

INDIANA DEPARTMENT OF ADMINISTRATION  
REQUEST FOR INFORMATION (RFI) #49010000-14-001-D1

# Professional Services for Public Input Implementation and Design for Proposed Bicentennial Plaza

INDIANA STATEHOUSE  
200 W. WASHINGTON STREET, INDIANAPOLIS, INDIANA

DUE TO PUBLIC WORKS DIVISION BY  
6/13/2014





## **REQUEST FOR INFORMATION # 49010000-14-001-D1**

This is a Request for Information (RFI) issued by the Indiana Department of Administration (IDO).

This RFI is intended to publicize the possible, future availability of contracting opportunities for services described herein. The IDOA creates no obligation, expressed or implied, by issuing this RFI or by receipt of any submissions pursuant hereto. The award of any contract(s) as a result of this RFI shall be at the sole discretion of the IDOA. Neither this RFI nor any proposal submitted in response hereto is to be construed as a legal offer. No contract will be awarded without further discussion and negotiation with the responding firms or the issuance of a Request for Proposal (RFP). The IDOA will not be responsible for any expenses incurred by any firm in preparing and submitting information responding to this request.

## **CONFIDENTIAL INFORMATION**

Potential offerors are advised that materials contained in their proposals are subject to the Indiana Public Records Act, IC 5-14-3 et. seq., and after the execution of the contract, may be viewed and/or copied by any member of the public, including news agencies and competitors. Potential offerors claiming a statutory exception to the Indiana Public Records Act, must place all confidential documents in a sealed envelope, clearly marked "Confidential" and must indicate on the outside of their proposal envelope that confidential materials are included and specify which statutory exception provision applies. The IDOA reserves the right to make determinations of confidentiality. If the IDOA does not agree with the information designated confidential under one of the disclosure exceptions to the Public Records Act, it may either reject the proposal or discuss its interpretation of the allowable exceptions with the offeror. If agreement can be reached, the proposal will be considered.



## SCOPE OF WORK

Overview: To commemorate the 200th anniversary of Indiana's statehood, the Indiana Department of Administration (IDO) may undertake the development and construction of an outdoor plaza and/or park to commemorate the Bicentennial.

Site: The park/plaza will be located on the grounds of the Indiana Government Center with the following requirements:

- The park/plaza will be centered on the intersection of Senate Avenue and Robert D. Orr Plaza.
- At a minimum, repairs to the Senate Avenue entry plaza at the Indiana State Library must be made.
- Additional spaces can be incorporated into the park/plaza design, including:
  - The Senate Avenue entry plaza at the Indiana State Library
  - Senate Avenue between Washington and Ohio Streets (utilization of green space along west side of Statehouse lawn is acceptable though the limestone seating wall and spaces contained within are historic in nature)
  - Robert D. Orr Plaza between West Street and Senate Avenue
  - East side of West Street between Washington Street and the canal
  - The southeast corner of the Senate Avenue Parking Garage
- The Indiana Law Enforcement and Firefighters Memorial shall not be modified.
- The space between the Indiana State Library and the Indiana Government Center North (100 N. Senate) shall remain accessible for maintenance purposes.

See the attached aerial map for project limits.

Construction budget: For the purposes for this RFI and subsequent submissions, assume a construction budget of \$2 million.

Construction completion: The park/plaza must be completed and ready for public event activities starting October 1, 2016.



#### Minimum requirements of the park/plaza design:

- Public Engagement: in the form of a competition or submissions, the inclusion of public submissions should be included in the design.
- Torch: the Bicentennial Commission will be operating a 2,300 mile torch relay that will travel through all 92 of Indiana's counties. The relay will culminate at the park/plaza with the lighting of a torch that will remain lit 365 days per year. The event and torch will be promoted as the "Enduring Light for Indiana" and dedicated in homage to the generations of Hoosiers that preceded us and serve as inspiration to the ones that follow.
- Ninety-Two Counties: recognition or identification of each of the 92 counties should be included in some format.
- Water Feature
- Time Capsule
- Inclusion of Indiana-made materials (e.g. limestone)
- Recognition of Donors
- Continued vehicular traffic from West Street through Orr Plaza onto Senate Avenue
- Protection of the Statehouse from accidental or malicious vehicular collisions

#### Minimum requirements of the selected design team:

- Prequalified with the State of Indiana Public Works Certification Board
- Engagement with the public
- Presentation to the Indiana Bicentennial Commission
- Presentation to the State Historic Preservation Officer
- Provide images for fundraising purposes
- Submit drawings for all required permits
- Create bid documents, attend bid and construction meetings, and all other requirements included in the standard Department of Administration Public Works (DAPW) designer contract and the DAPW designer manual



## **TERMS**

The designer should anticipate executing a standard contract for full professional services (a draft is attached). The contract will provide for a firm, fixed price for services.

