By: _____
Mark W. Myers, Mayor

Date: _____

As Authorized and Approved by the City of Greenwood Board of Public Works and Safety at a Public Meeting on _____

Approved by the Common Council of the City of Greenwood, Indiana by resolution adopted the _____ day of _____, 2023.

ATTEST:

By: _____
Jeannine Myers, City Clerk

Date:

APPROVED AS TO LEGAL FORM:

By: _____
Shawna Koons, City Attorney

JOHNSON COUNTY BOARD OF COMMISSIONERS

By: _____
Brian P. Baird, Chair

By: _____
Kevin M. Walls, Member

By: _____
Ronald H. West, Member

Dated:

Attest: _____
Elizabeth Alvey, Johnson County Auditor

**FISCAL BODY APPROVAL
JOHNSON COUNTY COUNCIL**

Approved this ___ day of _____, 2023.

Voting Affirmative

Voting Opposed:

By: _____
Jonathan T. Myers

By: _____
Jonathan T. Myers

By: _____
Melinda Griesemer

By: _____
Melinda Griesemer

By: _____
Pamela Burton

By: _____
Pamela Burton

By: _____
Ron Deer

By: _____
Ron Deer

By: _____
John Ditmars

By: _____
John Ditmars

By: _____
John Mallers

By: _____
John Mallers

By: _____
John Myers

By: _____
John Myers

Attest: _____
Elizabeth Alvey, Johnson County Auditor

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