

**AGREEMENT**

THIS AGREEMENT is made and entered into \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, acting by and through its proper officials, hereinafter referred to as the LOCAL PUBLIC AGENCY or LPA, and \_\_\_\_\_ (hereinafter referred to as the "CONSULTANT").

**WITNESSETH**

WHEREAS, the LPA desires to contract for \_\_\_\_\_; and

WHEREAS, the CONSULTANT has expressed a willingness to \_\_\_\_\_; and

WHEREAS, the parties have agreed that the CONSULTANT shall provide the services and documents described herein, in relation to the following described project(s):

Project: \_\_\_\_\_;

NOW THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

**SECTION I SERVICES BY CONSULTANT**

The services to be provided by the CONSULTANT under this Agreement are as set out in Appendix "A", attached to this Agreement, and made an integral part hereof.

**SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY LPA**

The information and services to be furnished by the LOCAL PUBLIC AGENCY are as set out in

Appendix "B", attached to this Agreement, and made an integral part hereof.

SECTION III NOTICE TO PROCEED AND SCHEDULE

The CONSULTANT shall begin the work to be performed under this Agreement upon receipt of the written notice to proceed from the LOCAL PUBLIC AGENCY, and shall deliver the work to the LOCAL PUBLIC AGENCY in accordance with the schedule contained in Appendix "C", attached to this Agreement, and made an integral part hereof. The Consultant shall not begin work prior to the date of the notice to proceed.

SECTION IV COMPENSATION

The CONSULTANT shall receive payment for the work performed under this Agreement as set forth in Appendix "D", attached to this Agreement, and made an integral part hereof.

The cost principles contained in the Federal Acquisition Regulations, 48 CFR Part 31, shall be adhered to for work under this Agreement.

SECTION V GENERAL PROVISIONS

1. Work Office

The CONSULTANT shall perform the work under this Agreement at the following office(s):

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The CONSULTANT shall notify the LOCAL PUBLIC AGENCY of any change in its mailing address and/or the location(s) of the office(s) where the work is performed.

2. Employment

During the period of this Agreement, the CONSULTANT shall not engage, on a full or part time or other basis, any LPA personnel who remain in the employ of the LOCAL PUBLIC AGENCY.

3. Covenant Against Contingent Fees

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the LOCAL PUBLIC AGENCY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

4. Subletting and Assignment

The CONSULTANT and its subcontractors, if any, shall not assign, sublet, subcontract, or otherwise dispose of the whole or any part of the work under this Agreement without prior written consent of the LPA and the Indiana Department of Transportation ("INDOT"). Consent for such assignment shall not relieve the CONSULTANT of any of its duties or responsibilities hereunder.

5. Ownership of Documents

All documents, including tracings, drawings, reports, estimates, specifications, field notes, investigations, studies, etc. ("the documents"), as instruments of service, shall remain the property of the LPA. Neither the LOCAL PUBLIC AGENCY, nor any person, firm or corporation acting on behalf of the LOCAL PUBLIC AGENCY, shall use the documents, or copies of the documents, for any work or project other than the work or project for which the CONSULTANT prepared the documents. The CONSULTANT shall have no liability for personal injury, death, property damage or economic loss, of whatever kind or character, arising out of, or relating to, the use by LOCAL PUBLIC AGENCY or any person, firm or corporation acting on behalf of LOCAL PUBLIC AGENCY, of the documents, or copies of the documents, for any work or project other than the work or project for which the CONSULTANT prepared the documents.

The LOCAL PUBLIC AGENCY may make unlimited copies of the documents furnished by the CONSULTANT.

6. Access to Records

During the Agreement period and for three (3) years from the date of final payment under the terms of this Agreement, the CONSULTANT and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred and shall make such materials available at their respective offices at all reasonable times for inspection or audit by the LOCAL PUBLIC AGENCY, INDOT, the Federal Highway Administration ("FHWA"), or other authorized representatives of the federal government, and copies thereof shall be furnished if requested.

