CONSULTING CONTRACT
EDS # A249-_____

This Contract ("this Contract") is made and entered into this _____ day of _____, 2009 by and between the State of Indiana, acting by and through the Indiana Department of Transportation ("INDOT"), and

_____
_____
_____

the "CONSULTANT").

W I T N E S S E T H

WHEREAS, INDOT wishes to hire CONSULTANT to provide services required to _____

WHEREAS, CONSULTANT has extensive experience, knowledge and expertise relating to these services; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the services in connection therewith.

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

SECTION I **SERVICES BY CONSULTANT**. The CONSULTANT will provide the services and deliverables described in Appendix "A" which is attached and made an integral part of this Contract.

SECTION II **INFORMATION AND SERVICES TO BE FURNISHED BY INDOT.** The information and services to be furnished by INDOT is set out in Appendix "B" which is attached and made an integral part of this Contract.

SECTION III **TERM**. The term of this Contract shall be from the date of the last INDOT signature affixed to this Contract. A schedule for completion of the services and deliverables is described in Appendix "C" which is attached and made an integral part of this Contract.

SECTION IV **COMPENSATION**. INDOT shall pay the CONSULTANT for the services performed under this Contract in accordance with Appendix "D" which is attached and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed $_____.

SECTION V **NOTICE TO PROCEED AND SCHEDULE**. The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from INDOT, and shall deliver the work to INDOT in accordance with the schedule contained in Appendix "C" attached and made an integral part of this Contract.

SECTION VI **GENERAL PROVISIONS**

1. **Access to Records.** The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT, or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to Contract, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. **Assignment; Successors.** The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without INDOT's prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of INDOT, provided that the CONSULTANT gives written notice (including evidence of such assignment) to INDOT thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

Any substitution of sub-consultants and/or disadvantaged business enterprises must first be approved and receive written authorization of INDOT's Consultant Selection Review Committee and INDOT's Economic Opportunity Division Director respectively.

3. **Audit.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et seq. and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract..

4. **Authority to Bind Consultant**. The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT, and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed and accepted by INDOT.

5. **Certification for Federal-Aid Contracts Lobbying Activities**. The CONSULTANT certifies, by signing and submitting this Contract, 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 CONSULTANT, 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 Contracts, 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.

C. The CONSULTANT also agrees by signing this Contract 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 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.

6. **Changes in Work.** The CONSULTANT shall not commence any additional work or change the scopeof the work until authorized in writing by INDOT. CONSULTANT shall make no claim for additional compensation in the absence of a prior written approval and manemdnet executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

7. **Compliance with Laws.**

A. The CONSULTANT 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 of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract shall be reviewed by INDOT and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.

B. The CONSULTANT 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 Indiana Code § 4-2-6, *et seq*., Indiana Code § 4-2-7, *et seq*., the regulations promulgated thereunder, and Executive Order 05-12, dated January 12, 2005. If the CONSULTANT is not familiar with these ethical requirements, the CONSULTANT should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<http://www.in.gov/ethics/>>>. If the CONSULTANT or its agents violate any applicable ethical standards, the State may, at its sole discretion, terminate this Contract immediately upon notice to the CONSULTANT. In addition, the CONSULTANT may be subject to penalties under Indiana Code §§ 4-2-6 and 4-2-7, and under any other applicable state or federal laws.

C. The CONSULTANT certifies by entering into this Agreement, that neither it nor its principal(s) are presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the CONSULTANT agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the CONSULTANT. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the CONSULTANT becomes current in its payments and has submitted proof of such payment to INDOT.

D. The CONSULTANT warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, CONSULTANT agrees that INDOT may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the State of Indiana or its agencies, and INDOT decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to INDOT. A determination by the INDOT shall be final and binding on the parties and not subject to administrative review. Any payments that the INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

F. The CONSULTANT represents and warrants that the CONSULTANT and its SUBCONSULTANTS, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INDOT. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.

G. The CONSULTANT hereby represents and warrants that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

H. As required by IC 5-22-3-7: (1) the CONSULTANT and any principals of the CONSULTANT certify that (A) the CONSULTANT, 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 CONSULTANT will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law. (2) The CONSULTANT and any principals of the CONSULTANT certify that an affiliate or principal of the CONSULTANT and any agent acting on behalf of the CONSULTANT or on behalf of an affiliate or principal of the CONSULTANT: (A) except for de minimis and nonsystematic violations, 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 Contract, even if IC 24-4.7 is preempted by federal law.

