

INTERNAL COPY

# TECHNICAL PROPOSAL FOR I-65 / I-70 NORTH SPLIT PROJECT

March 10, 2020 • Submitted by:  
Superior Construction Co., Inc.

**VOLUME 3:**  
STIPEND AGREEMENT

**SUPERIOR**  
CONSTRUCTION



# EXHIBIT E

East Dayton  
100' x 40' sign

## EXHIBIT E

### SUMMARY AND ORDER OF PROPOSAL CONTENTS

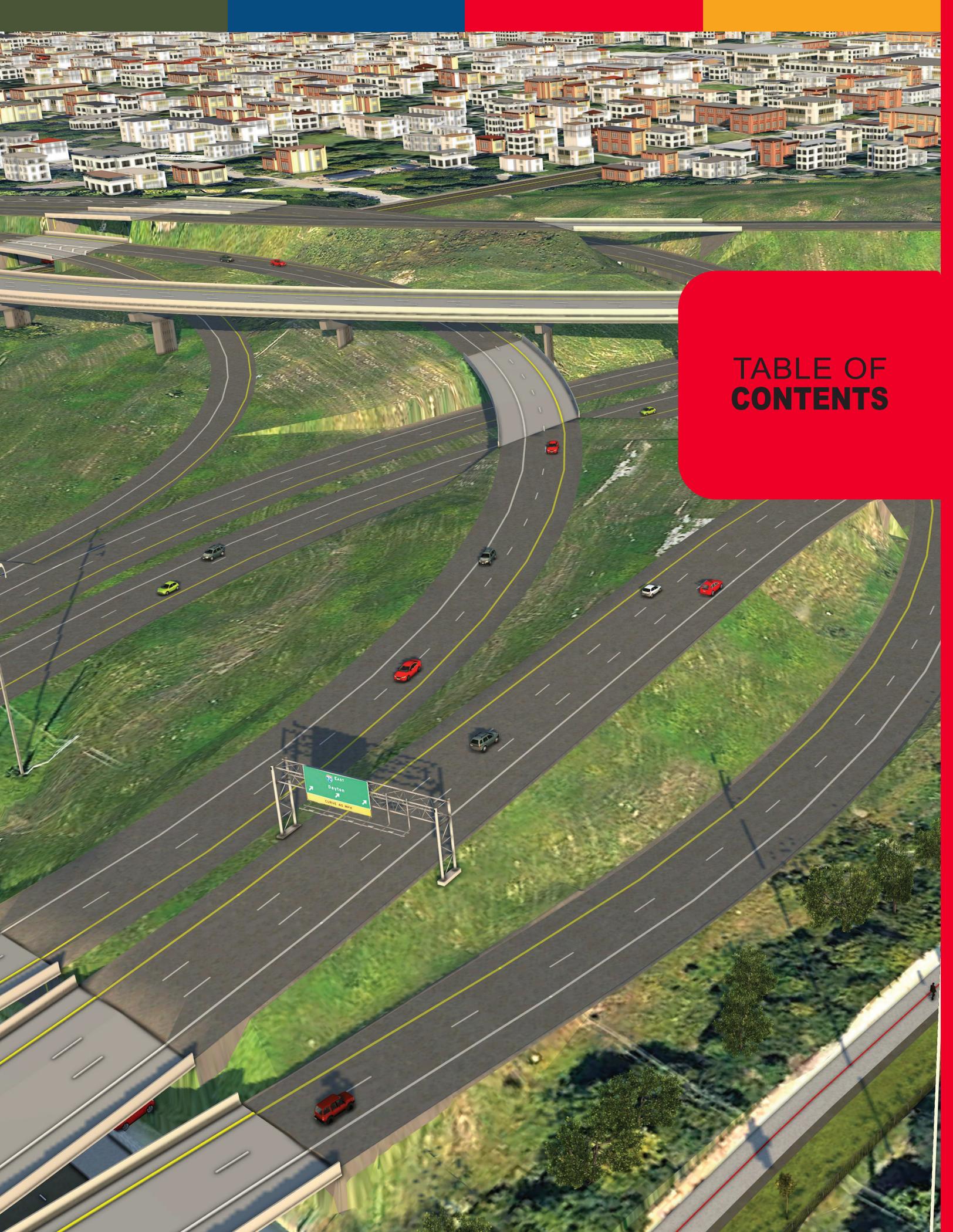
Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
<b>Volume 1</b>		
<b>A. Executive Summary</b>		
Executive Summary ( <b>Exclude price information</b> )	No forms are provided	<u>Exhibit B, Section 3.1</u>
<b>B. Proposer Information, Certifications and Documents</b>		
Proposal Letter	<u>Form A</u>	<u>Exhibit B, Section 3.2.1</u>
Authorization Documents	No forms are provided	<u>Exhibit B, Section 3.2.1</u>
Identification of Proposer and Equity Members	<u>Form B-1</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Proposer Organization	<u>Form B-2</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Major Participants and Identified Subcontractors	<u>Form B-3</u>	<u>Exhibit B, Section 3.2.2</u>
Letter accepting joint and several liability, if applicable	<u>No forms are provided</u>	<u>Exhibit B, Section 3.2.2</u>
Responsible Proposer and Major Participant Questionnaire	<u>Form C</u>	<u>Exhibit B, Section 3.2.3</u>
Industrial Safety Record for Proposer, Equity Members and Major Participants	<u>Form D (as applicable)</u>	<u>Exhibit B, Section 3.2.4</u>
Personnel Work Assignment Form and Commitment of Availability	<u>Form E</u>	<u>Exhibit B, Section 3.2.5</u>
Letter(s) Regarding Pre-Proposal Submittals	No forms are provided	<u>Exhibit B, Section 3.2.6</u>
Non-Collusion Affidavit	<u>Form F</u>	<u>Exhibit B, Section 3.2.7</u>
DBE Certification	<u>Form G</u> No forms are provided for the DBE Project Plan or Job Training Plan	<u>Exhibit B, Section 3.2.8</u>