7. Audit Working Papers and Conclusions

The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the LPA, INDOT, FHWA, or other authorized representatives of the federal government may release or make available to the agency any working papers from an audit performed by such agency of the CONSULTANT and its subcontractors in connection with this Agreement, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

8. Compliance with State and Other Laws

The CONSULTANT agrees to comply with all federal, state and local laws, rules, regulations, or ordinances, that are applicable at the time the CONSULTANT's services pursuant to this Agreement are rendered, and all provisions required thereby to be included herein are hereby incorporated by reference.

9. Responsibility of the CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services if the errors or deficiencies resulted, independently of all other causes, from negligence of the CONSULTANT. The CONSULTANT shall not be

responsible for errors, omissions or deficiencies in the designs, drawings, specifications, reports or other services of the LOCAL PUBLIC AGENCY or other consultants, including, without limitation, surveyors and geotechnical engineers, who have been retained by LOCAL PUBLIC AGENCY. The CONSULTANT shall have no liability for errors or deficiencies in its designs, drawings, specifications and other services that were caused, or contributed to, by errors or deficiencies (unless such errors, omissions or deficiencies were known or should have been known by the CONSULTANT) in the designs, drawings, specifications and other services furnished by the LOCAL PUBLIC AGENCY, INDOT, or other consultants retained by the LOCAL PUBLIC AGENCY.

- B. Neither the LOCAL PUBLIC AGENCY's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the LOCAL PUBLIC AGENCY in accordance with applicable law for all damages to the LOCAL PUBLIC AGENCY caused by the CONSULTANT's negligent performance of any of the services furnished under this contract.
- C. The CONSULTANT shall be responsible for all damage to life and property caused by errors or omissions of the CONSULTANT, its subcontractors, agents, or employees in connection with the services rendered by the CONSULTANT pursuant to this contract. The CONSULTANT shall indemnify, defend, and hold harmless the LOCAL PUBLIC AGENCY, INDOT and the State of Indiana, their officials and employees, from any liability due to loss, damage, injuries, or other casualties of whatever kind, which, directly and independently of all other causes, arise out of, or result from, the negligence of the CONSULTANT, its agents or employees, in performing the services that are required of the CONSULTANT by this contract.
- D. The CONSULTANT shall have no responsibility for supervising, directing or controlling the work of contractors or other consultants retained by the LOCAL PUBLIC AGENCY, nor shall the CONSULTANT have authority over, or responsibility for, the means, methods, techniques, sequences or procedures of construction (except those required by the contract plans, specifications, special provisions, etc. prepared by the CONSULTANT) selected by contractors. The CONSULTANT shall have no responsibility for the safety of persons on or off the job site, and whether or not engaged in the work, for safety precautions and programs incident to the work of contractors, or for any failure of contractors or others to exercise care for the safety of any person, including employees of contractors, or to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractors' performance of the work.
- E. The rights and remedies of the LOCAL PUBLIC AGENCY provided for under this contract are in addition to any other rights and remedies provided by law.
- F. The CONSULTANT shall have an affirmative duty to advise the LOCAL PUBLIC AGENCY of any known or obvious errors, omissions, or deficiencies in the designs, drawings, specifications, reports, or other services of the LOCAL PUBLIC AGENCY or consultants retained by the LOCAL PUBLIC AGENCY.

10. Status of Claims

The CONSULTANT shall be responsible for keeping the LOCAL PUBLIC AGENCY and INDOT currently advised as to the status of any claims made for damages against the CONSULTANT resulting from services performed under this Agreement. The CONSULTANT shall send notice of claims related to work under this Agreement to Chief Counsel, Indiana Department of Transportation, 100 North Senate Avenue, Room N730, Indianapolis, IN 46204-2249.

11. Workman's Compensation and Liability Insurance

The CONSULTANT shall procure and maintain insurance covering all operations under this Agreement, whether performed by the CONSULTANT or its subcontractor, from insurance companies licensed to do business in the State of Indiana, of the kinds and in the amounts hereinafter provided, until final payment by the LPA for the services covered in this Agreement. The CONSULTANT shall not be given notice to proceed until it has furnished certificates in a form satisfactory to the LPA, showing compliance with this section. During the life of this Agreement, the CONSULTANT shall provide the LPA with certificates showing that the required insurance has been maintained, at the request of the LPA. The certificates shall provide that the policies shall not be changed or canceled without ten (10) days prior written notice to the LPA. If such notice is given, the LPA, at its sole option, may terminate this Agreement. In such event, the CONSULTANT shall not be entitled to any further compensation under this Agreement.

