

## FORM A

### INDIANA DEPARTMENT OF TRANSPORTATION I-65 NORTHWEST INDIANA MAJOR MOVES 2020 EXPANSION PROJECT INSTRUCTIONS TO PROPOSERS

#### PROPOSAL LETTER

PROPOSER: \_\_\_\_\_

Proposal Date: August 16, 2016

The undersigned (“**Proposer**”) submits this proposal (this “**Proposal**”) in response to that certain Request for Proposals (as amended, the “**RFP**”) issued by the Indiana Department of Transportation (“**INDOT**”), an agency of the State of Indiana, dated May 26, 2016, to design and build the I-65 Northwest Indiana Major Moves 2020 Expansion Project (the “**Project**”), as more specifically described herein and in the documents provided with the RFP (the “**RFP Documents**”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Subject to the terms below, in consideration for INDOT supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertake(s) [jointly and severally] ***[if Proposer team’s equity members have not formed the Proposer entity, then leave in words “jointly and severally...” and delete the brackets. Otherwise delete the entire phrase. The bracketed “jointly and severally...” language applies until a Proposer entity is formed, in which case, it will not apply unless the Design-Build Contractor is a joint venture or partnership]:***

a) subject to Section 4.6.2 of the ITP, to keep this Proposal open for acceptance initially for 180 days after the Proposal Due Date, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of INDOT, in INDOT’s sole discretion; and

b) if this Proposal is accepted, to provide security (including bonds and insurance) for the due performance of the Public-Private Agreement (“**Agreement**”) as stipulated in the Agreement and the RFP.

If INDOT properly draws on Proposer’s Proposal Security in accordance with the terms, and subject to the conditions of the RFP Documents, and the surety or other financial institution providing the Proposal Security refuses to honor INDOT’s proper draw thereon, by its signature(s) below, the undersigned undertakes, on behalf of Proposer’s Equity Members, and by such signature, Proposer’s Equity Members each assume, joint and several liability to INDOT for the entire stated amount (in the case of a certified check made payable to INDOT) or penal sum (in the case of a Proposal Bond) of the Proposal Security.

If selected by INDOT, Proposer agrees to do the following or to cause the Design-Build Contractor to do the following: (a) if requested by INDOT in its sole discretion, enter into good faith negotiations with INDOT regarding the terms of the Agreement with INDOT in good faith and in accordance with the requirements of the RFP, (b) enter into the Agreement without varying or amending its terms (except for modifications agreed to by INDOT, in its sole discretion) and satisfy all other conditions to award of the Agreement; and (c) perform its obligations as set forth in the ITP and Agreement, including compliance with all commitments contained in this Proposal.

The following individual(s) is/are authorized to enter into negotiations with INDOT on behalf of the Proposer and Design-Build Contractor in connection with this RFP, the Project and the Agreement: \_\_\_\_\_ ***[insert names]***

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Executive Summary
- Technical Proposal, including Proposer Information, Certifications and Documents, and Proposal Security
- Price Proposal

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

Addenda issued:

XXXXXXX

[ ]

Responses issued

XXXXXXXXX

[ ]

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions or conditions and that it agrees to the terms and conditions of the RFP Documents. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the HNTB ProjectWise, the Addenda and responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by Design-Build Contractor and do not contain internal inconsistencies, errors or omissions; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted a Reasonable Investigation in preparing this Proposal; and that it has notified INDOT in writing of any deficiencies or errors in or

omissions from any RFP Documents or other documents provided by INDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the SOQ previously delivered to INDOT (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such SOQ, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer understands that INDOT is not bound to award the Agreement to the best financial Proposal or any Proposal that INDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any stipend that Department may pay Proposer in accordance with the Stipend Agreement and ITP Section 6.3. Proposer acknowledges that it has executed the Stipend Agreement and, in doing so, has irrevocably elected to accept the stipend offered for such work product.

Subject to Proposer's rights under the Public Records Act, Proposer consents to INDOT's disclosure of its Proposal pursuant to Indiana Code 8-15.7-4-6(c) and Indiana Code 8-15.7-4-2(k) to any Persons, in INDOT's sole discretion, after award and execution of the Agreement by INDOT and acknowledges and agrees to the provisions and deadlines set forth in ITP Section 1.8.4. Proposer acknowledges and agrees to the disclosure terms of the ITP and that observers and individuals may conduct reviews on behalf of PABs with respect to the successful Proposal. Proposer expressly waives any right to contest such disclosures.