<b>Technical Proposal – Volumes 1 and 2</b>		
<b>Technical Proposal Component</b>	<b>Form (if any)</b>	<b>ITP Section Cross-Reference</b>
Conflict of Interest Disclosure	<u>Form H</u>	<u>Exhibit B, Section 3.2.9</u>
Certification regarding Buy America	<u>Form Q</u>	<u>Exhibit B, Section 3.2.10</u>
Certification regarding Equal Employment Opportunity	<u>Form R</u>	<u>Exhibit B, Section 3.2.11</u>
Use of Contract Funds for Lobbying Certification	<u>Form S</u>	<u>Exhibit B, Section 3.2.12</u>
Debarment and Suspension Certification	<u>Form K</u>	<u>Exhibit B, Section 3.2.13</u>
Guarantor Commitment Letter	<u>Form P</u>	<u>Exhibit B, Section 3.2.14</u>
Insurance	No forms are provided	<u>Exhibit B, Section 3.2.15</u>
Confidential Contents Index	No forms are provided	<u>Exhibit B, Section 3.2.16</u>
Preliminary DBE Project Plan	No forms are provided	<u>Exhibit B, Section 3.2.17</u>
Prequalification Identification	<u>Form U</u>	<u>Exhibit B, Section 3.2.19</u>
<b>C. Proposal</b>		
Stipend Agreement	<u>Form N</u>	<u>Exhibit B, Section 3.2.18</u>
<b>Volume 2</b>		
<b>F. Preliminary Performance Plans</b>		
Preliminary Project Management Plan	No forms are provided	<u>Exhibit B, Section 4.1</u>
Project Management Approach	No forms are provided	<u>Exhibit B, Section 4.1.1</u>
Preliminary Project Baseline Schedule Narrative	No forms are provided	<u>Exhibit B, Section 4.1.2(a)</u>
NTP + 180 Schedule Narrative	No forms are provided	<u>Exhibit B, Section 4.1.2(b)</u>