The kinds and amounts of insurance required are as follows:

- A. Policies covering the obligations of the CONSULTANT pursuant to the provisions of the Workers' Compensation laws. This Agreement shall be void and of no effect unless the CONSULTANT procures and maintains such policies until final acceptance of the work.
- B. Comprehensive occurrence policies for bodily injury liability and property damage liability insurance including owners' or contractors' protective coverage with a save and hold harmless endorsement for the types herein specified each with limits of \$1,000,000.00 per occurrence for bodily injury or property damage with a \$2,000,000.00 annual aggregate. Such policies shall have no deductibles or self-insured retentions.
- C. Automobile policies for bodily injury and property damage liability insurance for the types herein specified with limits of \$1,000,000.00 per person and \$3,000,000.00 per accident and

\$1,000,000.00 for property damage, including hired and non-owned vehicles. Such policies shall have no deductibles or self-insured retentions.

12. Progress Reports

The CONSULTANT shall submit a progress report to the LPA on or before the tenth (10th) day of each month, showing progress to the first of the month. The report shall consist of a progress chart with the initial schedule on which shall be superimposed the current status of the work.

13. Changes in Work

In the event the LPA requires a material change in scope, character or complexity of the work after the work has progressed as directed by the LOCAL PUBLIC AGENCY, adjustments in compensation to the CONSULTANT and in time for performance of the work as modified shall be determined by the LPA, subject to the CONSULTANT's approval. The CONSULTANT shall not commence the additional work or the change of the scope of the work until a supplemental contract is executed and the CONSULTANT has received written authorization from the LPA and INDOT to proceed with the work.

14. Delays and Extensions

The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Any such delays shall be compensated for by an extension of time for such period as may be determined by the LPA, subject to the CONSULTANT's approval. However, it being understood, that the permitting of the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the LPA of any of its rights herein.

15. Abandonment and Termination

The LOCAL PUBLIC AGENCY reserves the right to terminate or suspend this Agreement upon thirty (30) days written notice.

- A. If the LOCAL PUBLIC AGENCY shall abandon the services herein mentioned, the CONSULTANT shall deliver to the LOCAL PUBLIC AGENCY all data, reports, drawings, specifications and estimates completed or partially completed, which shall become the property of the LPA. The earned value of the work performed shall be based upon an estimate of the portion of the total services that have been rendered by the CONSULTANT to the date of the abandonment and which estimate shall be made by the LOCAL PUBLIC AGENCY in the exercise of its honest and reasonable judgment for services to be paid on a lump sum basis, and it shall be based upon an audit for those services to be paid for on a cost basis or a cost plus fixed fee basis. The audit shall be performed by the Indiana Department of Transportation's Division of Accounting and Control in accordance with generally accepted auditing standards and the cost principles contained in the Federal Acquisition Regulations, 48 CFR Part 31. The payment made to the CONSULTANT shall be paid as the final payment in full settlement for its services hereunder.
- B. If, at any time, for any cause whatsoever, the CONSULTANT shall abandon or fail to timely perform any of its duties hereunder, including the preparation and completion of plans and specifications within the time specified, or within such further extension or extensions of time as may be agreed upon, the LOCAL PUBLIC AGENCY may give written notice that if the CONSULTANT has not complied with the requirements of this Agreement within twenty (20) calendar days from the date of such notice, then the Agreement is deemed terminated. Upon the mailing or delivery of such notice or personal delivery thereof to the CONSULTANT, and the failure of the CONSULTANT within the twenty (20) day period to fully comply with each and all requirements of this Agreement, this Agreement shall terminate and the LOCAL PUBLIC AGENCY may by any method it deems to be necessary designate and employ other consultants, by contract or otherwise, to perform and complete the services herein described. When written notice is referred to herein, it shall be deemed given when deposited in the mail addressed to the CONSULTANT at its last known address.
- C. If the LOCAL PUBLIC AGENCY shall act under the preceding paragraph, then all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Agreement, shall be delivered within twenty (20) days to LOCAL PUBLIC AGENCY. If the CONSULTANT fails to make such delivery upon demand, then the CONSULTANT shall pay to LOCAL PUBLIC AGENCY any damage it may sustain by reason thereof.