## **PROPOSALS**

Firms interested in providing these services to the IDOA should submit an original and four (4) unbound copies of their written proposal to:

**Indiana Department of Administration, Public Works Division**

**Attn: Jason Larrison, AIA, State Architect**

**402 West Washington Street, Room W467**

**Indianapolis, Indiana 46204**

Proposals must be received no later than 12:00 p.m. Eastern Daylight-Saving Time on June 13, 2014. Proposals received after 12:00 p.m. will not be considered. The outside of the envelope should be clearly marked:

**“RESPONSE TO REQUEST FOR INFORMATION”**

No more than one (1) response per principal firm should be submitted. Each proposal should designate one person as the principal contact for the proposing firm. Following a review of the responses, some of the responding firms may be requested to make oral presentations.

Any questions regarding this RFI must be submitted to the above address no later than 12:00 p.m. Eastern Standard Time on May 30, 2014. Questions may also be submitted by fax at (317)233-4613 or via email at IDOA2016@idoa.in.gov. Questions received after 12:00 p.m. will not be considered. Responses to all questions will be promptly prepared and provided to each entity that received a copy of the RFI.



## **SELECTION PROCESS AND CRITERIA**

The Evaluation Team will review all of the responses in the following manner:

1. Each response will be evaluated on the basis of the criteria listed below.
2. Based on the results of the evaluation, the proposal(s) determined to be most advantageous to the IDOA, taking into account all of the evaluation criteria, may be selected by the IDOA for further action.
3. If technical proposals are close to equal, greater weight could be given to firms based in Indiana. Regional participation is desirable.

Responses will be evaluated based upon the documented ability of the proposer to satisfy the requirements of the Announcement in a cost effective manner. Specific criteria include:

1. Demonstrated experience and expertise in the design of outdoor public spaces, landscape architecture, civil engineering, and historic preservation.
2. Demonstrated experience and expertise in the creation of cost estimates, construction scheduling, and construction documents.
3. Demonstrated experience and expertise in public engagement, soliciting public input, and incorporating suggestions and submissions into the design.
4. Demonstrated ability to work with state agencies and commissions to address needs and present the proposed designs to the IDOA, the Indiana Bicentennial Commission, the Governor's Office, the Indiana Historic Preservation Review Board, the Indiana Arts Commission, and the Indiana Department of Homeland Security.
5. Experience and expertise with government bidding requirements, particularly with respect to capital projects.

## **PROPOSAL SUBMISSIONS**

The response should address the selection criteria described herein and any other information which the offeror believes is relevant to the selection process. The response should include a statement of the philosophy of the firm's approach to this project. The response should include examples of projects which are similar to this project or which address the selection criteria. The response should identify the key persons to be assigned to the project and include a statement of the availability and commitment level for each person which the offeror is willing to include in the contracting document. The IDOA encourages responding firms to be creative in preparing their response to this RFI.



## **EQUAL OPPORTUNITY COMMITMENT**

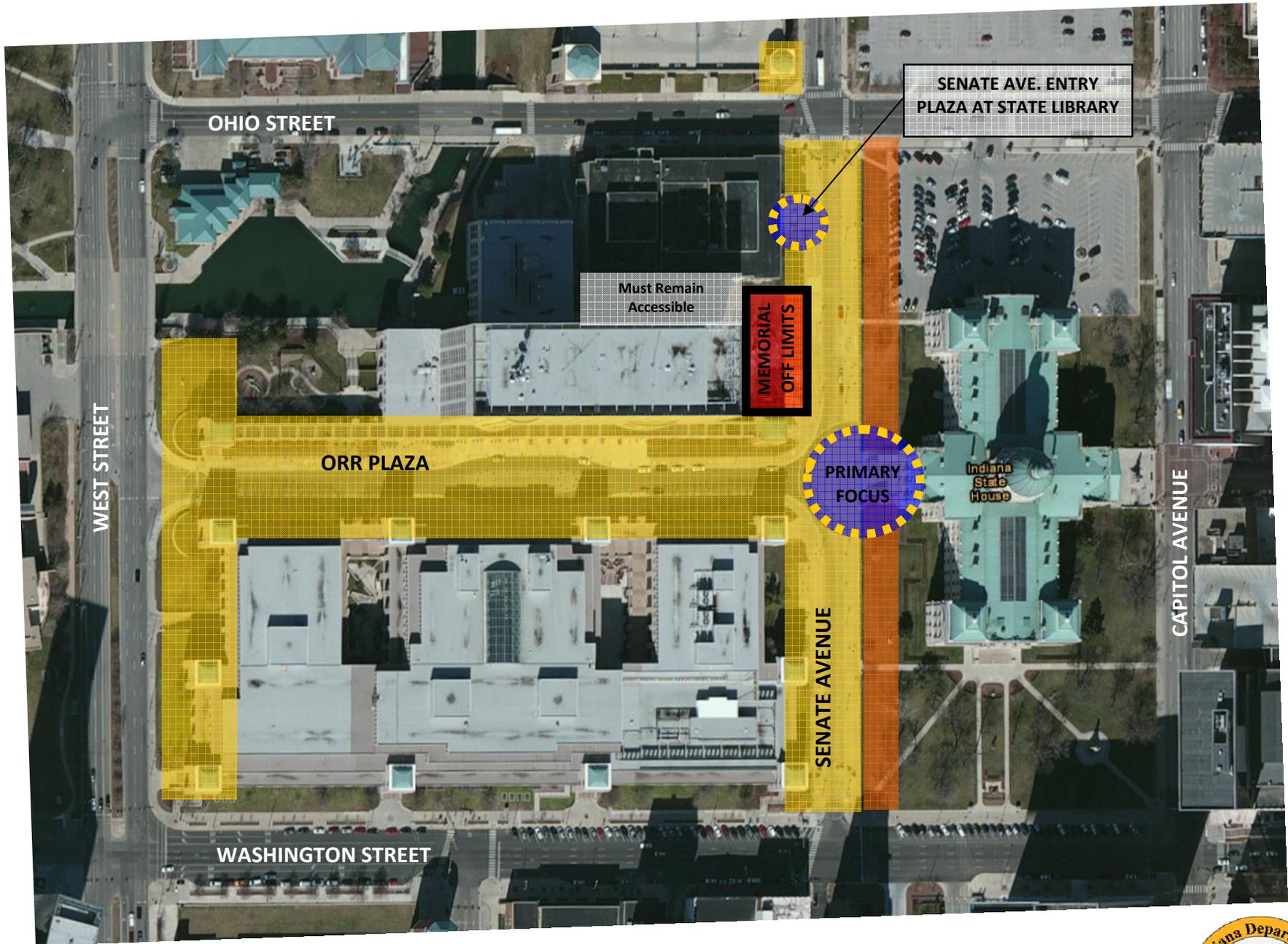
Pursuant to IC 4-13-16.5 and in accordance with 25 IAC 2-20, the IDOA has determined that there is a reasonable expectation of minority business enterprise participation in this contract. Therefore a contract goal of not less than five percent (5%) minority business enterprise (MBE) participation and not less than three percent (3%) women business enterprise (WBE) has been established and all offerors and their subcontractors will be expected to comply with the regulations set forth in 25 IAC 2-20.