Proposer agrees that INDOT will not be responsible for any errors, omissions, inaccuracies, inconsistencies or incomplete statements in this Proposal.

Proposer acknowledges the procurement protest procedures set forth in Section 7 of the ITP and agrees that if it files a protest of this procurement or award of an Agreement hereunder and that protest is denied or is otherwise unsuccessful, Proposer shall forfeit its Proposal stipend and shall be liable to INDOT for INDOT's costs incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by INDOT as a consequence of the protest.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Indiana.

Proposer's business address:

\_\_\_\_\_  
(No.) (Street) (Floor or Suite)

\_\_\_\_\_  
(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: \_\_\_\_\_

*[Insert appropriate signature block from following pages]*

1. Sample signature block for corporation or Limited Liability Company:

*[Insert the Proposer's name]*

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

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

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

2. Sample signature block for consortium, partnership or any other form of joint venture:

*[Insert the Proposer's name]*

By: *[Insert general partner's or member's name]*

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

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

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

*[Add signatures of additional general partners or members as appropriate]*

3. Sample signature block for attorney in fact:

*[Insert the Proposer's name]*

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

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

Attorney in Fact

**ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:**

- A. If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation. If the Proposer is a limited liability company, enter the state or country of organization.
- B. Describe in detail the legal structure of the Proposer/Design-Build Contractor and Equity Members.
1. If Proposer/Design-Build Contractor/Equity Member is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for the Proposer/Design-Build Contractor/Equity Member and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.
  2. If Proposer/Design-Build Contractor/Equity Member is a general partnership or includes a general partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Design-Build Contractor/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.
  3. If Proposer/Design-Build Contractor/Equity Member is a limited partnership or includes a limited partnership as a joint venture member, partner or member, attach full names and addresses of all general partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Design-Build Contractor/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.
  4. If Proposer/Design-Build Contractor/Equity Member is a consortium, joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Proposer/Design-Build Contractor/Equity

Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.

5. If Proposer/Design-Build Contractor/Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Proposer/Design-Build Contractor/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual. Attach evidence to the Proposal Letter, in respect of the Proposal, and to each letter required under the Proposal Letter that the person signing has authority to do so. If any entity is not yet formed, so state and indicate that these documents will be provided as required by the ITP. For purposes of clarity, Proposer may append to the Proposal Letter a letter from each person signing the Proposal that such person has the authority to do so, which shall suffice for the purposes of the requirements set forth in this Section B.4.

For purposes of this Section B, the term “organizational documentation” in respect of an Equity Member shall mean such entity’s certificate of formation/articles of incorporation/certificate of partnership/joint venture agreement, or equivalent charter documentation; provided, further, that such entity shall provide its partnership agreement/operating agreement/bylaws/equivalent joint venture prior to commercial close as required by the ITP.

- C. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a:
  - corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation.
  - partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner.
  - limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information.

- consortium or other form of joint venture, such evidence shall be in the form of a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member.
- consortium, joint venture or a partnership, the Proposal must be executed by all consortium or joint venture members or all general partners, as applicable.

D. Except as set forth in this clause (D), Design-Build Contractor's partnership agreement, limited liability company operating agreement, charter or joint venture agreement, as applicable, must include an express provision satisfactory to INDOT, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners, members or shareholders, as applicable, no joint venture member, partner, member or shareholder, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers should submit the applicable agreement to INDOT and identify on a cover page where in the agreement the provision can be found. If Design-Build Contractor is not yet formed, provide draft organizational documents and indicate where the provision is found. If Design-Build Contractor is an existing partnership, limited liability company or joint venture not formed or created for the Project and is unable to modify its partnership agreement, limited liability operating agreement or joint venture agreement, as applicable, it may satisfy this requirement by submitting a unanimous consent executed by its partners, members or joint venturers, as applicable, agreeing to abide to the provisions of this clause (D).



**FORM B-1**

**IDENTIFICATION OF PROPOSER AND EQUITY MEMBERS**

| <b>NAME OF ENTITY AND CONTACT INFORMATION<br/>(address, representative, phone, fax, e-mail)</b> | <b>ROLE OF ENTITY IN PROPOSER ORGANIZATION</b> | <b>INDOT Qualification Categories</b> | <b>Description of Work/Services To Be Performed By Entity (if applicable)</b> |
|-------------------------------------------------------------------------------------------------|------------------------------------------------|---------------------------------------|-------------------------------------------------------------------------------|
|                                                                                                 |                                                |                                       |                                                                               |
|                                                                                                 |                                                |                                       |                                                                               |
|                                                                                                 |                                                |                                       |                                                                               |
|                                                                                                 |                                                |                                       |                                                                               |
|                                                                                                 |                                                |                                       |                                                                               |
|                                                                                                 |                                                |                                       |                                                                               |
|                                                                                                 |                                                |                                       |                                                                               |

The above information is true, correct and accurate.