16. Non-Discrimination

- A. Pursuant to I.C. 22-9-1-10, the CONSULTANT and its subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.
- B. The CONSULTANT, and any agent of the CONSULTANT, in the performance of the work under this Agreement, shall comply with 42 U.S.C. §2000e, provided the CONSULTANT has fifteen or more employees for each working day in each of twenty or more calendar

weeks in the current or preceding calendar year. 42 U.S.C. §2000e states in part that it shall be unlawful for the CONSULTANT to:

1. fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
2. to limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex or national origin.

The CONSULTANT shall comply with 42 U.S.C. §2000e, the terms of which are incorporated by reference and made a part of this Agreement. Breach of this covenant may be regarded as a material breach of the Agreement.

- C. The CONSULTANT agrees to comply with the regulations of the U.S. Department of Transportation relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation. Title 49, Code of Federal Regulations, Part 21, effectuates 42 U.S.C. §2000e above, and is incorporated by reference and made a part of this Agreement. Pursuant to 49 CFR Part 21, the CONSULTANT agrees as follows:

1. Nondiscrimination: The CONSULTANT, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the regulations, including employment practices when the contract covers a program set forth in Appendix "A" of the regulations.
2. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement and the regulations relative to non-discrimination.
3. Information and Reports: The CONSULTANT will provide all information and reports required by the regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by the LOCAL PUBLIC AGENCY or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this

information, the CONSULTANT shall so certify to the LOCAL PUBLIC AGENCY, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

4. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Agreement, the LOCAL PUBLIC AGENCY shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to, suspension or termination or refusal to grant or to continue federal financial assistance or by any other means authorized by law.
5. Incorporation of Provisions: The CONSULTANT will 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. The CONSULTANT will take such action with respect to any subcontract or procurement as the LOCAL PUBLIC AGENCY or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the LOCAL PUBLIC AGENCY to enter into such litigation to protect the interests of the LOCAL PUBLIC AGENCY and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

17. Successors and Assignees

In so far as authorized by law, the parties bind their successors, executors, administrators and assignees to all covenants of this Agreement. Except as above set forth, neither the CONSULTANT nor the LOCAL PUBLIC AGENCY shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

18. Disadvantaged Business Enterprise Program

A. General

1. Notice is hereby given to the CONSULTANT or subcontractor that failure to carry out the requirements set forth in 49 CFR Sec. 23.43(a) shall constitute a breach of contract and, after notification, may result in termination of the contract or such remedy as the LOCAL PUBLIC AGENCY deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise (DBE) obligation to be included in all subsequent contracts between the CONSULTANT and any subcontractor:

- (a) It is the policy of the Indiana Department of Transportation that disadvantaged business enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently the DBE requirements of 49 CFR Part 23 apply to this Agreement.
  - (b) The CONSULTANT agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the CONSULTANT shall take all necessary and reasonable steps, in accordance with 49 CFR Part 23, to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of federally assisted contracts.
2. As part of the CONSULTANT's equal opportunity affirmative action program, it is required that the CONSULTANT shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise subcontractors, vendors or suppliers.

**B. Definitions**

1. "Disadvantaged business enterprise" means a small business concern:
  - (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
  - (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. "Small business concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$2.5 million over the previous three fiscal years.
3. "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, native Americans,

Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

4. "Certified disadvantaged business enterprise" means the business has completed and filed with the Indiana Department of Transportation a request for certification, and that the business has been reviewed and determined to comply with the guidelines established in 49 CFR Part 23. A business which is determined to be eligible will be certified as a disadvantaged business enterprise (DBE).

C. Subcontracts

1. If the CONSULTANT intends to subcontract a portion of the work, the CONSULTANT is required to take affirmative actions to seek out and consider DBEs as potential subcontractors prior to any subcontractual commitment.
2. The contacts made with potential DBE subcontractors and the results thereof shall be documented and made available to the LOCAL PUBLIC AGENCY and the Federal Highway Administration (FHWA) when requested.
3. A request to sublet a portion of the work to a firm that is not a DBE shall include Form DBE-2 and documentation evidencing contacts and the results thereof made with potential DBEs for the specific work to be subcontracted, in compliance with C.1 and C.2.
4. If a portion of the work under this Agreement is subcontracted to a DBE firm, then upon completion of the project, a Disadvantaged Business Enterprise Utilization Affidavit, Form DBE-3, shall be completed by the CONSULTANT and returned to the LOCAL PUBLIC AGENCY. The contractor and the subcontractor/lessor/supplier shall certify on the DBE-3 form that specific amounts have been paid and received.