In accordance with Executive Order 13-04 and IC 5-22-14-3.5, it has been determined that there is a reasonable expectation of Indiana Veterans Business Enterprises (VBE) subcontracting opportunities on a contract awarded under this RFI. Therefore, a contract goal of 3% for Indiana Veterans Business Enterprises has been established.

Compliance with these regulations will be considered to be a demonstration of the offeror's responsiveness and responsibility. Failure to comply with these regulations may result in the determination of the offeror as non-responsive.

## **QUESTIONNAIRE**

1. Name and address of principal location and Indiana office(s), if any, for principal firm and any consulting firms or individuals.
  - a. Please describe:
    - i. A brief history of the firms/individuals involved in this team.
    - ii. Experience, background, or expertise that qualifies your team for this project.
2. Indicate how your firm will provide the services requested in this RFI and an outline of procedures to be used by the firm in providing a unified team approach. Provide any case histories or other information which is available to indicate past performance on similar types of services, including copies of typical reports.
3. References:
  - a. List several persons who can provide information about similar work your firm has completed. (references may be contacted)
  - b. Provide a list of financial references that can provide information about the firm.
4. Submit a plan for MBE/WBE/VBE participation as part of the response to this announcement.



RFI: PROPOSED BICENTENNIAL PLAZA  
AERIAL MAP



STATE OF INDIANA  
STANDARD CONTRACT FOR DESIGN OF PUBLIC WORKS PROJECT

THIS CONTRACT, is entered in to by and between State of Indiana, acting by and through the Director, Public Works Division, Department of Administration, (“the Owner”), and XXXXXXXXXXXXXXXXXXXX (the “Designer”) is a Public Works Contract governed by IC 4-13.6, *et. seq.* This contract shall be effective as of the date of the final required state signature and shall terminate XXXXXX days following completion of the required designer’s duties as defined herein.

Whereas the Owner intends to undertake a capital improvement project to be entitled:  
**EDS # and Public Works Project No. XXXXXXXX**  
**DESCRIPTION**

for: **DEPARTMENT** (the “Using Agency”),

and located on a site designated as: **FACILITY** (the “Project Site”); and

Whereas the Director has accepted the Project under Indiana Code 4-13.6-3-2(8), and has determined the total costs of the Project shall not exceed funds available, in any event not to exceed the current funding of **\$XXXXXXXX.00** unless authorized by Director and has determined a fee not to exceed: **\$XXXXXXXX.00** for BASIC DESIGN SERVICES for the Project.

NOW, THEREFORE, THE OWNER AND THE DESIGNER, pursuant to the following terms and conditions, and in consideration for those mutual undertakings and covenants, agree as follows:

ARTICLE 1. THE DESIGNER AGREES TO PROVIDE PROFESSIONAL SERVICES FOR THE PROJECT UNDER THE DIRECTION OF: **XXXXXXXXXX**

WHO SHALL CERTIFY THE WORK AS THE DESIGNER OF RECORD.