8. <u>Condition of Payment.</u> The CONSULTANT must perform all services under this Contract to INDOT's reasonable satisfaction, as determined at the discretion of INDOT and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. INDOT will not pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of federal, state, or local law.

9. <u>Confidentiality of State Information</u>. The CONSULTANT understands and agrees that data, materials, and information disclosed to CONSULTANT may contain confidential and protected information. Therefore, the

CONSULTANT covenants that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Contract, will not be disclosed to others or discussed with third parties without INDOT's prior written consent.

The parties acknowledge that the services to be performed by CONSULTANT for INDOT under this contract may require or allow access to data, materials, and information containing Social Security numbers and maintained by INDOT in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the CONSULTANT and the INDOT agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by CONSULTANT, CONSULTANT agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

10. Debarment and Suspension.

A. The CONSULTANT certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT. The CONSULTANT shall notify INDOT upon any change in the status of the structure of the CONSULTANT.

B. The CONSULTANT certifies that it has verified the state and federal suspension and debarment state of all SUBCONSULTANTS receiving funds under this Contract and shall be solely responsible for any recoupment, penalties of costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the State if any SUBCONSULTANT becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the SUBCONSULTANT for work to be performed under this Contract.

11. Default by INDOT. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

12. 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 Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by INDOT subject to the CONSULTANT's approval, it being understood, however, 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 INDOT of any of its rights herein. In the event substantial delays or extensions, or change of any kind, not caused by CONSULTANT, takes place which causes CONSULTANT material change in scope, character or complexity of work, including but not limited to the cost of demobilization /mobilization of resources, INDOT at its sole discretion shall determine any adjustments in compensation. CONSULTANT must notify INDOT in writing immediately of material change in the work.

13. DBE REQUIREMENTS. Notice is hereby given to the CONSULTANT or SUB-CONSULTANT that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any SUBCONSULTANT:

> The CONSULTANT, sub recipient or SUB-CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which

may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE SUBCONSULTANTS identified on its Affirmative Action Certification. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and approved by INDOT's Economic Opportunity Division

14. Disputes

A. Should any disputes arise with respect to the Contract, the CONSULTANT and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The CONSULTANT agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.

C. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

1. The parties agree to resolve such matters through submission of this dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the CONSULTANT and INDOT within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration or mediation for the determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the CONSULTANT of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for CONSULTANT to terminate this Contract, and the CONSULTANT may bring suit to collect these amounts without following the disputes procedure contained herein.

15. Drug-Free Workplace Certification. The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the Indiana Department of Transportation and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the CONSULTANT in the State of Indiana has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of the Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Contract amount set forth in this Contract is in excess of $25,000.00, CONSULTANT hereby further agrees that this Contract is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of $25,000.00. No award of a

contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds $25,000.00, shall be valid, unless and until this certification has been fully executed by the CONSULTANT and made a part of the contract or agreement as part of the contract documents.

The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:

a. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT'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 CONSULTANT'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 CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

d. Notifying in writing the State 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) take appropriate personnel action against the employee, up to and including termination; or (2) require 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.

16. **Employment Option**. If INDOT determines that it would be in the State's best interest to hire an employee of the CONSULTANT, the CONSULTANT will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee

17. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

18. **Funding Cancellation Clause.** When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by either Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

19. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana.

20. **IC 8-23-2-12.5.** With respect to liability and indemnification issues, this Contract is subject to IC 8-23-2-12.5.

21. Indemnification. To the extent permitted by IC 8-23-2-12.5, the CONSULTANT agrees to indemnify, and hold harmless the State of Indiana, its agents, officials, and employees from claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the CONSULTANT and/or its subconsultants, if any, under this Contract. INDOT shall not provide such indemnification to the CONSULTANT.

22. Independent Contractor. Both parties hereto, in the performance of this Contract, shall act 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 the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.

23. Insurance - Liability for Damages.

A. The CONSULTANT shall be responsible for the accuracy of the services and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from INDOT. Acceptance of the services by INDOT shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities.

B. During construction or any phase of work performed by others based on services provided by the CONSULTANT, the CONSULTANT shall confer with INDOT when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes for a minimum of delay to the project.

C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred as a result of its negligent act, error or omission, and for losses or costs to repair or remedy construction. Acceptance of the services by INDOT shall not relieve the CONSULTANT of responsibility for subsequent correction.