Executed \_\_\_\_\_.

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

\_\_\_\_\_  
(Name Printed)

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

\_\_\_\_\_  
(Proposer)

**FORM B-2**

**INFORMATION ABOUT PROPOSER ORGANIZATION**

1.0 Name of Proposer: \_\_\_\_\_

2.0 Type of entity: \_\_\_\_\_

3.0 Proposer's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Facsimile

4.0 How many years (measured from the date of issuance of the RFQ) has Proposer and each Equity Member been in its current line of business and how many years (measured from the date of issuance of the RFQ) has each entity been in business under its present name? For a limited partnership, Equity Member means the general partners only.

| Name | No. of years in business | No. of years under present name |
|------|--------------------------|---------------------------------|
|      |                          |                                 |
|      |                          |                                 |
|      |                          |                                 |
|      |                          |                                 |
|      |                          |                                 |
|      |                          |                                 |
|      |                          |                                 |

5.0 Under what other or former names has Proposer and each Equity Member operated?

Proposer: \_\_\_\_\_

\_\_\_\_\_: \_\_\_\_\_

\_\_\_\_\_: \_\_\_\_\_

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

- 6.0 List all Indiana licenses and Certificates of Qualification held by Proposer and any Equity Member. For a limited partnership, Equity Member means the general partners only. Attach copies of all such Indiana licenses and Certificates. Attach a separate sheet if necessary.

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

- 7.0 The Proposal shall include the following information regarding the Surety/Bonding companies or banking institutions committing to provide the Payment and Performance Bonds in accordance with Section 8 of the Agreement:

- (a) Name and address of bonding company(ies) that will provide the surety bonds required by the Agreement (must be an Eligible Surety)
- (b) Whether or not the listed bonding company has defaulted on any obligation within the past ten years (measured from the date of issuance of the RFQ), and, if so, a description and details of the circumstances and the outcome of such default.

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed \_\_\_\_\_.

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

\_\_\_\_\_  
(Name Printed)

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

\_\_\_\_\_  
(Proposer)

**FORM B-3**

**INFORMATION ABOUT MAJOR PARTICIPANTS AND IDENTIFIED CONTRACTORS**

*[This form will be used to provide information about any Major Participants (excluding Equity Members that do not fall into categories (a) through (e) of the definition of Major Participants) and any other Contractors that have been identified as of the Proposal Date.]*

Proposer Name \_\_\_\_\_

| <b>Name of Entity and Contact Information<br/>(address, representative, phone, fax, e-mail)</b> | <b>Address of Head Office</b> | <b>INDOT Qualification Categories</b> | <b>Description of Work/Services To Be Performed By Entity (if applicable)</b> | <b>Major Participant (Y/N)</b> |
|-------------------------------------------------------------------------------------------------|-------------------------------|---------------------------------------|-------------------------------------------------------------------------------|--------------------------------|
|                                                                                                 |                               |                                       |                                                                               |                                |
|                                                                                                 |                               |                                       |                                                                               |                                |
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|                                                                                                 |                               |                                       |                                                                               |                                |
|                                                                                                 |                               |                                       |                                                                               |                                |

If any Major Participant or Contactor identified above is a single purpose entity formed for the Project, complete the following matrix for each such single purpose entity:

| Name of major Participant/Contractor | Form of Entity (partnership, joint venture, LLC, corporation, etc.) | Entities with Ownership Interest | Percentage of Ownership Interest |
|--------------------------------------|---------------------------------------------------------------------|----------------------------------|----------------------------------|
| Ex: Contractor AB, JV                | Joint venture                                                       | Contractor A                     | 60%                              |
|                                      |                                                                     | Contractor B                     | 40%                              |
|                                      |                                                                     |                                  |                                  |

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants resulting in an agreement to enter into any Contracts with respect to the Project, except for those listed above. Proposer agrees that it will follow applicable PPA Documents requirements with respect to Contractors. Proposer further declares that it has carefully examined the RFP Documents and acknowledges that INDOT has determined that a Proposer's efforts to obtain participation by Contractors could reasonably be expected to produce 10% Disadvantaged Business Enterprises participation of the Total Project Capital Cost for the professional services and construction portions of the Work.

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed \_\_\_\_\_.