D. Affirmative Actions

The CONSULTANT shall, as a minimum, develop an affirmative action plan for a Disadvantaged Business Enterprise Program which includes:

1. Appointment of a representative with authority to administer the CONSULTANT's Disadvantaged Business Enterprise Program.
2. Documentation of affirmative action methods and procedures intended to be used in seeking out and considering certified DBEs as subcontractors or suppliers.
3. Maintenance of a list of certified DBEs to be contacted prior to the selection of a potential subcontractor for the particular items, within the capabilities of the DBEs. This list shall include but not be limited to:
  - (a) the name of each subcontractor or supplier and a notation as to their DBE

certification status; and

- (b) the potential type of work or services to be performed by each subcontractor or supplier.

**E. Records and Reports**

1. The CONSULTANT shall keep such records as are necessary to determine compliance with this contract. The records kept by the CONSULTANT shall show, as a minimum:
  - (a) the number of disadvantaged and non-minority subcontractors and suppliers and type and dollar value of work, materials or services being performed on or incorporated in this project;
  - (b) the progress and efforts made in seeking out disadvantaged contractor organizations and individual disadvantaged contractors for work on this project;
  - (c) documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of DBEs on this Agreement.
2. The CONSULTANT shall submit reports, as required by the LOCAL PUBLIC AGENCY, of those contracts and other business agreements executed with DBEs with respect to the records referred to in paragraph E.1.
3. All such records must be maintained for a period of three years following acceptance of final payment and shall be available for inspection by The LOCAL PUBLIC AGENCY and the Federal Highway Administration.

**F. Leases and Rentals**

The CONSULTANT shall notify the LOCAL PUBLIC AGENCY when purchases or rental of equipment are made with disadvantaged businesses. The information submitted shall include the name of the business, the dollar amount of the transaction, and the type of purchases made or type of equipment rented.

**G. DBE Program**

Unless otherwise specified in this Agreement, the DBE Program developed by the LOCAL PUBLIC AGENCY and approved by the Federal Highway Administration applies to this Agreement.

**19. Supplements**

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

20. Pollution Control Requirements

If this Agreement is for \$100,000 or more, the CONSULTANT:

- A. stipulates that any facility to be utilized in performance under or to benefit from this Agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
- B. agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
- C. stipulates that, as a condition of federal-aid pursuant to this Agreement, it shall notify the LPA and the Federal Highway Administration of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Agreement is under consideration to be listed on the EPA Listing of Violating Facilities.

20. Governing Laws

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

21. Independent Contractor

The parties hereto, in the performance of this Agreement, will be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be employees or agents of the other party for any purpose whatsoever.

22. Certification for Federal-Aid Contracts

The CONSULTANT certifies, by signing and submitting this Agreement, to the best of its knowledge and belief, that the CONSULTANT 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 undersigned, 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 contract,

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 contract, 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 this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. This form is available through the Indiana Department of Transportation.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed 31 U.S.C. sec. 1352.

The CONSULTANT also agrees by signing this Agreement that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such subrecipients 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.

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

CONSULTANT

LOCAL PUBLIC AGENCY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or type name and title)

\_\_\_\_\_  
(Print or type name and title)

ATTEST:

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Signature

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Signature

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(Print or type name and title)

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(Print or type name and title)

ATTEST:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Print or type name and title)

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ ), COUNTY OF \_\_\_\_\_ ) SS:

Before me, the undersigned Notary Public in an for said County personally appeared

\_\_\_\_\_  
(name of signers, their official capacity and agency name)

and each acknowledged the execution of the foregoing contract on this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_, and each acknowledged and stated that he/she is the party authorized by the said agency  
to execute the foregoing contract.

