

FUTURE TRAFFIC SIGNAL COVENANT

Between

THE INDIANA DEPARTMENT OF TRANSPORTATION

And

THE TOWN OF MCCORDSVILLE

This covenant ("Covenant"), made by and between the State of Indiana, acting by and through the Indiana Department of Transportation (hereinafter referred to as "INDOT") and the Town of McCordsville (hereinafter the "Town"), and collectively referred to as "Parties," is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the Parties agree as follows:

RECITALS

WHEREAS, the Town has applied for a permit (#T0000171162) to install a minor road approach, including a left turn lane for southbound US 36 (collectively referred to as the "Intersection"), which will be utilized as a main entrance into the Town's future town square multi-use development ("McCord Square") along US 36, in McCordsville, Hancock County, Indiana, as shown in **Exhibit A**, attached hereto and incorporated herein; and

WHEREAS, the Parties anticipate an increased volume of traffic on US 36 as the Town commences development of McCord Square and the need for lighting and a traffic signal may become warranted for the development; and

WHEREAS, as McCord Square develops, INDOT will conduct a traffic signal analysis at its sole cost to determine if a traffic signal is warranted at the Intersection; and

WHEREAS, the Town, and its successors, or assigns, shall be solely responsible for the installation of the traffic signal and lighting at the Intersection when the minimum traffic volume warrants the installation of a traffic signal; and

WHEREAS, the Town shall be responsible for all costs associated with the design and installation of a traffic signal and lighting; and

WHEREAS, INDOT shall be responsible for maintenance of the traffic signal and lighting after it has been installed by the Town to the satisfaction of INDOT; and

WHEREAS, it is of mutual interest for INDOT and the Town to cooperate in providing highway improvements for the convenience and safety of the public;

NOW, THEREFORE, the Parties to this Covenant hereby agree to the following terms and conditions:

ARTICLE I. PURPOSE AND TERM

1.1. Preamble. The Preamble and Recitals recorded above are incorporated by reference into this Covenant. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Covenant.

1.2. Purpose. The purpose of this Covenant is to set forth responsibilities regarding installation and maintenance of lighting and a traffic signal should it become warranted in the future.

1.3. Term. It is understood and agreed that this covenant shall run with the land and shall be binding upon the parties and all persons claiming under them. This covenant shall terminate on December 31, 2028.

ARTICLE II. SPECIFIC PROVISIONS

2.1. Town's Responsibilities.

2.1.1. The Town has applied for a driveway permit #T0000171162 to install a minor road approach and turn lanes along US 36 into McCord Square. As part of the Intersection improvement, a traffic signal may be warranted. INDOT may require the Town, and its successors, or assigns, to design and install a traffic signal and lighting at the above location when the minimum traffic volume warrants the installation of a traffic signal. The Town shall have until December 31, 2028, to install the minor road approach, the turn lanes, lighting, and the traffic signal (if warranted). If a traffic signal is warranted, the Town shall be given eighteen (18) months' notice to budget, design and construct the traffic signal and install the lighting. If the Town has to acquire property in order to complete the traffic signal and lighting, the Town shall be given twenty-four (24) months' notice to budget, design, acquire property, and construct the traffic signal and install the lighting.

2.1.2. When the minor road approach to McCord Square has been constructed, the Town shall evaluate the need for a traffic signal and lighting. The evaluations shall be concluded when either McCord Square and/or the Tower segments are connected to the driveway at Civic Drive, as shown in **Exhibit A**.

2.1.3. The cost to design and prepare plans and specifications, cost of construction of traffic signal, lighting and appurtenances, cost to acquire any required right-of-way, cost of reimbursable utility expenses, cost to solicit, and let bids, cost to inspect construction, and cost of electrical energy shall be borne by the Town. All the work shall be done as per current INDOT standards and by an INDOT prequalified Registered Professional Engineer/Contractor.

2.1.4. Subject to the terms and conditions of this Covenant, and prior to entering state-owned or controlled right-of-way, the Town shall apply for a right-of-way permit for all installation and construction of the traffic signal and lighting by the Town (or other parties contracted by the Town) within state-owned or controlled right-of-way.

2.2. INDOT's Responsibilities.

2.2.1. INDOT in its sole discretion shall perform or cause to be performed a traffic signal analysis at the Intersection and shall be solely responsible for the cost of the traffic signal analysis. The traffic signal analysis shall be performed in accordance with the Indiana Manual on Uniform Traffic Control Devices, and INDOT shall notify the Town of McCordsville at the out-set of the traffic signal analysis.

2.2.2. INDOT shall maintain the traffic signal after the signal is installed to the satisfaction of INDOT.

ARTICLE III. GENERAL PROVISIONS

3.1. Authority to Bind the Town. The signatory for the Town represents that he/she has been duly authorized to execute this Agreement on behalf of the Town and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Town when his/her signature is affixed and accepted by the State.