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

\_\_\_\_\_  
(Name Printed)

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

\_\_\_\_\_  
(Proposer)

## FORM C

### RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: \_\_\_\_\_

NAME OF ENTITY  
PROVIDING THIS FORM: \_\_\_\_\_

#### 1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection. For a limited partnership, Equity Member means the general partners only.

The term "**affiliate**" means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years (measured from the date of issuance of the RFQ) have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years (measured from the date of issuance of the RFQ) in North America. For a limited partnership, Equity Member means the general partners only.

Within the past ten years (measured from the date of issuance of the RFQ), has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

- a) Been disqualified, removed, debarred or suspended from performing work for the federal government, any state or local government, or any foreign governmental entity?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

- b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

- c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes \_\_\_\_ No \_\_\_\_

- e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

- f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

- g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

- h) Been indicted or convicted of any other felony or serious misdemeanor?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

- i) Been found liable in a civil suit or found guilty in a criminal action for making any false claim or other material misrepresentation to a public entity?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

- j) Performed or managed a construction project that involved repeated or multiple failures to comply with safety rules, regulations, or requirements?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

- k) If not previously answered or included in a prior response on this form, been involved in any proceeding, claim, matter, suit, indictment, etc. currently pending against the firm that could result in the firm being found liable, guilty or in violation of the matters referenced above and/or subject to debarment, suspension, removal or disqualification by the federal government, any state or local government, or any foreign governmental entity?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_ No \_\_\_\_

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.



2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed \_\_\_\_\_.

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

\_\_\_\_\_  
(Name Printed)

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

\_\_\_\_\_  
(Name of Organization)

**FORM D**

**INDUSTRIAL SAFETY RECORD**  
**FOR PROPOSER, EQUITY MEMBERS AND MAJOR PARTICIPANTS**

PROPOSER'S NAME: \_\_\_\_\_

NAME OF TEAM MEMBER: \_\_\_\_\_

ROLE OF TEAM MEMBER: \_\_\_\_\_

This form shall be filled out separately and provided for the Proposer, each Equity Member and each Major Participant of Proposer's team that has undertaken work in the United States and will perform or supervise construction and installation Work for the Project, and including information for any entity affiliated with such team member that has undertaken work in the United States. Information must be provided with regard to all construction, installation and integration work undertaken in the United States (including the State of Indiana) by the entity, with separate statistics relative to the State of Indiana. For team members that are members of joint ventures, information as to the joint venture shall be provided as though 100% of the results were for the listed participant. Proposer may be requested to submit additional information or explanation of data which INDOT may require for evaluating the safety record.

For purposes of this form, the term "affiliated" means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years (measured from the date of issuance of the RFQ) have engaged in business or investment in the United States. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in the United States.

|                                                                                                  | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> |
|--------------------------------------------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|
| 1) Total Hours Worked (in thousands)<br>Nationwide:<br>Indiana:                                  |             |             |             |             |             |
| 2) Number of fatalities:*<br>Nationwide:<br>Indiana:                                             |             |             |             |             |             |
| 3) Number of lost workdays:*<br>Nationwide:<br>Indiana:                                          |             |             |             |             |             |
| 4) Number of lost workdays* cases:<br>Nationwide:<br>Indiana:                                    |             |             |             |             |             |
| 5) Number of injury/illness* cases:<br>Nationwide:<br>Indiana:                                   |             |             |             |             |             |
| 6) Number of days of* restricted work activity due to injury/illness:<br>Nationwide:<br>Indiana: |             |             |             |             |             |

|                                                                                                              | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> |
|--------------------------------------------------------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|
| 7) Incidence Rate**<br>Lost Workday Cases<br>Nationwide:<br>Indiana:<br>Days Lost<br>Nationwide:<br>Indiana: |             |             |             |             |             |
| 8) Worker's Compensation<br>Experience Modifier<br>Nationwide:<br>Indiana:                                   |             |             |             |             |             |

\* The information required for these items is the same as required for columns 3 to 6, Code 10, Log and Summary of Occupational Injuries and Illnesses, OSHA Form 200.

\*\* Incidence Rate = No. Injuries (Cases) x 200,000 / Total Hours Worked

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury under the laws of the State of Indiana that the information is true and accurate within the limitation of those records.

Executed \_\_\_\_\_.