D. The CONSULTANT shall be required to maintain in full force and effect, from the date of the first authorization to proceed until INDOT's acceptance of the work product, at least the following minimum coverage. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.

E. The State of Indiana, INDOT, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, sub-consultants or any agent of any of them, and the obligations of the indemnification in Section 20 below shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.

F. The CONSULTANT shall furnish a certificate of insurance and all endorsements to INDOT prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of Contract entitling INDOT to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For INDOT Prequalification **Work Types** 1.1, 12.2-12.6 CONSULTANTS shall provide not less than $250,000.00 professional liability insurance per claim and $250.000.00 aggregate for all claims for negligent performance. For **Work Types** 2.2, 3.1, 3.2, 4.1, 4.2, 5.5, 5.8, 5.11, 6.1 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 – 10.4, 11.1, 14.1 – 14.5, CONSULTANTS shall carry professional liability

insurance in an amount not less than $1,000,000.00 per claim and $1,000,000.00 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two (2) years after substantial completion of construction.

II. Commercial General Liability Insurance

The CONSULTANT must obtain and carry Commercial / General liability insurance as follows: For INDOT Prequalification **Work Types** 2.1, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 14.1 - 14.5, the CONSULTANT shall carry $1,000,000.00 per occurrence, $2,000,000.00 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.

2. The policy shall provide thirty (30) days notice of cancellation to INDOT.

3. CONSULTANT shall name INDOT as an additional insured.

III. Automobile Liability

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than $1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

1. Contractual Liability coverage shall be included.

2. The policy shall provide thirty (30) days notice of cancellation to INDOT.

3. CONSULTANT shall name INDOT as an additional insured.

IV. Watercraft Liability (When Applicable)

1. When necessary to use watercraft for the performance of the CONSULTANT's services under the terms of this Contract, either by the CONSULTANT, or any subconsultant, the CONSULTANT shall carry watercraft liability in the amount of $1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.

2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:

   a. United States Longshoremen & Harbor workers

   b. Maritime Coverage - Jones Act

3. The policy shall provide thirty (30) days notice of cancellation to INDOT.

4. CONSULTANT shall name INDOT as an additional insured.

V. Aircraft Liability (When Applicable)

1. When necessary to use aircraft for the performance of the CONSULTANT's services under the terms of this contract, either by the CONSULTANT or subconsultant, the CONSULTANT shall carry aircraft liability in the amount of $5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.

2. The policy shall provide thirty (30) days notice of cancellation to INDOT.

3. CONSULTANT shall name INDOT as an additional insured.

24. Licensing Standards. The CONSULTANT, its employees and SUBCONSULTANTS shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract. INDOT will not pay the CONSULTANT for any services performed when the CONSULTANT, its employees or SUBCONSULTANTS are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the CONSULTANT shall notify INDOT immediately and INDOT, at its option, may immediately terminate this Contract.

25. Merger and Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements or representations, oral or written, not specified within this Contract will be valid provisions of this Contact. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

26. Non-Discrimination

A. This Contract is enacted 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. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

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

C. During the performance of this Contract, the CONSULTANT, agrees as follows**:**

1. **Compliance with Regulations**: The CONSULTANT shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to in this part as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination**: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of SUBCONSULTANTS. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when this Contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subconsultants, Including Procurements of Materials and Equipment**: In all solicitations either by letters of interest or negotiation made by the CONSULTANT for work to be

performed under a subcontract, each potential subconsultant shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. **Information and Reports**: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by INDOT or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONSULTANTis in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to INDOT, 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 CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, INDOT shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding of payments to the CONSULTANT under this Contract until the CONSULTANT complies, and/or (b) cancellation, termination or suspension of this Contract, in whole or in part.

6. **Incorporation of Provisions**: The CONSULTANT shall include the provisions of paragraphs (1) through (6) in every subcontract, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANTshall take such action with respect to any subcontract as INDOT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided however, that, in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of the INDOT, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

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

A. Notices to the State shall be sent to:
Contract Administrator
100 N Senate Avenue, Room N855
Indianapolis, IN 46204

B. Notices to theCONSULTANTshall be sent to:

_____
_____
_____

C. As required by IC 4-13-2-14.8, payments to the CONSULTANT shall be made via electronic funds transfer in accordance with instructions filed by the CONSULTANT with the Indiana Auditor of State.

