

PROFESSIONAL SERVICES CONTRACT

This Contract (“Contract”), entered into by and between the Indiana Finance Authority (the “Authority”) and [insert name of consulting firm] (“Consultant”), is executed pursuant to the terms and conditions set forth herein and is intended to address the scope of professional environmental services to be provided by the Consultant to the Authority pertaining to the Indiana Brownfields Program’s (“Program”) [insert initiative]. As projects are awarded by the Authority to the Consultant, a project-specific amendment to the Contract (“Project Amendment”) will be made as set forth in Section 29, including documents required under the Contract to implement the work. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Consultant. The Consultant shall provide the following services relative to this Contract:

Project activities (“Project Activities”) in accordance with any Project Amendment made hereto, which shall include a scope of work (“Scope of Work”) approved by the Program, a schedule for project tasks (“Schedule”), a total estimated project expense budget (“Project Budget”), and a copy of an executed site access agreement (“Site Access Agreement”), if required for the project.

2. Consideration. The Consultant will be paid in accordance with the Schedule and Project Budget for performing the duties set forth in the Project Amendment. Total remuneration under the Project Amendment shall not exceed the amount awarded by the Authority and stated in the Project Amendment.

3. Term. This Contract shall be effective for a period of two (2) years from the date of the last state signature, or if sooner, immediately following the completion of the duties set forth in a Project Amendment to the satisfaction of the Authority and following final payment by the Authority to the Consultant pursuant to a Project Amendment to this Contract.

4. Access to Records. The Consultant and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract and for three (3) years from the date of final payment under this Contract, for inspection by the State of Indiana (the “State”), the Authority, or its authorized designees. Copies shall be furnished at no cost to the Authority if requested.

5. Assignment; Successors. The Consultant binds its successors and assignees to all the terms and conditions of this Contract. The Consultant shall not assign or subcontract the whole or any part of this Contract without the Authority’s prior written consent.

6. Assignment of Antitrust Claims. As part of the consideration for the award of this Contract, Consultant assigns to the State all right, title and interest in and to any claims Consultant now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

7. Audits. The Consultant acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State. If the funds used to pay for the goods or services that are the subject of this Contract are subject to different or additional federal audit requirements, Consultant shall comply with such federal statutes, rules or guidelines as may be required by the particular circumstances.

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

9. Changes in Work. The Consultant shall not commence any additional work or change the scope of the work until authorized in writing by the Program. The Consultant shall make no claim for additional compensation in the absence of a prior written approval which, in conjunction with a written summary of additional Project Activities and associated costs, shall be attached to the Project Amendment for the Project Activities. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Consultant Reporting. As soon as any interim action (i.e., assessment started) or final accomplishment (i.e., assessment completed as indicated by approval of a final report submitted to the Program) related to the Project Activities occurs, the Consultant shall submit to the Authority a completed "Property Profile Form" (current form attached as part of Exhibit D attached hereto) available online at: <https://www.epa.gov/brownfields/brownfields-property-profile-form-instructions>. Within thirty (30) days following receipt of a No Further Action letter or other documentation from the Authority stating that the Project Activities have been completed to the satisfaction of the Authority, the Consultant shall submit to the Authority a completed "Brownfields Project Survey" form (current form attached as part of Exhibit E attached hereto) available online at: <https://www.in.gov/ifa/brownfields/files/Brownfields-Project-ROI-Survey-2022-rev-6-22.pdf>. The Brownfields Project Survey form will provide the Authority with current information regarding remediation and redevelopment plans for the Site and should be expected to be updated on a periodic basis in the future until redevelopment at the Site is complete.

11. Compliance with Laws.

- A. The Consultant shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the Authority and the Consultant to determine whether the provisions of this Contract require formal modification.
- B. The Consultant and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the Authority or the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Consultant is not familiar with these ethical requirements, the Consultant should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Consultant or its agents violate any applicable ethical standards, the Authority may, in its sole discretion, terminate this Contract immediately upon notice to the Consultant. In addition, the Consultant may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- C. The Consultant certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the Authority or the State. Further, the Consultant agrees that any payments in arrears and currently due to the Authority or the State may be withheld from payments due to the Consultant. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Consultant is current in its payments and has submitted proof of such payment to the Authority or the State.

- D. The Consultant warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the Authority or the State, and agrees that it will immediately notify the Authority of any such actions. During the pendency of such actions, the Consultant agrees that the Authority may delay, withhold, or deny work under this Contract and any supplements or amendments.
- E. Any payments that the Authority may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC § 5-17-5.
- F. The Consultant warrants that the Consultant and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the Authority. Failure to do so is a material breach of this Contract and grounds for immediate termination and denial of further work with the Authority.
- G. The Consultant affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. Consultant agrees that the Authority may confirm, at any time, that no overdue liabilities exist to the Authority or the State, and, if such liabilities are discovered, that the Authority may bar Consultant from contracting with the Authority in the future, cancel existing contracts, withhold payments to set off such obligations, and withhold further payments or purchases of services until the Consultant is current in its payments on its liability to the Authority and/or the State and has submitted proof of such payment to the Authority.
- I. As required by IC 5-22-3-7:
 - (1) The Consultant and any principals of the Consultant certify that:
 - (A) the Consultant, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC 24-5-12 [Telephone Solicitations]; or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) the Consultant will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
 - (2) The Consultant and any principals of the Consultant certify that an affiliate or principal of the Consultant and any agent acting on behalf of the Consultant or on behalf of an affiliate or principal of the Consultant
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
- J. The Consultant acknowledges that some or all of the funds to be paid by the Authority for the Project Activities are subject to the terms and conditions of a Cooperative Agreement (“CA”) entered into by the Authority and the U.S. Environmental Protection Agency (Assistance ID No. [insert Cooperative Agreement# for current year]). In particular, the Consultant understands that any administrative or programmatic conditions contained within the CA are applicable to some or all of the funds to be paid under this Contract, including complying with Federal cross-cutting

requirements which include, but are not limited to, MBE/WBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and permits required by Section 404 of the Clean Water Act. If requested, a copy of the CA will be provided to the Consultant by the Authority.