\_\_\_\_\_  
Name of Company (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
City

\_\_\_\_\_  
State and ZIP Code

\_\_\_\_\_  
Telephone Number

(or international address, if applicable)

**FORM E**

**PERSONNEL WORK ASSIGNMENT FORM AND COMMITMENT OF AVAILABILITY**

Name of Proposer: \_\_\_\_\_

| <b>Key Personnel Assignment</b>            | <b>Name of Individual Assigned and Employer</b> |
|--------------------------------------------|-------------------------------------------------|
| Project Manager                            |                                                 |
| Construction Manager                       |                                                 |
| Construction Superintendent                |                                                 |
| Lead Engineer                              |                                                 |
| Erosion and Sediment Control Manager       |                                                 |
| Design Quality Manager                     |                                                 |
| Maintenance of Traffic Manager             |                                                 |
| Certified INDOT Utility Coordinator        |                                                 |
| Kankakee River Bridge Lead Design Engineer |                                                 |

Proposer's Name: \_\_\_\_\_ (the "Proposer")

Employer's Name: \_\_\_\_\_ (the "Employer") *[Note: duplicate as necessary to ensure all employers execute]*

### **COMMITMENT OF AVAILABILITY**

Understanding INDOT's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the Project, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named Key Personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

Employer's Name: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

**FORM F**

**NON-COLLUSION AFFIDAVIT**

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

Each of the undersigned, being first duly sworn, deposes and says that:

- A. \_\_\_\_\_ is the \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ is the \_\_\_\_\_ of \_\_\_\_\_, which entity(ies) are the \_\_\_\_\_ of \_\_\_\_\_, the entity making the foregoing Proposal.
- B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against INDOT or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.
- C. Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

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

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

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Name Printed)

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

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



Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2016.

---

Notary Public in and for  
said County and State

[Seal]

My commission expires: \_\_\_\_\_.

*[Duplicate or modify this form as necessary so that it accurately describes (i) the entity making the Proposal and so that it is signed by and on behalf of all partners, members, joint venture members, and (ii) Equity Members of the Proposer.]*

**FORM G**

**DBE CERTIFICATION**

**DBE REQUIREMENTS**

The following goal for participation by Disadvantaged Business Enterprises is established for professional services and construction work on the Project.

**Disadvantaged Business Enterprises: 10%**

**DBE Certification**

By signing the Proposal, the Proposer certifies that (1) the above DBE project goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Proposer will provide a good faith effort to substantiate the attempt to meet the goal; and (2) if awarded the Agreement, the Design-Build Contractor will submit a final DBE Performance Plan and Workforce/EEO Project Plan meeting the requirements set forth in Section 7.1.3 of the Agreement.

Failure to submit the DBE Performance Plan and Workforce/EEO Project Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Bond provided by the Proposer will become property of INDOT and the Proposer will be precluded from participating in any reprocurement of the Agreement for the Project.

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Title]

## **FORM H**

### **CONFLICT OF INTEREST DISCLOSURE STATEMENT**

#### **1. Disclosure**

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Design-Build Contractor, the Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. If no disclosure is necessary, indicate "None".

Proposer should disclose (a) any current contractual relationships with INDOT, (b) any past, present, or planned contractual or employment relationships with any INDOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any INDOT member, officer, or employee if Proposer is awarded the contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer should also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

#### **2. Explanation**

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

**3. Certification**

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

Dated as of: \_\_\_\_\_.

**FORM I**  
**PRICE FORM**

**PROPOSAL PRICE FORM**

|                                                                                        |                 |                   |
|----------------------------------------------------------------------------------------|-----------------|-------------------|
| <b>Proposal Price less Repair Allowances, Mobilization and Bond/Insurance Premiums</b> | <b>1 LS</b>     | <b>\$ _____</b>   |
| <b>Patching Allowances</b>                                                             |                 |                   |
| <b>Full Depth PCCP Patching</b>                                                        | <b>2868 SYS</b> | <b>\$200/SYS</b>  |
| <b>Partial Depth HMA Patching</b>                                                      | <b>30 TONS</b>  | <b>\$300/TON</b>  |
| <b>Bridge Deck Patching, Full Depth</b>                                                | <b>1780 SFT</b> | <b>\$75/SFT</b>   |
| <b>Patching Concrete Structures</b>                                                    | <b>3880 SFT</b> | <b>\$175/SFT</b>  |
| <b>401 QC/QA HMA Pavement Items<sup>1</sup></b>                                        |                 | <b>\$75/TON</b>   |
| <b>501 QC/QA PCCP Pavement Items<sup>1</sup></b>                                       |                 | <b>\$50/SYS</b>   |
| <b>Underdrain, Patching</b>                                                            | <b>1000 LFT</b> | <b>\$45/LFT</b>   |
| <b>Underdrain Outlet, Undistributed</b>                                                | <b>1500 LFT</b> | <b>\$30/LFT</b>   |
| <b>Underdrain Outlet Protector, Undistributed</b>                                      | <b>30 EACH</b>  | <b>\$700/EACH</b> |
| <b>Mobilization</b>                                                                    | <b>1 LS</b>     | <b>\$ _____</b>   |
| <b>Bond/Insurance Premiums</b>                                                         | <b>1 LS</b>     | <b>\$ _____</b>   |
|                                                                                        |                 |                   |
| <b>Total Proposal Amount</b>                                                           |                 | <b>\$ _____</b>   |