<b>Technical Proposal – Volumes 1 and 2</b>		
<b>Technical Proposal Component</b>	<b>Form (if any)</b>	<b>ITP Section Cross-Reference</b>
Preliminary Quality Management Plan	No forms are provided	<u>Exhibit B, Section 4.1.3</u>
Safety and Environmental Management	No forms are provided	<u>Exhibit B, Section 4.1.4</u>
Public Information Plan	No forms are provided	<u>Exhibit B, Section 4.1.5</u>
Preliminary Design-Build Plan	No forms are provided	<u>Exhibit B, Section 4.2</u>
Preliminary Transportation Management Plan	No forms are provided	<u>Exhibit B, Section 4.2.1</u>
Bridge Structures, Retaining Walls, Sound Barriers and Other Structures	No forms are provided	<u>Exhibit B, Section 4.2.2</u>
Roadway Elements	No forms are provided	<u>Exhibit B, Section 4.2.3</u>
Utility Adjustment Work Elements	No forms are provided	<u>Exhibit B, Section 4.2.4</u>
Drainage Design and Culvert Replacement	No forms are provided	<u>Exhibit B, Section 4.2.5</u>
Total Project Duration	<u>Form L</u>	<u>Exhibit B, Section 4.3</u>
Maximum Closure Durations	<u>Form T</u>	<u>Exhibit B, Section 4.3</u>
<b>G. Volume 1 Appendices</b>		
Copies of Organizational Documents	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
Proposer Teaming Agreement or Key Terms	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
Executed Contracts or Term Sheets/Heads of Terms	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
<b>H. Volume 2 Appendices</b>		
Technical/Design Drawings, Graphs and Data	No forms are provided	<u>Exhibit B, Section 2</u>
Key Personnel Resumes	No forms are provided	<u>Exhibit B, Section 3.2.5</u>

<b>Technical Proposal – Volumes 1 and 2</b>		
<b>Technical Proposal Component</b>	<b>Form (if any)</b>	<b>ITP Section Cross-Reference</b>
Landscape Architecture Firm Description	No forms are provided	<u>Exhibit B, Section 3.2.18</u>
Preliminary Project Baseline Schedule	No forms are provided	<u>Exhibit B, Section 4.1.2(a)</u>
<b>I. NTP + 180 Schedule</b>		
NTP + 180 Schedule (Narrative plus Schedule)	No forms are provided	<u>Exhibit B, Section 4.1.2(b)</u>
<b>J. Railroad Coordination Bridge Plans</b>		
Railroad Coordination Bridge Plans	No forms are provided	<u>Exhibit B, Section 4.2.2(d)</u>

Price Proposal – Volume 3		
Price Proposal Component	Form (if any)	ITP Section Cross-Reference
<b>Volume 3</b>		
<b>A. Financial Capacity Information</b>		
Material Changes in Financial Condition	No form provided	<u>Exhibit C, Section 2.1</u>
<b>B. Proposal Security and Surety Information</b>		
Proposal Security	<u>Form J</u> (if in the form of a bond); no forms provided for certified check	<u>Exhibit C, Section 3.1</u>
Surety Information	No forms are provided	<u>Exhibit C, Section 3.2</u>
<b>C. Confidential Contents Index</b>		
Confidential Contents Index	No forms are provided	<u>Exhibit C, Section 4</u>
<b>D. Price Proposal Information</b>		
Price Proposal Form	<u>Form I</u>	<u>Exhibit C, Section 5</u>
Summary Cost Table Form	<u>Form I-1</u>	<u>Exhibit C, Section 5</u>



