

**CONSULTING CONTRACT
EDS # A249-**

This Contract ("this Contract") is made and entered into effective as of _____, 20____ ("Effective Date") by and between the State of Indiana ("State"), acting by and through the Indiana Department of Transportation ("INDOT"), and

(the "CONSULTANT"), [an individual residing in the State of _____] [a corporation/limited liability company organized under the laws of the State of _____].

W I T N E S S E T H

WHEREAS, INDOT wishes to hire the CONSULTANT to provide services required to _____ as more fully described in Appendix "A" attached hereto ("Services");

WHEREAS, the 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 to 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 are set out in Appendix "B" which is attached to and made an integral part of this Contract.

SECTION III TERM. The term of this Contract shall be from the date of the last signature affixed to this Contract to _____. A schedule for completion of the Services and deliverables is described in Appendix "C" which is attached to 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 to 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 to 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.

A. 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.

B. Any substitution of SUB-CONSULTANTS and/or disadvantaged business enterprises must first be approved and receive written authorization of INDOT's the Consultant Selection Review Committee and INDOT's Economic Opportunity Division Director, respectively, or their respective designee.

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 hereto.

5. Certification for Federal-Aid Contracts Lobbying Activities.

A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to INDOT prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

i. 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.

ii. 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.

B. 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 scope of the work until authorized in writing by INDOT. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.

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. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. 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 represents to INDOT that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to INDOT prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:

- i. *Required State of Indiana Payments.* Neither the CONSULTANT nor the CONSULTANT'S 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.
- ii. *State of Indiana Actions.* The CONSULTANT 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.
- iii. *Professional Licensing Standards.* The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to 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.
- iv. *Work Specific Standards.* The CONSULTANT and its SUBCONSULTANTS, if any, have obtained, will obtain and/or will 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.

- v. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
- vi. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT 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 and will immediately notify INDOT of any such actions. 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 or who has managerial or supervisory responsibilities for the Services.
- vii. *Debarment and Suspension of any SUBCONSULTANTS.* The CONSULTANT’s SUBCONSULTANTS are not 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 CONSULTANT 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.

C. *Ethics.* The CONSULTANT and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, 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, and any of the ethical requirements referenced in Appendix A, if any (collectively, “Ethical Standards”). 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 of the Ethical Standards, INDOT 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.

D. *Telephone Solicitation.* 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.

E. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT’S violation of any of Section 7(A) through 7(D), INDOT may, at its sole discretion, do any one or more of the following:

- i. terminate this Contract; or
- ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract; or

iii. bar the CONSULTANT from contracting with the State of Indiana.

F. *Disputes.* If a 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 INDOT under this Section 7.F shall be final and binding on the parties and not subject to administrative review. Any payments INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

8. Condition of Payment. 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 not performed to INDOT's reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, "deficiencies") until all deficiencies are remedied in a timely manner.

9. Confidentiality of State Information.

A. The CONSULTANT understands and agrees that data, materials, and information disclosed to the 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.

B. The parties acknowledge that the Services to be performed by the 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 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 the CONSULTANT, the 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. [Reserved]

11. [Reserved]

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 permitting 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 of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character or complexity of work the CONSULTANT is to perform under this Contract, INDOT at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify INDOT in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

13. DBE Requirements.

A. Notice is hereby given to the CONSULTANT and any SUB-CONSULTANT, and both agree, 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 and failure to promptly cure such breach, 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 SUB-CONSULTANT:

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.

B. 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 SUB-CONSULTANTS 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 this Contract, the CONSULTANT and INDOT agree to act promptly and in good faith to resolve such disputes in accordance with this Section 14. 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 (including reasonable attorneys' fees and expenses) incurred by INDOT or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.

C. If a party to this 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) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing according to the following procedure:

- i. The parties agree to resolve such matters through submission of the dispute to the Commissioner of the Indiana Department of Administration (or his or her designee) ("IDOA Commissioner"). The submission shall include a written description of the dispute, any supporting documentation and each party's respective recommended resolution of such dispute. The IDOA Commissioner shall make a written decision and mail or otherwise furnish a copy thereof to the CONSULTANT and INDOT within ten (10) business days after presentation of such dispute for action. The IDOA Commissioner's decision shall be final and conclusive unless either party provides a written notice of appeal to the Commissioner within ten (10) business days after receipt of the IDOA Commissioner's decision. Within ten (10) business days of receipt by the IDOA Commissioner of a written request for appeal, the IDOA Commissioner may reconsider its decision. The IDOA Commissioner may then choose to reconsider the determination and make a separate determination or may request that the parties submit to a mediation procedure. If the IDOA Commissioner chooses not to reconsider its decision or fails to respond within ten (10) business days, then the dispute may be submitted to an Indiana court of competent jurisdiction.
- ii. The State may withhold payments on disputed items pending resolution of the dispute.