Proposer proposes the above total amount from INDOT as the Contract Price for all Work under the PPA Documents.

<sup>1</sup> Unit prices to be used for pay factor adjustments in Standard Specifications 401 and 501.

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

\_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Date: August 16, 2016

**FORM J**  
**PROPOSAL BOND**

**Bond No.** \_\_\_\_\_

**KNOW ALL PERSONS BY THESE PRESENTS**, that the \_\_\_\_\_  
**[NOTE: insert name of Proposer as the Principal and delete this bracketed text]**, as Principal and \_\_\_\_\_, as Surety or as Co-Sureties, each a [corporation] duly organized under the laws of the state indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Indiana, are hereby jointly and severally held and firmly bound unto the Indiana Department of Transportation ("INDOT"), in the sum of \$\_\_\_\_\_ **[NOTE: (the "Bonded Sum")]**. This Bonded Sum reflects a portion of the total amount payable to INDOT by the Principal if it is identified as the apparent highest ranked proposer or awarded a contract based on its Proposal for the development, design and construction of the Project (the "Project"), for the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal is herewith submitting its Proposal to design and construct the Project through a Public-Private Agreement (the "Agreement"), which Proposal is incorporated herein by this reference and has been submitted pursuant to INDOT's Request for Proposals dated as of May 26, 2016,, as amended or supplemented, (the "RFP"), in accordance with the Instructions to Proposers ("ITP") included in the RFP (initially capitalized terms not otherwise defined herein shall have the meaning set forth in the ITP);

**NOW, THEREFORE:**

**1.** The condition of this bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to INDOT as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the "Co-Sureties") of notice of such forfeiture from INDOT:

(a) Principal's receipt of written notice from INDOT that either (i) no Agreement for the Project will be awarded by INDOT pursuant to the RFP, or (ii) INDOT has awarded an Agreement for the Project, has received the executed Agreement and other required documents, and does not intend to award the Agreement to Principal;

(b) Except as expressly provided otherwise in the RFP and/or agreed to by INDOT in writing, Principal's performance of its obligations to achieve commercial close by the applicable deadline, as such deadline may be extended in accordance with the RFP; or

(c) If INDOT has not previously delivered notice of forfeiture hereunder, failure of INDOT to notify Principal that it is the Preferred Proposer within 180 days after the Proposal Due Date.

2. The Principal and the Surety or Co-Sureties hereby agree to pay to INDOT the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after occurrence of any of the following events:

(a) Principal withdraws any part or all of its Proposal prior to the time allowed for execution of the Agreement under the ITP, as such time may be extended (including withdrawing, repudiating or otherwise indicating in writing that it will not meet any commitment made in its Proposal), without INDOT's consent;

(b) Principal is selected for negotiations and fails to engage in good faith negotiations with INDOT as set forth in ITP Section 5.10.1;

(c) Principal fails to achieve commercial close by the deadline set forth in the ITP, unless such failure is excused in accordance with ITP Section 4.7(d)(i)-(vii);

(d) Principal is the Preferred Proposer and fails to satisfy the conditions to award and execution of the Agreement, including, without limitation, providing the documents required under ITP Section 5.11.1 and ITP Section 6.1.1 by the deadline set forth in the ITP, without excuse under ITP Section 4.7;

(e) The Preferred Proposer fails to provide the access to or fails to participate in the review of the Escrowed Materials as set forth in ITP Section 5.11.3;

(f) Principal withdraws, repudiates or otherwise indicates prior to execution of the Agreement that it will not meet certain commitments made in its Proposal.

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate INDOT for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of INDOT's transportation improvement program, including with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that INDOT would incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.



3. The following terms and conditions shall apply with respect to this bond:

(a) This Proposal Bond shall not be subject to forfeiture in the event that INDOT disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.

(b) If suit is brought on this bond by INDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by INDOT in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.

(c) Any extension(s) of the time for award of the PPA that Principal may grant in accordance with the PPA or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.