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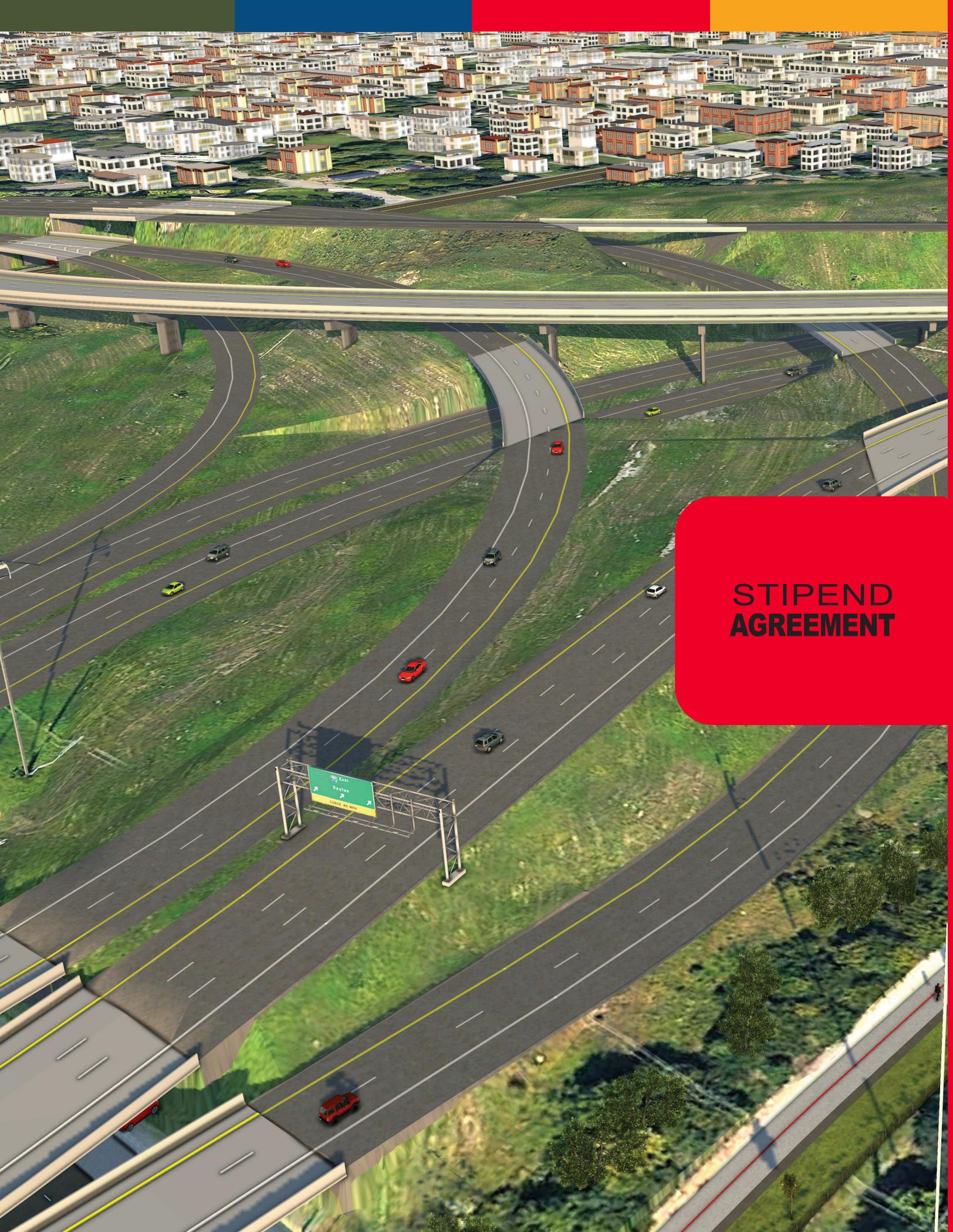


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**Stipend Agreement**.....



**STIPEND  
AGREEMENT**

70 East  
Dayton  
CHANGE AT NEXT

**FORM M**

**FORM OF WAIVER AND RELEASE RE: STIPEND**  
**WORK PRODUCT TRANSFER OF RIGHTS AND RELEASE OF CLAIMS**

The undersigned certifies and agrees on behalf of Proposer, its Equity Members, its Major Participants and all other members of the Proposer team, that:

***[NTD: Check ALL of the following boxes]***

- It has reviewed the provisions set forth in this Work Product Transfer of Rights and Release of Claims and expressly recognizes and agrees to be bound by the provisions set forth herein.
  