My Commission Expires

\_\_\_\_\_  
County of Residence

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print or type name

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ ), COUNTY OF \_\_\_\_\_ ) SS:

Before me, the undersigned Notary Public in an for said County personally appeared

\_\_\_\_\_  
(name of signers, their official capacity and agency name)

and each acknowledged the execution of the foregoing contract on this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_, and each acknowledged and stated that he/she is the party authorized by the said agency  
to execute the foregoing contract.

My Commission Expires

\_\_\_\_\_  
County of Residence

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print or type name

CERTIFICATE OF CONSULTANT

I hereby certify that I am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_, whose address is \_\_\_\_\_, and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement,
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

except as herein expressly stated (if any): \_\_\_\_\_.

I further certify that no employee, officer or agent or partner or any member of their immediate families of this firm is employed or retained either full or part-time, in any manner by the Indiana Department of Transportation; except as herein expressly stated (if any): \_\_\_\_\_.

I acknowledge that this certificate is to be furnished to the Indiana Department of Transportation and/or the Federal Highway Administration - Department of Transportation in connection, with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal Laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

CERTIFICATE OF LOCAL PUBLIC AGENCY

I hereby certify that (I am) (we are) the \_\_\_\_\_ (title) of the \_\_\_\_\_ (LPA), and the above Consultant or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind

except as herein expressly stated (if any): \_\_\_\_\_.

(I) (We) further certify that no employee, officer, agent, or partner, or any member of their immediate families of the Consultant is employed or retained either in a full-time or part-time basis in any manner by the LPA except as herein expressly stated (if any): \_\_\_\_\_

I acknowledge that this certificate is to be furnished to the Federal Highway Administration and the Indiana, Department of Transportation, in connection with this Agreement involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

\_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



## DEBARMENT CERTIFICATION

This certification applies to the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of Federal funds.

### Instructions for Certification

1. By signing and submitting this Agreement, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this Agreement is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this Agreement is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this Agreement that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension and other Responsibility Matters - - Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Printed or Typed)

\_\_\_\_\_  
(Company)

Before me, a Notary Public in and for said County and State personally appeared \_\_\_\_\_, who swore to and acknowledged the truth of the statements in the foregoing

Certification on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
County of Residence

\_\_\_\_\_  
Print or type name

APPENDIX "A"

Services by CONSULTANT

A. Engineering Personnel

For the fulfillment of all services outlined in Section B below, the CONSULTANT will provide one (1) fulltime Resident Project Representative, and Inspectors and clerical and secretarial personnel as required for a period of time necessary to complete the construction project and final construction report.

The qualifications and experiences of personnel provided by the CONSULTANT are subject to approval by the Local Public Agency and the Indiana Department of Transportation and no personnel will be assigned to the project until Local Public Agency and Indiana Department of Transportation approval is obtained.

The fulltime Resident Project Representative will take directions from and report to the Indiana Department of Transportation's Area Engineer on all matters concerning contract compliance and administration.

The fulltime Resident Project Representative will coordinate project activities with the Local Public Agency's Project Coordinator and Indiana Department of Transportation's Area Engineer.

B. Description of Services

1. Construction Schedule: Review the construction schedule prepared by the Contractor for compliance with the Contract, and give to the Local Public Agency detailed documentation concerning its acceptability.

2. Conferences: Attend pre-construction conferences as directed by the Local Public Agency, arrange a schedule of progress meetings, and such other job conferences as required for the timely and acceptable conduct of the job, and submit such schedules prepared, to the Local Public Agency for notification to those who are expected to attend. Record for the Local Public Agency, as directed, minutes of such meetings. The CONSULTANT shall be available for conferences as requested by the Local Public Agency, State, and Federal Highway Administration to review working details of the project. The Local Public Agency, State and Federal Highway Administration may review and inspect the activities whenever desired during the life of the Agreement.
3. Liaison: Serve as the Local Public Agency's liaison with the contractor, working principally through the Contractor's field superintendent or such other person in authority as designated by the Contractor. Acting in liaison capacity, the fulltime Resident Project Representative shall be thoroughly familiar with the plans and specifications applicable to the project to insure that all provisions therein are complied with. Any deviation observed shall be reported to the Local Public Agency and Indiana Department of Transportation by the full-time Resident Project Representative.
4. Cooperate with the Local Public Agency in dealing with the various Federal, State and Local Agencies having jurisdiction over the project.