ARTICLE 2. THE OWNER AGREES TO COMPENSATE THE DESIGNER AS FOLLOWS:

- 2.1 For Basic Design Services, the firm fee as set out above;
- 2.2 For Additional Services, the amount set forth in Articles 4 and 13, below;
- 2.3 For Direct and/or Reimbursable Expense, the amount set forth in Article 7, below;
- 2.4 For Basic Design Services performed prior to receipt of written notice from the Owner of abandonment of the Project, an agreed to percentage of the firm fee commensurate with percentage of Basic Design Services completed;
- 2.5 For Design Services required by Owner to change any previously-approved scope of the Project, an amount agreed to previous to executing changes.

ARTICLE 3. BASIC DESIGN SERVICES. The Designer shall refer to the *Public Works Designer Manual*, previously furnished to the Designer and incorporated fully herein by reference, for additional detail on the services described in this Article. The *Manual* is available at <http://www.in.gov/idoa/2484.htm>.

### 3.1 SCHEMATIC DESIGN PHASE

After receipt of fully executed contract, the Designer shall perform the following work.

- 3.1.1 The Designer shall consult with the Director and the Using Agency to ascertain the requirements of the Project based on the Legislature's approved Project description and understandings between the Using Agency, the Director and the Designer. Such requirements shall be reduced to a written program by the Designer and approved by the Director before authorization to proceed with Schematic Design Phase.
- 3.1.2 Based on the program requirements, the Designer shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationships of program components for presentation to, and review and approval by, the Director.
- 3.1.3 The Designer shall be responsible for obtaining sufficient information to properly design the Project and shall be responsible for field verification of information.
- 3.1.4 The Designer shall provide a good faith estimate of probable construction costs for Director review and approval.
- 3.1.5 On the first day of each month the Designer shall furnish to Public Works Division duplicate copies of the Monthly Planning Report (DAPW 2/State Form 21246) covering the progress of the professional services, and shall make note of any changes in the latest estimate of probable construction costs.

### 3.2 DESIGN DEVELOPMENT PHASE

After authorization from Director to undertake the Design Development Phase, the Designer shall perform the following work.

- 3.2.1 The Designer shall prepare, from the approved Schematic Design Studies, the Design Development Documents consisting of plans, sections, elevations and other drawings, and outline specifications to fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials, types of structure, mechanical, electrical systems and such other work as may be required.
- 3.2.2 The Designer shall provide a good faith estimate of probable construction costs with design development plans and outline specifications for Director review and approval.
- 3.2.3 On the first day of each month the Designer shall furnish to Public Works Division duplicate copies of the Monthly Planning Report (DAPW 2/State Form 21246) covering the progress of the professional services and shall make note of any changes in the latest estimate of probable construction costs.

### 3.3 CONSTRUCTION DOCUMENTS PHASE

After authorization from Director to undertake the Construction Documents Phase, the Designer shall perform the following work.

- 3.3.1 The Designer shall prepare, from the approved Design Development Documents, Working Drawings and Specifications setting forth in detail the work required for the architectural, structural, mechanical, electrical,

civil, service-connected equipment, and site work, and the necessary bidding information. The Designer shall include all required State documents for bidding. Use of alternates shall have prior approval of the Director.

3.3.2 The Designer shall advise Public Works Division, Project Manager of any adjustments to previous good faith estimates of probable construction costs, and of any variances indicated by approved changes in scope, requirements or market conditions.

3.3.3 The Designer shall be responsible for filing the required documents to secure, previous to bidding, approval of Indiana Department of Homeland Security, Division of Fire and Building Safety, Indiana State Department of Health, and all other governmental authorities having jurisdiction over the design of the Project.

3.3.4 Final plans, specifications and detailed good faith estimates of probable construction costs shall be approved in writing by the Using Agency and Director before bidding.

3.3.5 On the first day of each month the Designer shall furnish to Public Works Division, Project Manager duplicate copies of the Monthly Planning Report (DAPW 2/State Form 21246) covering the progress of the professional services and shall make note of any changes in the good faith estimate of probable construction costs.

### 3.4 BIDDING PHASE

After authorization from Director to undertake bidding, the Designer shall perform the following services.

3.4.1 When a bid date is desired, Designer shall initiate the Notice to Bidders (DAPW 28/State Form 15891) and submit such to Public Works Division, Project Manager. The Project Manager shall establish and confirm the bid date and time and shall issue all notices and advertisements required by law.

3.4.2 The Designer shall actively solicit bids and notify contractors. Designer shall prepare, print, and distribute all copies of final contract documents, including addenda, as required by the Project Manager for the bidding phase.

3.4.3 The Designer shall supply sets of Project documents to each bidder who request same at a nominal cost, with no less than 80% refund for all plans returned to the Designer in usable condition within a reasonable time

3.4.4 The Designer shall schedule and conduct a pre-bid visit to the Project Site early in the bid period, and shall ascertain the need for any letters of clarification or addenda.

3.4.5 The Designer shall be present at bid opening(s).

3.4.6 The Designer shall make written recommendations of contractors, alternates and amounts for award of contracts.

3.4.7 In the event that the lowest bona fide bid exceeds the Designer's Construction Document Phase estimate, as approved by the Director, and is unacceptable to the Director, then the Designer shall, in cooperation with the Using Agency and the Director, and pursuant to 25 IND. ADMIN. CODE § 2-3-6, revise the Project scope and/or quality to meet the approved budget, rebid the Project and follow through to completion of the Project, all at no additional cost to the Owner.