3.2. Certification for Federal-Aid Contracts Lobbying Activities. The Town certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the Town has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Town, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreements, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with such federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Town also agrees by signing this Agreement that it shall require that the language of this certification be included in all contractor agreements including lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

3.3. Compliance with Laws.

- A. The Town shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the State and the Town to determine whether the provisions of this Agreement require formal modification.
- B. The Town and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Town has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the Town shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Agreement.** If the Town is not familiar with these ethical requirements, the Town should refer any questions to the Indiana State Ethics Commission or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Town or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the Town. In addition, the Town may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
- C. [OMITTED – NOT APPLICABLE.]
- D. [OMITTED – NOT APPLICABLE.]
- E. [OMITTED – NOT APPLICABLE.]
- F. The Town warrants that the Town and its contractors shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this Agreement. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work with the State.
- G. [OMITTED – NOT APPLICABLE.]
- H. As required by IC §5-22-3-7:
1. The Town and any principals of the Town certify that:
 - (A) the Town, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) the Town will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.

2. The Town and any principals of the Town certify that an affiliate or principal of the Town and any agent acting on behalf of the Town or on behalf of an affiliate or principal of the Town, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.

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

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

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Town's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Town's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Town of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision C. (2) above, or otherwise receiving actual notice of such conviction;

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

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

3.5. Employment Eligibility Verification. As required by IC §22-5-1.7, the Town swears or affirms under the penalties of perjury that the Town does not knowingly employ an unauthorized alien. The Town further agrees that:

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

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

C. The Town shall require his/her/its subcontractors, who perform work under this Agreement, to certify to the Town that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Town agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

3.6. Funding Cancellation Clause. As required by Financial Management Circular 3.3 and IC 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

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

3.8. Indemnification. The Town agrees to indemnify, defend, exculpate and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, to the person or property of anyone arising out of, or resulting from the performance of this Agreement or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent such liability is caused by the negligence of the Town, including any claims arising out of any law, ordinance, order or decree. INDOT shall not provide indemnification to the Town. The Town agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith in the event that the Town shall default under the provisions of this Section.

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

3.10. Non-Discrimination.

- A. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Town covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The Town certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Town or any subcontractor.
- B. INDOT is a recipient of federal funds, and therefore, where applicable, the Town and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

The Town agrees that if the Town employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Town will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Town complies with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Agreement.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, income status, limited English proficiency, or status as a veteran.)

- C. During the performance of this Agreement, the Town, for itself, its assignees, and successors in interest (hereinafter referred to as the "the Town") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
1. Compliance with Regulations: The Town shall comply with the regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
 2. Nondiscrimination: The Town, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Town shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Town for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Town of the Town's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.
 4. Information and Reports: The Town shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Town

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

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

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

A. For INDOT:

Nathan Sturdevant, P.E.
Seymour District Special Projects Engineer
32 South Broadway
Greenfield, IN 46140
Phone: 317-467-3445
Email: Nsturdevant@indot.IN.gov

With Copy To:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, IN 46204
Email: kshelby@indot.in.gov

B. For the Town:

Tim Gropp
McCordsville Town Manager
6280 W. 800
McCordsville, IN 46055
Phone: 317-335-5146
Email: tgropp@mccordsville.org

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Non-Collusion and Acceptance

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

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Agreement by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Agreement to the State of Indiana. I understand that my signing and submitting this Agreement in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Agreement and this affirmation. I understand and agree that by electronically signing and submitting this Agreement in this fashion I am affirming to the truth of the information contained therein. I understand that this Agreement will not become binding on the State until it has been approved by the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCTS.GBL

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

TOWN OF MCCORDSVILLE

Tim Gropp, Town Manager

Date: _____

STATE OF INDIANA)
) SS:
COUNTY OF HANCOCK)

Before me, the undersigned Notary Public in and for said County and State, personally appeared Greg Brewer, Town Manager, and I acknowledge the execution of the foregoing Future Traffic Signal Covenant on this ____ day of _____, 2023.

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence: _____

My Commission No. _____

STATE OF INDIANA
Indiana Department of Transportation

Patrick Szewczak
Acting Greenfield District Deputy Commissioner

Date: _____

STATE OF INDIANA)
) SS
COUNTY OF: HANCOCK)

Before me, the undersigned Notary Public in and for said County and State, personally appeared Valerie Cockrum, Acting Greenfield District Deputy Commissioner, and I acknowledge the execution of the foregoing Future Traffic Signal Covenant on this ____ day of _____, 2023.

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence: _____

My Commission No. _____

APPROVALS

[State approvals are electronic – see attached confirmation page.]