- It (a) has received and agreed to an offer from the Indiana Department of Transportation (“INDOT”) for the payment of a stipend in an amount, under certain circumstances, and subject to the terms and conditions of the Stipend Agreement and the Instructions to Proposals issued by INDOT on October 11, 2019, as amended, the “ITP”), in respect of the I-65/I-70 North Split Project, including Section 6.3 thereof, and (b) is eligible to receive all or a portion of the total amount available for a stipend from INDOT for work product received by the Indiana Department of Transportation (“INDOT”) pursuant to the Stipend Agreement and the ITP.
  
- It has reviewed the provisions set forth in this Work Product Transfer of Rights and Release of Claims and hereby, upon receipt of the amount of the stipend as prescribed under the Stipend Agreement and Section 6.3 of the ITP: (a) transfers all rights to its work product to INDOT; (b) waives all rights to protest the procurement of the Project; and (c) fully, unconditionally and irrevocably releases and waives all claims against INDOT arising out of or relating to (i) the use of the work product; (ii) the Project; and (iii) this procurement.

Upon Proposer’s receipt of any stipend amount, and in consideration thereof, INDOT shall each have all right to, and be entitled to use all work product submitted by Proposer to INDOT during the procurement (including ATCs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications) and any work product contained in its Proposal, if submitted, without any further compensation or consideration to Proposer. The foregoing rights of INDOT shall not apply to work product that is expressly required to be returned to the Proposer under the RFP. Upon Proposer’s receipt of any stipend amount, this right shall extend to allow INDOT to use such work product in the performance of its functions. Capitalized terms used, but not defined, herein shall have the meanings ascribed in the ITP.

Proposer: Superior Construction Co., Inc.

Date: March 10, 2020

Signature: 

Title: Daniel Sopczak, President

**FORM N**

**FORM OF STIPEND AGREEMENT**

**STIPEND AGREEMENT  
(I-65/I-70 North Split Project)**

THIS STIPEND AGREEMENT is made and entered into as of this 10th day of March 2020, by and between the Indiana Department of Transportation, an agency of the State of Indiana (“INDOT”) and [Superior Construction Co., Inc.], a [Corporation] (“Proposer”), with reference to the following facts:

A. Proposer is one of the proposers shortlisted to submit Proposals for the I-65/I-70 North Split Project (the “Project”), and wishes to submit a Proposal in response to the Request for Proposals for the I-65/I-70 North Split Project issued by INDOT on October 11, 2019 as amended, the “RFP”. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

B. The RFP provides for the execution and delivery of a Stipend Agreement between INDOT and each Proposer.

NOW, THEREFORE, the Proposer hereby agrees as follows:

1. SERVICES AND PERFORMANCE

(a) By executing this Agreement, Proposer has irrevocably elected to accept payment of a stipend subject to the terms hereof.

(b) INDOT hereby retains Proposer to actively participate in good faith in the procurement process and to prepare a responsive and compliant Proposal in response to the RFP. Responsiveness and compliance shall be determined pursuant to the ITP. Proposer shall be considered a vendor for purposes of payment of the stipend.

(c) Subject to the provisions of the RFP Documents regarding ownership of the Proposal and Proposer work product, all work product submitted by Proposer to INDOT during the procurement and in connection with the Proposal (including all ATCs, written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer for the purpose of developing its Proposal during this procurement process) shall be considered work for hire, and the products of such work shall become the property of INDOT without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Stipend Agreement. The foregoing rights of INDOT shall not apply to work product that is expressly required to be returned to the Proposer under the RFP.