### 3.5 CONSTRUCTION PHASE

After authorization from the Director to undertake the Construction Phase, the Designer shall proceed with general administration of the construction contracts, including the following services.

3.5.1 The Designer shall schedule and officiate at a pre-construction conference at the Project Site with prime contractors and a representative from Public Works Division. The Using Agency and Public Works Division shall be notified of all conference schedules. Five (5) sets of construction documents shall be distributed to all prime contractors.

Periodic progress meetings shall be held under direction of Designer and as provided by specifications. The Designer shall record, keep and distribute minutes of all meetings.

3.5.2 The Designer shall, upon Owner's request, be available for consultation on matters relating to claims and on matters relating to the execution and progress of the work as well as give assistance to the Owner on technical matters pertaining to interpretation of the contract documents. Designer shall promptly check and approve samples, schedules, shop drawings and other submittals for compliance with the information given by the contract documents, shall prepare change orders and shall collect all guarantees required of contractors or suppliers.

The Designer shall secure approval of the Public Works Division, Project Manager prior to any substitution of any material or equipment. The Designer shall not direct changes in scope or value of the contract work without prior approval of Public Works Division, Project Manager.

3.5.3 The Designer shall provide such interpretation and clarification of the contract documents as required for the proper construction of the Project, and shall make such decisions as required by the contract documents at such times and in such manner as to expedite the proper execution of the construction contract.

3.5.4 The Designer shall make weekly visits to the Project Site when work is in progress and become familiar with the quality, quantity and adherence of the work to the Contract Documents. The Designer shall not be responsible for a contractor's failure to carry out construction work in accordance with the Contract Documents, but will determine to his own satisfaction that the interests of the Owner are safeguarded. During visits to the Project Site, and on the basis of observation while at the Project Site, the Designer will keep the Owner informed of the progress of the work, will endeavor to guard the Owner against defects and deficiencies in the work of contractors, and may condemn work as failing to conform to the intent of the Contract Documents.

3.5.5 Based on personal observations and the contractor's Application for Payment, the Designer shall determine the amount due the Contractor and will issue Certificates for Payment in such amounts. The Certificates for Payment will constitute a representation to the Owner, based on such observations and the data comprising the Application for Payment, that the work has progressed to the point indicated. By issuing a Certificate for Payment, the Designer will also represent to the Owner, that to the best of his/her knowledge based on reasonable and prudent inquiry and observation, the quality of the work is in accordance with the Contract Documents. The Designer shall, within seven (7) days after receipt of the Request for Payment, issue said Certificate to the Owner or state in writing the reasons for its being withheld.

3.5.6 Designer shall invite the Owner to participate in the necessary inspections to determine substantial completion and shall, after conferring with the State's Site Representative and Project Manager, initiate a Certificate of Substantial Completion (DAPW 5/State Form 1084). The Certificate shall be valid only upon written approval by the Director, and the final Certificate for Payment shall follow such Substantial Completion approval.

3.5.7 The Designer shall furnish to Public Works Division record documents showing changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by the Contractors to the Designer.

- 3.5.8 The Designer shall collect and submit to Public Works Division two sets of all warranties, guarantees, manuals and operating directions.
- 3.5.9 The Designer shall make an inspection of the Project nine months after substantial completion in conjunction with Public Works Division Representative prior to the expiration of the one-year guarantee period, and shall report to Public Works Division, Project Manager the written results of this inspection in writing.
- 3.5.10 On the first day of each month the Designer shall furnish to Public Works Division, Project Manager duplicate copies of the Monthly Planning Report (DAPW 2/State Form 21246) covering the progress of the professional services and construction.
- 3.5.11 The Designer shall submit one set of Record Documents to Department of Fire and Building Services within 60 days of the Directors acceptance of Certificate of Substantial Completion.

ARTICLE 4. DESIGNER'S ADDITIONAL SERVICES

Services by the Designer not set forth in Article 3, above, or in the *Public Works Designer Manual*, shall constitute Additional Services and shall require the prior written approval and authorization of the Director. Such written approval and authorization may be for the performance of Additional Services for a set fee, or at the hourly rates set forth in Article 7, below.

ARTICLE 5. OWNER'S RESPONSIBILITIES

- 5.1 The Owner shall provide all available information as to requirements for the Project as promptly as practicable.
- 5.2 The Director shall designate a Project Manager to act on Owner's behalf. The Project Manager shall examine documents submitted by the Designer and promptly render decisions pertaining thereto. The Project Manager shall issue orders to contractors through the Designer to the extent that such procedure is practicable.
- 5.3 If the Owner observes or otherwise becomes aware of any defects in the Project, it shall give prompt notice thereof to the Designer.