28. **Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the INDOT, (3) RFP document, (4) CONSULTANT's response to the RFP document, and (5) attachments prepared by the CONSULTANT. All of the foregoing are incorporated fully by reference.

29. **Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT transfers any ownership claim to INDOT and all such materials will be the property of INDOT. Use of these materials, other than related to contract performance by the CONSULTANT, without INDOT's prior written

consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to these materials developed for or supplied by INDOT and used to develop or assist in the services provided herein while the materials are in the possession of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide INDOT full, immediate, and unrestricted access to the work product during the term of this Contract.

30. **Payments.** All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the CONSULTANT in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

31. **Penalties, Interest and Attorney's Fees**. INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.

32. **Pollution Control Requirements**. If this Contract is for $100,000 or more, the CONSULTANT:

A. Stipulates that any facility to be utilized in performance under or to benefit from this Contract 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 Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

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

34. **Status of Claims**. The CONSULTANT shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the CONSULTANT resulting from services performed under this Contract. The CONSULTANT shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, IN 46204-2249

35. **Subconsultant Acknowledgement.** The CONSULTANT agrees and represents and warrants to the State of Indiana, that the CONSULTANT will obtain signed Subconsultant Acknowledgement forms, identical to the form attached as Appendix "F" of this Contract, from all subconsultants providing services under this contract or to be compensated for services through this contract. CONSULTANT agrees to provide signed original of the Subconsultant Acknowlegement form(s) to INDOT for approval prior to performance of the services by any subconsultant.

36. **Substantial Performance**. This Contract shall be deemed to be substantially performed only when fully performed according to its' terms and conditions and any modification or Amendment thereof.

37. **Taxes**. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.

38. Termination for Convenience.

A. INDOT may terminate, in whole or in part, whenever, for any reason, when INDOT determines that such termination is in its' best interest. Termination or partial termination of services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The CONSULTANT shall be compensated for services properly rendered prior to the effective date of termination. INDOT will not be liable for services performed after the effective date of termination.

B. If INDOT terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, then and in such event, 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 Contract, shall be delivered within ten (10) days to INDOT. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to INDOT any damage it may sustain by reason thereof.

39. Termination for Default.

A. With the provision of thirty (30) days notice to the CONSULTANT, the State may terminate this Contract in whole or in part if the CONSULTANT fails to:

1. Correct or cure any breach of this Contract;
2. Deliver the supplies or perform the services within the time specified in this Contract or any amendment or extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the State for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The CONSULTANT and the State shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 13). The State may withhold from the agreed upon price for services any sum the State determine necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

40. Travel. No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions of this Contract. Expenditures made by the CONSULTANT for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.

41. Waiver of Rights. No rights conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither INDOT'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 INDOT in accordance with applicable law for all damages to INDOT caused by the CONSULTANT's negligent performance of any of the services furnished under this Contract.

42. Work Standards/Conflicts of Interest.

A. The CONSULTANT shall understand and utilize all relevant INDOT standards including the Design Manual, where applicable, and other appropriate materials and shall perform all services in accordance with the standards of care, skill and diligence provided by competent professionals doing work of a similar nature.

B. The CONSULTANT agrees to comply with the "Indiana Department of Transportation Consultant Conflict of Interest Policy" (Conflict of Interest Policy) attached hereto as Appendix "E". Failure to comply with the Conflict of Interest Policy, may be grounds for INDOT to terminate this Contract under either Section 38 (Termination for Convenience) or Section 39 (Termination for Default) at INDOT's discretion.

[Remainder of Page Intentionally Left Blank]

Non-Collusion The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, CONSULTANT and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

CONSULTANT

_____
President

Date: _____

Attest:

_____
Secretary

STATE OF INDIANA
Department of Administration

_____
Carrie Henderson, Commissioner

Date: _____

State Budget Agency

_____
Christopher A. Ruhl,, Director

Date: _____

STATE OF INDIANA
Indiana Department of Transportation
Recommended for approval by:

_____
Robert D. Cales, Director
Contract Administration

Date: _____

Executed By:

_____(FOR)
Karl B. Browning, Commissioner
Indiana Department of Transportation

Date: _____

Approved as to Form and Legality:

_____(FOR)
Gregory F. Zoeller,
Attorney General of Indiana

Date Approved: _____

Prepared by: _____
Date: _____