(d) Correspondence or claims relating to this bond should be sent to Surety at the following address:

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---

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**SIGNED and SEALED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Principal

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

\_\_\_\_\_  
Co-Surety

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

Attorney in Fact

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

\_\_\_\_\_  
Co-Surety

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

Attorney in Fact

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

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

\_\_\_\_\_  
Co-Surety

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

Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

**FORM K**

[OMITTED]

**FORM L**

**COMPLETION DEADLINES**

**INDOT Last Allowable Dates:**

| <b>Milestone</b>                         | <b>Deadline</b>   |
|------------------------------------------|-------------------|
| Baseline Substantial Completion Deadline | November 27, 2018 |
| Partial Acceptance Deadline              | June 28, 2019     |
| Final Acceptance Deadline                | October 15, 2019  |

**Proposal Commitment Dates (cannot exceed the above table):**

| <b>Milestone</b>                | <b>Deadline</b>                               |
|---------------------------------|-----------------------------------------------|
| Baseline Substantial Completion | [insert date not later November 27, 2018]     |
| Partial Acceptance Deadline     | [insert date not later than June 28, 2019]    |
| Final Acceptance Deadline       | [insert date not later than October 15, 2019] |

**FORM M**

**SUMMARY COST TABLE FORM**

| <b><u>Cost Category</u></b>                                                        | <b><u>Capital Cost</u></b> |                              |
|------------------------------------------------------------------------------------|----------------------------|------------------------------|
|                                                                                    | <b><u>Labor Cost</u></b>   | <b><u>Non Labor Cost</u></b> |
| <b>Mobilization (may not exceed 5% of Contract Price)</b>                          |                            |                              |
| <b>Engineering</b>                                                                 |                            |                              |
| <b>Clearing Right-of-Way</b>                                                       |                            |                              |
| <b>Erosion Control</b>                                                             |                            |                              |
| <b>Pavement Construction</b>                                                       |                            |                              |
| <b>Full Depth PCCP Patching<br/>(2868 square yards at \$200 per square yard)</b>   |                            |                              |
| <b>Partial Depth HMA Patching<br/>(30 tons at \$300 per ton))</b>                  |                            |                              |
| <b>Bridge Deck Patching, Full Depth (1780 square feet at \$75 per square foot)</b> |                            |                              |
| <b>Patching Concrete Structures (3880 square feet at \$175 per square foot)</b>    |                            |                              |
| <b>Underdrain Patching (1000 lineal feet at \$45per lineal foot)</b>               |                            |                              |
| <b>Underdrain Outlet, Undistributed (1500 lineal feet at \$30 per lineal foot)</b> |                            |                              |
| <b>Underdrain Outlet Protector, Undistributed (30 each at \$700 each)</b>          |                            |                              |
| <b>Quality Control</b>                                                             |                            |                              |
| <b>Subgrade</b>                                                                    |                            |                              |
| <b>Bridge Construction</b>                                                         |                            |                              |
| <b>Earthwork</b>                                                                   |                            |                              |
| <b>Drainage</b>                                                                    |                            |                              |
| <b>Maintenance of Traffic</b>                                                      |                            |                              |
| <b>Signing</b>                                                                     |                            |                              |
| <b>Demobilization</b>                                                              |                            |                              |

| <b><u>Cost Category</u></b>                             | <b><u>Capital Cost</u></b>            |    |
|---------------------------------------------------------|---------------------------------------|----|
| <b>As-Built Plans (Must Equal 1% of Contract Price)</b> |                                       |    |
| <b>Contingency and Profit</b>                           |                                       |    |
| <b>Subtotals</b>                                        | \$                                    | \$ |
| <b>Total</b>                                            | \$_____ (Total Project Capital Costs) |    |

**FORM N**

**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 Major Participants and all other members of the Proposer team, that:

[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 May 26, 2016, as amended, the "ITP"), in respect of the I-65 Northwest Indiana Major Moves 2020 Expansion 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 the use of the work product.