ARTICLE 6. PROJECT CONSTRUCTION COST

- 6.1 "Project Construction Cost" means the total cost of all construction contracts involving work which has been designed or specified by the Designer in connection with the Project, but does not include any payments made to the Designer or consultants.
- 6.2 Project Construction Cost shall be based upon the following sources with precedence in the order listed.
  - 6.2.1 Lowest acceptable bona fide Contractor's proposal, consisting of base bid and alternates, received and accepted.
  - 6.2.2 The Designer's latest accepted and approved Estimate of Probable Construction Cost.

ARTICLE 7. DIRECT AND REIMBURSABLE EXPENSES

- 7.1 "Direct Personnel Expenses" include that of principals and employees engaged on the Project including architects, engineers, designers, job captains, draftsmen, specification writers, typists, and project representatives in consultation, research, designing and producing drawings, specifications and other

documents pertaining to the Project, and services during construction. The Rate Schedule is attached as **Exhibit A** to this Contract.

- 7.2 Reimbursable Expenses include actual Director-authorized expenditures made by the Designer in the interest of the Project.
- 7.3 All information or data produced through reimbursable expenses shall become the property of the State of Indiana upon completion of the Project and shall be presented to the Project Manager.

**ARTICLE 8. PERIODIC PAYMENTS TO THE DESIGNER**

8.1 Payment on account of the Basic Design Services shall be made at the completion of design phase(s), and monthly thereafter, upon receipt by the Owner of an itemized claim in proportion to services performed. The compensation for basic services shall not exceed the following percentages at the completion of each phase of the work.

Schematic Design Phase.....	10%
Design Development Phase.....	33%
Construction Documents Phase.....	66%
Bidding Phase.....	70%
Construction Phase.....	95%
Final Documents .....	100%

- 8.2 Payments for Additional Services of the Designer as defined in Article 4 and for Reimbursable Expense as defined in Article 7 shall be made monthly upon presentation and approval by Director of the Designer's itemized claim.
- 8.3 No deduction shall be made from the Designer's compensation on account of liquidated damages or other sums withheld from payments to Contractors.

**ARTICLE 9. ACCOUNTING RECORDS.**

Records of the Designer's direct personnel, consultant, and reimbursable expense pertaining to this Contract and records of accounts between the Owner and the Designer shall be kept in accordance with generally accepted accounting principals. Designer shall make such materials available at its offices at all reasonable times during the contract term and for three (3) years from the date of final payment under this Contract, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

**ARTICLE 10. DESIGNER RECOGNITION**

Whenever renderings, photographs of renderings, photographs of models, or photographs of the Project are released by the Owner for publicity, proper credit for design shall be given the Designer, provided, the giving of such credit is without cost to the Owner.

**ARTICLE 11. CERTIFICATION BOARD PREQUALIFICATION; LICENSURE**

The Designer certifies that its employees, assistants and others who provide services pursuant to this Contract have been pre-qualified by the Public Works Certification Board to perform the work and furnish the services, that the Designer's application for pre-qualification was true, complete and accurate. The Designer and the Designer's employees and consultants shall comply with all applicable licensing and certification standards

and any other rules or regulations governing the services to be provided pursuant to this Contract. The Owner shall not be required to reimburse the Designer for any services performed pursuant to this Contract if the Designer is not in compliance with such applicable requirements, standards, laws, rules or regulations.

**ARTICLE 12. CONFLICT OF INTEREST**

The Designer covenants to have no direct or indirect financial interest in any other contract in connection with the Project. The Designer further represents and warrants that no state officer or employee who is either the spouse or an unemancipated child of either the Designer (if an individual) nor any principal of the Designer (if a business entity) participated in any decision or vote of any kind in the award of this Contract, and that execution of this Contract by the Designer does not result in a conflict of interest under IC 4-2-6-9.

**ARTICLE 13. FEE CLARIFICATION**

Fee for Basic Services as set forth herein:..... **\$XXXXXX.00**

Allowance for additional services, which may be authorized by Director, including site surveys, geotechnical surveys, filing fees for Indiana Department of Homeland Security, Division of Fire and Building Safety, printing of Bidding and Construction documents, printing of final and as-built documents, and added services to expedite design or construction: ..... \$ XXXXX.00

Total encumbrance for services set out herein above..... **\$XXXXXXXX.00**

**ARTICLE 14 STATE STANDARD CONTRACT CLAUSES**

- 14.1 *Access to Records.* The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.
- 14.2 *Assignment; Successors.* The Designer binds its successors and assignees to all the terms and conditions of this Contract. The Designer shall not assign or subcontract the whole or any part of this Contract without the State’s prior written consent. The Designer may assign its right to receive payments to such third parties as the Designer may desire without the prior written consent of the State, provided that the Designer gives written notice (including evidence of such assignment) to the State 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.
- 14.3 *Assignment of Antitrust Claims.* As part of the consideration for the award of this Contract, the Designer assigns to the State all right, title and interest in and to any claims the Designer now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- 14.4 *Audits.* The Designer 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.

The State considers the Designer to be a “vendor” for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the Designer shall

arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Designer is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Designer's fiscal year. The Designer agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Designer, and not of a parent, member, or subsidiary corporation of the Designer, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Designer is not out of compliance with the financial aspects of this Contract.