5. Assist the Local Public Agency and Indiana Department of Transportation in obtaining from the Contractor a list of his proposed suppliers and sub-contractors.
6. Assist the Local Public Agency and Indiana Department of Transportation in obtaining from the Contractor additional details or information when needed at the job site for proper execution of work.
7. Equipment - Furnish all equipment necessary to sample and test materials in accordance with Indiana Department of Transportation's procedures.
8. Samples - Obtain field samples of materials delivered to the site as required by the State and deliver such samples to the appropriate Indiana Department of Transportation laboratory office.
9. Shop Drawings:
  - a. Receive shop drawings and falsework drawings. Check for completeness and then forward to INDOT personnel for approval.
  - b. Review approved shop and falsework drawings, specifications and other submissions, record receipt of this data, maintain a file of all drawings and submissions, and check construction for compliance in accordance with the Contract Documents.

- c. Alert the Contractor's field superintendent when it is observed that materials or equipment are being or about to be used or installed before approval of shop drawings or samples, where such are required, and advise the Local Public Agency and Indiana Department of Transportation when he believes it is necessary to disapprove work as failing to conform to the Contract Documents.
10. Review of Work, Inspection and Tests:
- a. Conduct on-site inspections for the Local Public Agency of the work in progress as a basis for determining that the project is proceeding in accordance with the Contract Documents.
  - b. Provide on-site acceptance testing of materials in the manner and extent prescribed by the latest edition of the Indiana State Highway Commission Construction Manual and in accordance with current accepted practices.
  - c. Accompany visiting inspectors, representing Local, State or Federal Agencies having jurisdiction over the project, and report details of such inspection to the Local Public Agency and Indiana Department of Transportation.
  - d. Verify that required testing has been accomplished.
11. Modification: Consider and evaluate the Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to the Local Public Agency and Indiana Department of Transportation.

12. Records:

- a. Prepare and maintain at the job site orderly files of correspondence, reports of job conferences, shop drawings and other submissions, reproductions of original Contract Documents, including all addenda, change orders and additional drawings subsequent to the award of the Contract, progress reports and other project related documents.
- b. Keep a diary or log book, recording hours on the job site, weather conditions, list of visiting officials, decisions, general observations, and specific observations with regard to test procedures. Upon request furnish copies of such a diary or log book to the Local Public Agency.
- c. Maintain for the Local Public Agency, a record of names, addresses and telephone numbers of all sub-contractors and major material suppliers.
- d. Maintain a set of drawings on which authorized changes are noted, and deliver to the Local Public Agency upon request, but in any event at the completion of the project.
- e. Prepare the Final Construction Record and Final Estimate as required by the Indiana Department of Transportation and the Local Public Agency.

13. Reports: Furnish to the Indiana Department of Transportation and the Local Public Agency at periodic intervals, as required, progress reports of the project, including the Contractor's compliance with the approved construction schedule.

14. Progress Estimates: Prepare progress estimates for periodic partial payments to the Contractor and deliver to the Local Public Agency and Indiana Department of Transportation for review and processing. The payments to the Contractor will be based on estimates of the value of work performed and materials complete in place in accordance with the contract.
15. Project Responsibility: The Resident Project Representative will be responsible for the documentation of pay quantities and estimates, and the maintenance of appropriate records related to the construction of this project.
16. Work Schedule and Suspension: The consultant's crew will be required to regulate their work week to conform to the contractor's hours in accordance with the directions of the Indiana Department of Transportation's Area Engineer. If work on the construction project is suspended and all matters concerning contract compliance and administration are complete, the services of the consultant may also be suspended without cost to the project.
17. Contract Administration: The CONSULTANT will administer the contract in accordance with Indiana Department of Transportation's procedures.

18. Conflict of Interest: The CONSULTANT acknowledges and agrees that the CONSULTANT, a firm associated with the CONSULTANT or an individual associated with the CONSULTANT can not accept or perform any work (including but not limited to construction engineering, production staking, falsework drawings, shop drawings) for the contractor, material supplier of the contractor or for any of the contractor's subcontractors on this project. For purposes of this section a firm is associated with the CONSULTANT if the firm and CONSULTANT have a common director, common officer or a common owner. For purposes of this section an individual is associated with the CONSULTANT if the individual is an employee of the CONSULTANT or an employee of a firm associated with the CONSULTANT.