15. Drug-Free Workplace Certification.

A. 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 this Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

B. 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, the 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.

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

- i. 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;
- ii. 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;
- iii. Notifying all employees in the statement required by subparagraph 15.C.i 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;
- iv. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision 15.C.iii(2) above, or otherwise receiving actual notice of such conviction;
- v. Within thirty (30) days after receiving notice under subdivision 15.C.iii(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
- vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 15.C.i through 15.C.v 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 fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Contract shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written 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. The CONSULTANT may seek recovery from the State for any amounts unpaid for Services rendered or goods delivered through the date of cancellation.

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. The parties acknowledge that the governing law includes I.C. 8-23-2-12.5. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction 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.** The CONSULTANT agrees to indemnify the State of Indiana, INDOT, and their agents, officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by, the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract, provided that if the CONSULTANT is a "contractor" within the meaning of I.C. 8-23-2-12.5, this indemnity obligation shall be limited by and interpreted in accordance with I.C. 8-23-2-12.5. 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. Subject to I.C. 8-23-2-12.5, the CONSULTANT shall be responsible for the accuracy of the Services performed under this Contract 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. The

CONSULTANT shall have no liability for the errors or deficiencies in designs, drawings, specifications or other services furnished to the CONSULTANT by INDOT on which the Consultant has reasonably relied, provided that the foregoing shall not relieve the CONSULTANT from any liability from the CONSULTANT'S failure to fulfill its obligations under this Contract, to exercise its professional responsibilities to INDOT, or to notify INDOT of any errors or deficiencies which the CONSULTANT knew or should have known existed.

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 by the State as a result of any negligent act, error or omission of the CONSULTANT, and for the State's 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 indemnification in Section 21 herein 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 the 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, 13.1, 14.1 – 14.5, the 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, 13.1, 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. The 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. The 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 SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the watercraft shall carry watercraft liability insurance 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. The CONSULTANT or SUB-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 SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the aircraft 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. The CONSULTANT or SUB-CONSULTANT shall name INDOT as an additional insured.

24. **[Reserved]**

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 Contract. 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:

- i. **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.
- ii. **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during this Contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of SUB-CONSULTANTS. 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.
- iii. **Solicitations for SUB-CONSULTANTS, 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 SUB-CONSULTANT 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.
- iv. **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 CONSULTANT is 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.

- v. **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.
- vi. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of subparagraphs 26.C.i through 26.C.v in every subcontract, unless exempt by the Regulations, or directives issued pursuant thereto.

D. The CONSULTANT shall 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 SUB-CONSULTANT as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of 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: Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

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

Notices to the CONSULTANT shall be sent to:

or to such other address or addresses as shall be furnished in writing by any party to the other party. Unless the sending party has actual knowledge that a Notice was not received by the intended recipient, a Notice shall be deemed to have been given as of the date (i) when personally delivered; (ii) three (3) days after the date deposited with the United States mail properly addressed; or (iii) the next day when delivered during business hours to overnight delivery service, properly addressed and prior to such delivery service's cut off time for next day delivery. The parties acknowledge that notices delivered by facsimile or by email shall not be effective.

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 INDOT, (3) RFP document, (4) the 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 assigns and transfers any ownership claim to INDOT and all such materials ("Work Product") will be the property of INDOT. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by 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 any of the Work Product developed for or supplied by INDOT and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control 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. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this Contract by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in Appendix "A" on other projects without the express written consent of the CONSULTANT or as provided in Appendix "A". INDOT acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.

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:

- i. 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;
- ii. 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
- iii. 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 give prompt written notice to INDOT any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping INDOT currently advised as to the status of such claims. 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. Sub-consultant Acknowledgement. The CONSULTANT agrees and represents and warrants to the State of Indiana, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, identical to the form attached as Appendix "E" of this Contract, from all SUB-CONSULTANTS providing

Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to INDOT for approval prior to performance of the Services by any SUB-CONSULTANT.

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 interests. 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 (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.

39. Termination for Default.

A. With the provision of twenty (20) days written notice to the CONSULTANT, INDOT may terminate this Contract in whole or in part if (i) the CONSULTANT fails to:

1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;
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 to be performed by the CONSULTANT; or

(ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.

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

C. INDOT shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and INDOT 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 14). INDOT may withhold from the agreed upon price for Services

any sum INDOT determine necessary to protect INDOT against loss because of outstanding liens or claims of former lien holders.

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

E. **Default by INDOT.** If the CONSULTANT believes INDOT is in default of this Contract, it shall provide written notice immediately to INDOT describing such default. If INDOT fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, 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, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, INDOT shall have up to one hundred twenty (120) days from such notice to effect such cure if INDOT promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the State or INDOT.

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 required in Appendix "A" or, if not set forth therein, ordinarily exercised 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 "F". 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.

43. No Third-Party Beneficiaries.

This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.

[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, the 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

STATE OF INDIANA
Department of Administration

President

Mark W. Everson, Commissioner

Date: _____

Date: _____

Attest:

State Budget Agency

Secretary

Christopher A. Ruhl, Director

Date: _____

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

Approved as to Form and Legality:

Robert D. Cales, Director
Contract Administration

(FOR)

Date: _____

Greg Zoeller
Attorney General of Indiana

Executed By:

Date Approved: _____

(FOR)
Michael W. Reed, Commissioner
Indiana Department of Transportation

Date: _____