

**SETTLEMENT AGREEMENT RELATING TO PREQUALIFICATION OF Apex  
Consulting & Surveying, Inc.**

This Settlement Agreement ("Agreement") is presented to the INDOT Prequalification Committee ("Committee") by Apex Consulting & Surveying, Inc. ("Apex"), a consultant granted prequalification by INDOT.

**RECITALS**

1. The Committee is the group that from time to time makes recommendations to the Commissioner regarding the prequalification status of contractors and consultants who provide work and services to INDOT.
2. Apex is a consultant that is currently prequalified to provide professional services to INDOT.
3. Apex is a certified Disadvantage Business Enterprise ("DBE").

**PROPOSALS FOR CONTRACT NO. T-39112 & T-39131-A**

4. On December 11, 2017, Apex sent a subcontract proposal in the amount of \$7,680.00 to prequalified contractor, WL Markers, Inc., to complete Construction Engineering Services for Contract No. T-39112.
5. On the same day, Apex sent a second proposal to WL Markers for the same work in the amount of \$8,480.
6. On March 12, 2018, Apex again sent two (2) subcontract proposals to WL Markers to provide professional services for Contract No. T-39131-A. Again, the second proposal, despite being for the same work, was increased to \$9,080.
7. In both instances, the amount of Apex's second proposal was *exactly* the sum WL Markers, Inc. needed to satisfy DBE goals for the contracts. As a result, INDOT's Economic Opportunity Division commenced an investigation to determine whether WL Markers and Apex conspired to falsify the subcontract sums to meet DBE goals.
8. On August 29, 2018, representatives from INDOT met with the undersigned owner of Apex, Nana A. Opoku, and Engineering Manager, Aaron Ott.
9. During this meeting Opoku and Ott informed INDOT that Apex increased its subcontract proposals for Contract No. T-39112 and T-39131-A at the direction of WL Markers, Inc. who instructed Apex to increase their original proposals to satisfy DBE goals assigned to the contracts.

10. As outlined above, Apex admitted that it increased its subcontract proposals for Contract No. T-39112 and T-39131-A to allow WL Markers, Inc. to satisfy DBE goals assigned to the contracts. The increased proposals amounts were not based on the actual cost of the work to be delivered.

### **UNAPPROVED SUBCONTRACT WORK**

11. Between April 13, 2018 and June 11, 2018, Apex performed nine (9) inspections for Contract No. RS-38691 without being the approved subcontractor for the work. These inspection work items were subcontracted to 3D Company, Inc., a prequalified contractor.

12. In an email dated July 19, 2018, Ott stated that Apex only completed three (3) or four (4) inspections on the contract “as a professional courtesy” to 3D Company, Inc.

13. However, during the August 29, 2018 meeting with Apex, Ott confirmed that Apex actually handled all nine (9) inspections completed for Contract No. RS-38691, and did so at the direction of 3D Company, Inc., without being approved by INDOT to do the work.

14. Subsequently, INDOT was invoiced for the inspection work items, with payment to be directed to the approved subcontractor, 3D Company, Inc. Based on the findings contained herein, payment for these work items was not made.

15. Apex previously has been a responsible contractor and performed well on previous INDOT projects.

16. In consideration of the facts outlined above, and in lieu of a hearing before the Prequalification Committee, Apex agrees to the terms outlined hereinbelow.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants to be performed as set forth herein, Apex agrees as follows:

17. Apex agrees to serve a voluntary six (6) month suspension from contracting and subcontracting with the Indiana Department of Transportation to provide any work or services.

18. This suspension is effective for six (6) months from the date this Agreement is signed by the Commissioner.

19. This suspension extends to Apex Consulting & Surveying, Inc. and its principals, including

any other company owned or operated thereby.

20. The suspension shall not apply to the following contracts, which may be executed and performed after the effective date of suspension: Des. No. 1702850; Des. No. 1801748 /1801749; R-37686; R-39514; R-41644; R-36183; R-37568; B-40921; T-40045; R-38034; and R-41041.

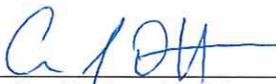
21. Apex's Agreement to these provisions is contingent upon the acceptance of this Agreement by the Committee and the Commission of the Indiana Department of Transportation.

22. The Apex representatives executing this Agreement has full authority to enter into this agreement and bind the corporation.

23. This Agreement is subject to the approval of the Committee. If this Agreement is approved by the Committee and accepted by the Commissioner, Apex waives all rights to appeal and to judicial review.

24. In consideration for this Agreement, INDOT agrees not to pursue any additional remedies with regard to the facts outline hereinabove.

THE FOREGOING IS AGREED THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2019, BY:

  
\_\_\_\_\_  
Aaron Ott, Engineering Manager  
Apex Consulting & Surveying, Inc.

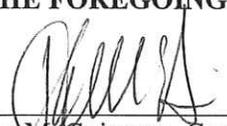
  
\_\_\_\_\_  
Nana A. Opoku, Owner  
Apex Consulting & Surveying, Inc.

THE FOREGOING AGREEMENT WAS APPROVED, AND RECOMMENDED TO THE COMMISSIONER, BY THE PREQUALIFICATION COMMITTEE ON THIS 6<sup>th</sup> DAY OF DECEMBER 2018, BY A VOTE OF

Seven to zero  
(7-0)

  
\_\_\_\_\_  
Christopher B. Serak, Prequalification Director  
Indiana Department of Transportation

THE FOREGOING IS ORDERED AND APPROVED THIS 10<sup>th</sup> DAY OF DECEMBER, 2018 BY:

  
\_\_\_\_\_  
Joe McGuinness, Commissioner  
Indiana Department of Transportation