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: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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



**FORM O**

**FORM OF STIPEND AGREEMENT**

**STIPEND AGREEMENT  
(I-65 Northwest Indiana Major Moves 2020 Expansion Project)**

THIS STIPEND AGREEMENT is made and entered into as of this 16th day of August 2016, by and between the Indiana Department of Transportation, an agency of the State of Indiana ("INDOT") and [REDACTED], a [REDACTED] ("Proposer"), with reference to the following facts:

A. Proposer is one of the proposers shortlisted to submit Proposals for the I-65 Northwest Indiana Major Moves 2020 Expansion Project (the "Project"), and wishes to submit a Proposal in response to the Request for Proposals for the I-65 Northwest Indiana Major Moves 2020 Expansion Project issued by INDOT on May 26, 2016 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 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

(a) Except as set forth in Section 6.3 of the ITP, if Proposer submits a timely and responsive, but unsuccessful, Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents and Proposer is eligible for the payment pursuant to the terms of this Stipend Agreement and the ITP, INDOT shall pay to Proposer (or as it may direct) a stipulated stipend payment for this procurement of \$250,000. A timely and responsive Proposal shall also be considered unsuccessful if (i) INDOT cancels the procurement without award after the Proposal Due Date; (ii) INDOT fails to execute the PPA upon satisfaction by Proposer of all conditions to award and execution that are set forth in the ITP; and (iii) INDOT does not award the PPA and achieve commercial close prior to the date on which the validity period of the Proposal expires. No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in Section 6.3 of the ITP.

(b) If INDOT awards the PPA to Proposer and commercial close, as defined under the ITP, occurs, Proposer will not be entitled to compensation hereunder, including, without limitation, payments under Section 3(a) of this Form O.

(d) Proposer shall be eligible to receive a stipend hereunder only to the extent permitted by this Stipend Agreement and Section 6.3 of the ITP.

(e) Invoice, waiver and release submittal requirements concerning payment of the stipend and the timing of payment of the stipend owing hereunder are addressed in Section 6.3 of the ITP. 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 preceding sentence, the indemnity shall not cover use by the 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; provided that this Stipend Agreement may be assigned to the special purpose vehicle formed by the Proposer for purposes of the Project without the prior written consent of the INDOT but upon written notice to the INDOT. 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. The venue for any proceeding relating to this Stipend Agreement shall be in the Marion County, Indiana Circuit/Superior Court located in Marion County, 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, the 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: \_\_\_\_\_

\_\_\_\_\_

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

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

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

**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 Northwest Indiana Major Moves 2020 Expansion Project through a Public-Private Agreement issued on May 26, 2016, 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 August 16, 2016, by and between INDOT and [REDACTED] ("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 two-hundred and fifty thousand U.S. dollars (\$250,000). 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 N 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 N 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: \_\_\_\_\_

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

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

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

**FORM P**  
**RFP COMMENT FORM**

Proposer: \_\_\_\_\_

Comment Sheet\_ of \_\_\_\_\_ Sheets

| No. | Document and<br>Section<br>Number | Category | Comment(s) | Reserved for INDOT Response |
|-----|-----------------------------------|----------|------------|-----------------------------|
|     |                                   |          |            |                             |
|     |                                   |          |            |                             |
|     |                                   |          |            |                             |
|     |                                   |          |            |                             |

**FORM Q**

**[OMITTED]**

**FORM R**

**BUY AMERICA CERTIFICATION**

(To be signed by authorized signatory(ies) of Proposer)

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) the following with regard to the Project:

- a. Proposer shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the design-build contract price.
- b. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this PPA be investigated, Proposer has the burden of proof to establish that it is in compliance.
- c. At Proposer's request, INDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by INDOT.

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

Signature: \_\_\_\_\_

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

Proposer's Name: \_\_\_\_\_

**FORM S**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

*[To be executed by the Proposer, each Major Participant and each non-exempt Subcontractor.]*

The undersigned certifies on behalf of \_\_\_\_\_, that:  
(Name of entity making certification)

*[check one of the following boxes]*

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

*[check one of the following boxes]*

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_, 2016

If not Proposer, relationship to Proposer: \_\_\_\_\_

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposer, Major Participants (other than Equity Members) and proposed non-exempt Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

## FORM T

### USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATE

The undersigned Proposer \_\_\_\_\_ Major Participant \_\_\_\_\_ proposed Subcontractor \_\_\_\_\_ certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The undersigned shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

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

Firm/Entity: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Proposer: \_\_\_\_\_

*[Copy this form and modify as needed for execution by Proposer, Major Participants, and all proposed Subcontractors.]*



## **FORM U**

### **DEBARMENT AND SUSPENSION CERTIFICATION**

The undersigned Proposer certifies on behalf of itself and all Major Participants and proposed Subcontractors the following:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not within a 3-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where Proposer is unable to certify to any of the statements in this certification, it shall attach a certification to its Proposal or bid stating that it is unable to provide the certification and explaining the reasons for such inability.

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

Proposer: \_\_\_\_\_

Signature: \_\_\_\_\_

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