## 2. TERM

Unless otherwise provided herein, the provisions of this Stipend Agreement shall remain in full force and effect until the earlier to occur of (a) 12 months from the date of the execution of this Stipend Agreement or (b) the date payment is delivered hereunder; provided that if payment due and owing has not been made under this Stipend Agreement prior to the date referred to in clause (a) above, this Stipend Agreement shall continue in full force and effect until the date on which such payment has been made by INDOT and received by the Proposer. Work pursuant to this Stipend Agreement is authorized to commence effective upon the execution date of this Stipend Agreement, and the work product is due and must be delivered to INDOT no later than the earlier of (i) 15 days after delivery to Proposer of notice by INDOT of the cancellation by INDOT of this procurement or (ii) the Proposal Due Date.

## 3. COMPENSATION AND PAYMENT

INDOT shall pay to Proposer (or as it may direct) a stipulated stipend payment for this procurement if none of the circumstances in Section 6.3.2 of the ITP apply and preclude Proposer from receiving the stipend. The form of invoice submitted by the Proposer shall be as set forth in Exhibit 1 hereto.

## 4. INDEMNITIES AND SURETYSHIP

(a) Proposer agrees that it will indemnify, defend, and hold harmless INDOT and all of INDOT's officers, agents, representatives, employees, successors and assigns from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including attorneys' fees and costs) asserted, incurred, suffered or awarded as a result of or that relate to any third party claims, suits, actions, allegations or proceedings arising out of or caused by any acts, actions, negligence, omissions, fault, willful misconduct, violation of law or breach of contract by Proposer, its Equity Members, Major Participants, other team members or their respective agents, employees, or representatives arising out of or relating to the work product performed hereunder or in connection with or contained in the Proposal, whether direct or indirect, and whether to any person or property to which INDOT or said parties may be subject, except that Proposer shall not be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence or willful misconduct of INDOT or any of its officers, agents, representatives or employees. The foregoing indemnity shall survive the expiration or termination of this Stipend Agreement and shall expressly apply to and include all third party claims, suits, actions or allegations of infringement, confidential information, domestic or foreign patent rights, copyrights, intellectual property rights, moral rights, trade secrets, proprietary rights, licensing rights and unauthorized use. Notwithstanding the foregoing, except for such matters covered by the immediately preceding sentence, the indemnity shall not cover use by INDOT of such work product performed under this Stipend Agreement after award of the Agreement. Should the Proposer become the Design-Build Contractor under the Agreement, the indemnity under this Section 4(a) shall

continue to apply in accordance with its terms and be additive to any indemnifications set forth in the Agreement.

(b) Proposer's obligation to indemnify, defend, and pay for the defense or at INDOT's option, to participate and associate with INDOT in defense of any claim and any related settlement negotiations, shall be triggered by INDOT's notice of claim for indemnification to Proposer. Only a final and unappealable adjudication or judgment specifically finding sole negligence or willful misconduct of INDOT or any of its board members, officers, agents, representatives or employees shall excuse performance of this provision. Proposer shall pay all costs and fees related to this obligation and its enforcement by INDOT. INDOT's failure to notify Proposer of a claim shall not release Proposer of the above duty to defend.

(c) For purposes of this Section 4, "third party" means any Person (as defined in the Agreement) other than an Indemnified Party (as defined in the Agreement) and Proposer, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim that is (a) against an Indemnified Party, (b) within the scope of the indemnities and (c) not covered by the Indemnified Party's worker's compensation program.

## 5. COMPLIANCE WITH LAWS

(a) Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to INDOT during this procurement process, are, upon their receipt by INDOT, the property of INDOT and are subject to the Public Records Act.

(b) Proposer shall comply with all federal, state, and local laws; ordinances; rules; and regulations applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Stipend Agreement. Proposer shall also comply with all customary vendor payment requirements of the State of Indiana, including completion of a W-8 form.

(c) Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Stipend Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Stipend Agreement.

## 6. ASSIGNMENT

Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement without INDOT's prior written consent, in its sole discretion. Any assignment of this Stipend Agreement without the required consent of INDOT shall be null and void and may, in INDOT's sole discretion, disqualify Proposer from further consideration for the procurement process and the Project.

INDOT may assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement (a) without the Proposer's consent, to INDOT and any other Person that succeeds to the governmental powers and authority of INDOT, and (b) to others with the prior written consent of Proposer. Where consent is required but not given, any assignment of this Stipend Agreement shall be null and void.