STATE OF INDIANA
Budget Agency

By: (FOR)
Zachary Q. Jackson, Director

Date:

STATE OF INDIANA
Department of Administration

By: (FOR)
Rebecca Holwerda, Commissioner

Date:

Approved as to Form and Legality:
Office of the Attorney General

By: (FOR)
Theodore E. Rokita
Attorney General

Date:

This instrument was prepared by Marjorie A. Millman, Attorney No. 21748-36, for the Indiana Department of Transportation, 100 N. Senate Avenue, Indianapolis, IN 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Marjorie A. Millman

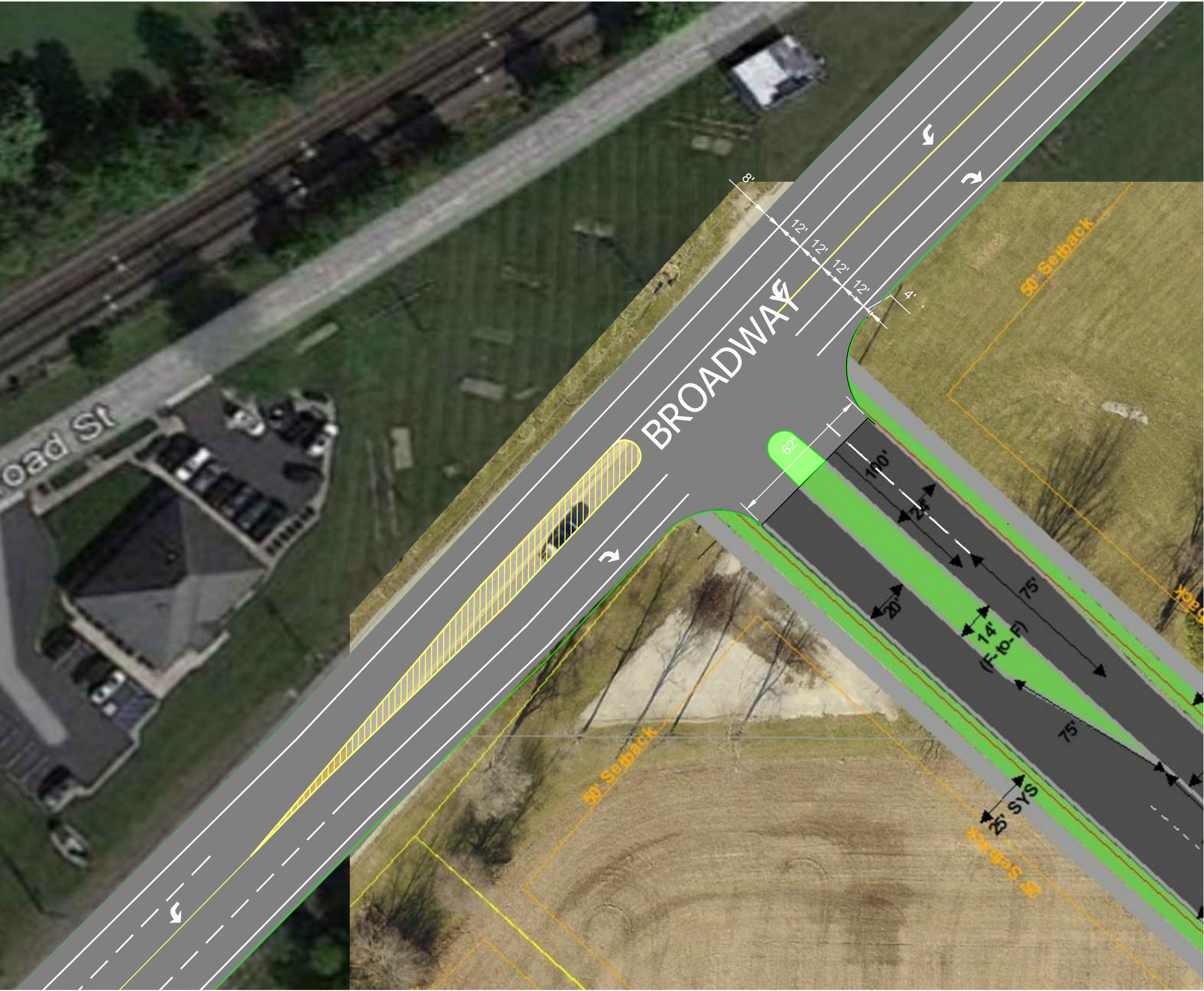


Exhibit A -Future
Improvements

McCORDSVILLE

Exhibit Page Title

Date: JUNE 28, 2022



SCALE: 1"= 40'

STORAGE = 150'
DECELERATION = 320'
TAPER = 100'

PREPARED BY

 **A&F ENGINEERING**
Transportation & Site Engineering
Creating Order Since 1966

Exhibit B - McCordsville Development Plan



LEGEND

XX = A.M. PEAK HOUR
(XX) = P.M. PEAK HOUR
* = NEGLIGIBLE

**TRAFFIC IMPACT STUDY
TOWN OF MCCORDSVILLE
MCCORDSVILLE, IN**

**FIGURE 2
EXISTING TRAFFIC
VOLUMES**