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

14.6 *Changes in Work.* The Designer shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Designer shall make no claim for additional compensation in the absence of a prior written approval and amendment 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.

14.7 *Compliance with Laws.*

A. The Designer shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Designer to determine whether the provisions of this Contract require formal modification.

B. The Designer and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Designer is not familiar with these ethical requirements, the Designer should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Designer or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Designer. In addition, the Designer may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

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

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

E. If a valid dispute exists as to the Designer's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Designer, the Designer may request that it be allowed to continue, or receive work, without delay. The Designer must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

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

G. The Designer affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

(1) The Designer and any principals of the Designer certify that:

(A) the Designer, 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 Designer 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 Designer and any principals of the Designer certify that an affiliate or principal of the Designer and any agent acting on behalf of the Designer or on behalf of an affiliate or principal of the Designer, except for de minimis and nonsystematic violations,

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

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

I. As required by IC §5-22-16.5, the Designer certifies that the Designer is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC §5-22-16.5-14 including termination of this Contract, denial of future state contracts, as well as an imposition of a civil penalty.

14.8 *Condition of Payment.* All services provided by the Designer under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

14.9 *Confidentiality of State Information.* The Designer understands and agrees that data, materials, and information disclosed to the Designer may contain confidential and protected information. The Designer covenants that data, material, and information gathered, based upon or disclosed to the Designer for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Designer for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State 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 Designer and the State 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 Designer, Designer 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.

14.10 *Continuity of Services.*

A. The Designer recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another designer, may continue them. The Designer agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Designer shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Designer shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Designer shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Designer also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Designer shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Designer shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14.11 *Debarment and Suspension.*

A. The Designer certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors 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 of Indiana. 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 Designer.

B. The Designer certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Designer shall immediately notify the State if any subcontractor 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 subcontractor for work to be performed under this Contract.

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

14.13 *Disputes.*

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

B. The Designer 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 Designer fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Designer as a result of such failure to proceed shall be borne by the Designer, and the Designer shall make no claim against the State for such costs.

C. If a party to the Contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. 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 shall submit the dispute in writing according to the following procedure:

The parties agree to resolve such matters through submission in writing of their 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 Designer and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive administrative decision 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 is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

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

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

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

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Designer'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 Designer'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 Designer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

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

- A. The Designer shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Designer is not required to participate should the E-Verify program cease to exist. Additionally, the Designer is not required to participate if the Designer is self-employed and does not employ any employees.
- B. The Designer shall not knowingly employ or contract with an unauthorized alien. The Designer shall not retain an employee or contract with a person that the Designer subsequently learns is an unauthorized alien.

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

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

- 14.16 *Employment Option.* If the State determines that it would be in the State’s best interest to hire an employee of the Designer, the Designer will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.
- 14.17 *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.
- 14.18 *Funding Cancellation.* When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- 14.19 *Governing Law.* This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.
- 14.20 *HIPAA Compliance.* If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Designer covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.
- 14.21 *Indemnification.* The Designer agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the Designer and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Designer.
- 14.22 *Independent Contractor; Workers’ Compensation Insurance.* The Designer is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. 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 subcontractors of the other party. The Designer shall provide all necessary unemployment and workers’ compensation insurance for the Designer’s employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.
- 14.23 *Information Technology Enterprise Architecture Requirements.* If the Designer provides any information technology related products or services to the State, the Designer shall comply with all IOT standards,

policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Designer specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC §4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Designer fails to cure a breach of this provision within a reasonable time.

#### 14.24 *Insurance.*

The Designer shall secure and keep in force during the term of this Contract the following insurance coverage, covering the Designer for any and all claims of any nature which may in any manner arise out of or result from Designer's performance under this Contract:

- A. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
  - 1. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
  - 2. The Designer shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.
- B. The Designer's insurance coverage must meet the following additional requirements:
  - 1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
  - 2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Designer.
  - 3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Designer in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
  - 4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
- C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Designer shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

14.25 *Key Person(s).*

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Designer is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Designer shall not be permitted without express written consent of the State.

Nothing in sections A and B, above shall be construed to prevent the Designer from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Designer shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are \_\_\_\_\_

14.26 *Licensing Standards.* The Designer, its employees and subcontractors 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 Designer pursuant to this Contract. The State will not pay the Designer for any services performed when the Designer, its employees or subcontractors 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 Designer shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

14.27 *Merger & 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, except by written agreement signed by all necessary parties.

14.28 *Minority and Women's Business Enterprises Compliance Award* of this Contract was based, in part, on the MBE/WBE participation plan. The following certified MBE or WBE subcontractors will be participating in this Contract:

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>PERCENT</u>
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N/A

(Terms for participation are as provided in the General Conditions of the contract included with the contract documents.)

A copy of each subcontractor agreement must be submitted to IDOA's MBE/WBE Division within thirty (30) days of the effective date of this Contract. Failure to provide a copy of any subcontractor agreement will be deemed a violation of the rules governing MBE/WBE procurement, and may result in sanctions allowable under 25 IAC 5-7-8. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Designer must obtain approval from IDOA's MBE/WBE Division before changing the participation plan submitted in connection with this Contract.