## 7. MISCELLANEOUS

(a) Proposer and INDOT agree that Proposer, its Equity Members, Major Participants and other team members and their respective employees are not agents or representatives of INDOT as a result of this Stipend Agreement.

(b) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

(c) This Stipend Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Stipend Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.

(d) It is understood and agreed by the parties hereto that if any part, term, or provision of this Stipend Agreement is by the courts held to be illegal or in conflict with any law of the State of Indiana, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Stipend Agreement did not contain the particular part, term, or provisions to be invalid.

(e) This Stipend Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

(f) This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(g) As required by IC 5-22-3-7, Proposer, on behalf of itself and the Equity Members certifies that, (i) in accordance with IC 5-22-3-7 (A) Proposer, except for *de minimis* and nonsystematic violations, has not violated the terms of (1) IC 24-4.7 (Telephone Solicitation Of Consumers), (2) IC 24-5-12 (Telephone Solicitations), or (3) 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) Proposer will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law; and (ii) an Affiliate or principal of Proposer and any agent acting on behalf of Proposer or on behalf of an Affiliate or principal of Proposer (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 this Stipend Agreement, even if IC 24-4.7 is preempted by federal Law.

(h) Proposer and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with INDOT or the State, as set forth in IC 4-2-6 *et seq.*, IC 4-2-7 *et seq.*, the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004. If Proposer is not familiar with these ethical requirements, Design-Build Contractor 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 Proposer or its agents violate any applicable ethical standards, Proposer may be subject to penalties under IC 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable Laws.

(i) Proposer and its agents shall abide by all requirements of IC 8-15.7-16 in respect of the prohibition on political contributions by Proposer. Neither Proposer nor any individual who has an interest in Proposer, may make any contribution to any candidate, or committee, during and up to and including three (3) years following the term of this Stipend Agreement.

(j) The parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of this Stipend Agreement shall be the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana.

IN WITNESS WHEREOF, this Stipend Agreement has been executed and delivered as of the day and year first above written.

INDIANA DEPARTMENT OF TRANSPORTATION

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

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

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

Superior Construction Co., Inc.,

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

Name: Daniel J. Sopczak

Title: President

**EXHIBIT 1**  
**FORM OF INVOICE**

[See attached]

## FORM OF INVOICE FOR STIPEND AMOUNT

Reference is made to that Request for Proposals to Design and Construct the I-65/I-70 North Split Project through a Public-Private Agreement issued on October 11, 2019, as amended, the ("ITP") by the Indiana Department of Transportation ("INDOT").

Reference is also made to that certain Stipend Agreement (the "Stipend Agreement") dated as of March 10, 2020, by and between INDOT and [ Superior Construction Co., Inc. ] ("Proposer").

Capitalized terms used, but not defined, herein shall have the meanings ascribed in the ITP.

Pursuant to Section 6.3.1 of the ITP and the Stipend Agreement, Proposer hereby requests payment of \$650,000. Attached to this invoice is an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against INDOT, in the form of Form M to the ITP. Proposer represents and warrants to INDOT that (a) Proposer submitted to INDOT a timely and responsive, but unsuccessful, Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents and (b) Proposer is eligible for payment pursuant to Section 6.3 of the ITP.

Proposer acknowledges that submission of this invoice, and payment by INDOT of any amount in response to this invoice, is in all respect subject to the terms and conditions of the ITP, Stipend Agreement and the other RFP Documents.

**CERTIFICATION**

The undersigned Proposer hereby certifies that (a) the Proposer is entitled to payment of the stipend pursuant to the terms of the ITP and the Stipend Agreement; (b) the irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against INDOT, in the form of Form M to the ITP, has been executed and delivered to INDOT and is in full force and effect and (c) that this entire invoice and all other supporting documentation are each, and collectively, true, correct and complete.

PROPOSER: Superior Construction Co., Inc.

By:   
Name: Daniel J. Sopczak  
Title: President