For purposes of this section the following definitions shall be used:

Director - Any member of the board of directors of a corporation.

Officer - The president, secretary, treasurer, or such other officers as may be prescribed by the corporations bylaws.

Owner - A sole proprietor, any partner in a partnership, or any shareholder of a corporation.

APPENDIX "B"

Information and Services to be furnished by Local Public Agency

The Local Public Agency shall furnish the CONSULTANT with the following:

1. Local Public Agency shall designate an employee as Project Coordinator to coordinate activities between Consultant, INDOT and the Local Public Agency.
2. Assistance to the CONSULTANT by placing at his disposal all available information pertinent to the project.

**APPENDIX "C"**

**Schedule**

The CONSULTANT will be prepared to begin the work under this Agreement within five (5) days after a letter of notification to proceed is received from the Local Public Agency. The CONSULTANT shall complete and deliver the final construction record and final estimate to the District Director within forty-five (45) calendar days after the contractor's last day of work.

APPENDIX "D"

Compensation:

A. Amount of Payment

1. The CONSULTANT shall receive as payment for the work performed under this Contract the total amount not to exceed \$\_\_\_\_\_, unless a supplement is executed by the parties that increases the maximum amount payable.
2. The CONSULTANT will be paid for the actual hours of work performed exclusively on this Contract in accordance with the negotiated hourly billing rates per classification:

<u>Labor Classification</u>	<u>Allowable Hourly Rates Per Year</u>	
	<u>2007</u>	<u>2008</u>
Department Manager	\$115.00	\$120.00

3. For those services performed by the CONSULTANT, the CONSULTANT will be reimbursed the direct non-salary costs (the actual costs of such out-of-pocket expenses directly attributable to the Contract such as fares, mileage long distance calls, equipment rentals, reproduction, etc.) as approved by INDOT. The direct non-salary costs for travel reimbursement shall not exceed the limitations on travel expenses set out in the current State of Indiana policy on travel reimbursement.

4. For those services performed by other than the CONSULTANT, the CONSULTANT will be reimbursed for the actual invoice for the services performed by other than the CONSULTANT, provided that each such claim voucher shall be subject to approval as reasonable by the Local Public Agency prior to any reimbursement thereof.
5. It is the policy of the Indiana Department of Transportation that Project Representatives and/or Inspectors be on the construction site whenever the Contractor is engaged in any activity requiring inspection or testing concurrent with the construction or activity. In order for the contractor to comply with the Contract Plans and Specifications and complete the work within the time required, it is often necessary for the Contractor to work more than an 8-hour day and more than a 5-day week. This in turn may require the Resident Project Representative and Inspectors to work over 40 hours per week. The CONSULTANT shall not bill for overtime for any individual until 40 hours have been worked on the Contract for the week by that individual. Holidays hours not worked on the Contract do not apply to the 40 hour week total.
6. The actual amount payable shall be determined in accordance with a final audit by INDOT's Division of Cost Accounting and Audits.

B. Method of Payment

1. The CONSULTANT may submit a maximum of one claim voucher per calendar month for work covered under this Contract. The claim vouchers shall be submitted to:

LPA's name and address

2. The claim vouchers shall represent the value to the Local Public Agency (LPA) of the partially completed work as of the date of the claim voucher. When submitting a claim voucher, the CONSULTANT shall furnish a copy of records showing the individuals who worked on this Contract during the month, their classification, the number of hours worked since the last claim voucher was submitted and the hourly rate.

3. If the LPA does not agree with the amount claimed by the CONSULTANT on a claim voucher, the LPA will send the CONSULTANT a letter by regular mail and list the differences between actual and claimed progress. The letter will be sent to the CONSULTANT's address on page 2 of this Contract or the CONSULTANT's last known address.
4. If, prior to the satisfactory completion of the services under this Contract, the total of the direct and indirect costs incurred by the CONSULTANT is within ten percent (10%) of the maximum amount payable, the CONSULTANT shall notify INDOT and the status will be evaluated.