14.29 *Nondiscrimination.* Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Designer covenants that it shall not discriminate against any

employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Designer certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Designer or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, Designer and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

- 14.30 *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: **Director of the Public Works Divisions**
  - B. Notices to the Designer shall be sent to: **See top of page 1 of this document.**
  - C. As required by IC 4-13-2-14.8, payments to the Designer shall be made via electronic funds transfer in accordance with instructions filed by the Designer with the Indiana Auditor of State.
- 14.31 *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 State, (3) *Public works Designer Manual*, and (4) attachments prepared by the Designer. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.
- 14.32 *Ownership of Documents and Materials.* All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Designer prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Designer transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Designer, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Designer shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Designer. Any loss or damage thereto shall be restored at the Designer's expense. The Designer shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract.
- 14.33 *Payments.*
- A. All payments shall be made 35 days 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 Designer 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.
  - B. The State Budget Agency and the Designer acknowledge that Designer is being paid in advance for the maintenance of equipment and / or software. Pursuant to IC §4-13-2-20(b)(14), Designer agrees that if it fails

to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

- 14.34 *Penalties/Interest/Attorney's Fees.* The State 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 permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

- 14.35 *Progress Reports.* The Designer shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

- 14.36 *Public Record.* The Designer acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

- 14.37 *Renewal Option.* This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

- 14.38 *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.

- 14.39 *Substantial Performance.* This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

- 14.40 *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 Designer as a result of this Contract.

- 14.41 *Termination for Convenience.* This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Designer of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Designer shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Designer shall be compensated for services herein provided but in no case shall total payment made to the Designer exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that the Indiana Department of Administration shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

- 14.42 *Termination for Default.*

- A. With the provision of thirty (30) days notice to the Designer, the State may terminate this Contract in whole or in part if the Designer fails to:
1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
  2. Deliver the supplies or perform the services within the time specified in this Contract or any 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 Designer will be liable to the State for any excess costs for those supplies or services. However, the Designer shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Designer and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be 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.

14.43 *Travel.* No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Designer 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. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

14.44 *Indiana Veteran’s Business Enterprise Compliance.* Award of this Contract was based, in part, on the Indiana Veteran’s Business Enterprise (“IVBE”) participation plan. The following IVBE subcontractors will be participating in this Contract:

VBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT
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N/A

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A copy of each subcontractor agreement shall be submitted to IDOA within thirty (30) days of the request. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Designer must obtain approval from IDOA before changing the IVBE participation plan submitted in connection with this Contract.

The Designer shall report payments made to IVBE subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as “Pay Audit.” IVBE subcontractor payments shall also be reported to IDOA as reasonably requested and in a format to be determined by IDOA.

14.45 *Waiver of Rights.* No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have

waived such right. Neither the State'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 Designer shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Designer's negligent performance of any of the services furnished under this Contract.

- 14.46 *Work Standards.* The Designer shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Designer shall grant such request.

#### **Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Designer, or that the undersigned is the properly authorized representative, agent, member or officer of the Designer. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Designer, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof.

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

[Designer]

**Department of Administration  
Public Works Division**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Director, DAPW

*For IDOA Commissioner if less than \$1,000,000*

Date: \_\_\_\_\_

ATTEST:

**Approved by:**  
Department of Administration

\_\_\_\_\_ Date \_\_\_\_\_

VICE PRES./SEC./TREAS.

By: \_\_\_\_\_ (for)

, Commissioner

\_\_\_\_\_ Date \_\_\_\_\_

PARTNER

Date: \_\_\_\_\_

**Approved by:**  
State Budget Agency *PURSUANT TO IC 4-13-2-14.1 IS NOT  
REQUIRED FOR PUBLIC WORKS CONTRACTS UNDER \$100,000.00*

\_\_\_\_\_ (for)

, Director

Date: \_\_\_\_\_

**Approved as to Form and Legality:**  
*Form approval has been granted by the  
Office of the Attorney General pursuant to  
IC 4-13-2-14.3(e) on September 30, 2013.  
FA 13-46*

This Instrument was prepared by: \_\_\_\_\_ on \_\_\_\_\_

Legal Counsel \_\_\_\_\_ (initials)

EXHIBIT "A"

FIRM NAME: DESIGN FIRM NAME  
PUBLIC WORKS PROJECT NUMBER: NUMBER

SCHEDULE OF RATES FOR USE IN JUSTIFYING COSTS OF OWNER AUTHORIZED ADDITIONAL SERVICES

Terms of additional services set out in Articles 4 and 7.

RATE/HOUR

Project Manager

Project Architect

Job Captain

Draftsperson

Specification Writer

Typist

Project Representative

Structural Engineer

Structural Draftsperson

Mechanical Project Manager

Mechanical Engineer

Electrical Project Manager

Electrical Engineer

Draftsperson Mech/Elect

Mech/Elect Representative

Mech/Elect Specification Writer