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

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

14. Conflict of Interest.

A. As used in this section:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party” means:

- 1) The individual executing this Contract;
- 2) An individual who has an interest of three percent (3%) or more of the Consultant, if the Consultant is not an individual; or
- 3) Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Commission” means the State Ethics Commission.

B. The Authority may cancel this Contract without recourse by the Consultant if an Interested Party is an employee of the Authority or the State.

C. The Authority will not exercise its right of cancellation under section B, above, if the Consultant gives the Authority an opinion by the Commission indicating that the existence of this Contract and the employment by the Authority or the State of the Interested Party does not violate any statute or rule relating to ethical conduct of the Authority or the State employees. The Authority may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.

D. Consultant has an affirmative obligation under this Contract to disclose to the Department when an Interested Party is or becomes an employee of the Authority or the State. The obligation under this section extends only to those facts that Consultant knows or reasonably could know.

15. Continuity of Services. The Consultant recognizes that the services to be performed under this Contract are vital to the Authority and must be continued without interruption and that, upon expiration or termination of this Contract or a withdrawal of the Consultant, the Authority may seek a successor

consultant to continue such services. The Consultant agrees to use its best efforts and cooperation to effect an orderly and efficient transition to a successor to provide the services contemplated hereby.

16. Debarment and Suspension.

- A. The Consultant certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Consultant.
- B. The Consultant certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The Consultant shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

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

18. Disputes.

- A. Should any disputes arise with respect to this Contract, the Consultant and Authority agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Consultant agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Consultant fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Consultant as a result of such failure to proceed shall be borne by the Consultant.

19. Drug-Free Workplace Certification. The Consultant hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Consultant will give written notice to the Authority within ten (10) days after receiving actual notice that the Consultant or an employee of the Consultant in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the Authority for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Consultant hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully

executed by the Consultant and made a part of the contract or agreement as part of the contract documents.

The Consultant certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Consultant's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Consultant's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Consultant of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the Authority in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

20. Employment Option. If the Authority determines that it would be in the Authority or the State's best interest to hire an employee of the Consultant, the Consultant will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost the Authority or the State or the employee.

21. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

22. Funding Cancellation. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State

Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

23. Governing Laws. This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana. The Consultant specifically consents to this jurisdiction.

24. Indemnification. The Consultant agrees to indemnify, defend, and hold harmless the Authority and the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Consultant and/or its subcontractors, if any, in the performance of this Contract. The Authority and the State shall **not** provide such indemnification to the Consultant.

25. Independent Consultant. Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Consultant shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Consultant's employees.

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

- A. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the Authority or the State. The Authority and State are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
- B. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The Authority and State are to be named as additional insureds on a primary, non-contributory basis.
- C. Professional liability, including errors and omissions, with minimum liability limits of \$1,000,000 per occurrence. The Authority and the State are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
- D. Consultant's (Contractor's) pollution legal liability, with minimum liability limits of \$1,000,000. The Authority and the State are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
- E. The Consultant shall provide proof of such insurance coverage by tendering to the undersigned Authority representative a certificate of insurance prior to the commencement of this Contract and proof of worker's compensation coverage meeting all statutory requirements of Indiana Code 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

The Consultant's insurance coverage must meet the following additional requirements:

- A. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
- B. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Consultant.
- C. The Authority and the State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Consultant in excess of the minimum requirements set forth above. The duty to indemnify the Authority and the State under this Contract shall not be limited by the insurance required in this Contract.
- D. The insurance required in this Contract, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days prior written notice to the Authority.
- E. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the Authority to immediately terminate this Contract.

27. Key Person(s).

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the Authority shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that the Consultant is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Consultant shall not be permitted without express written consent of the Authority.
- C. Nothing in sections A and B above shall be construed to prevent the Consultant from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Consultant shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract are specified in Exhibit B of this Contract.

28. Licensing Standards. The Consultant and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Consultant pursuant to this Contract. The Authority shall not be required to pay the Consultant for any duties or services performed when the Consultant or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against an applicable licensure, certification or accreditation, the Consultant shall notify the Authority immediately and the Authority, at its option, may immediately terminate this Contract.

29. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be

valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

30. Minority and Women Business Enterprise Compliance. The Consultant agrees to comply fully with the Consultant's MBE/WBE participation plan.

31. Nondiscrimination. This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically IC 22-9-1-10, and in keeping with the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the Authority and any applicant or employee of the Consultant or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically IC 22-9-1-10, and in keeping with the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Consultant covenants that it shall not discriminate against any employee or applicant for employment in the performance of this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Consultant certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

32. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the addresses as specified in the attached Exhibit B.

33. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the Authority, and (3) attachments prepared by the Consultant at the request of the Authority. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

34. Ownership of Documents and Materials. All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Consultant prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Consultant transfers any ownership claim to the Authority and all such materials will be the property of the Authority. Use of these materials, other than related to contract performance by the Consultant, without the prior written consent of the Authority, is prohibited. During the performance of this Contract, the Consultant shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Consultant. Any loss or damage thereto shall be restored at the Consultant's expense. The Consultant shall provide the Authority full, immediate, and unrestricted access to the work product during the term of this Contract. Reuse by the Authority without adaptation by Consultant will be at the sole risk of the Authority.

35. Payments.

- A. The Authority agrees to pay the Consultant for work performed pursuant to a Project Amendment after such activities have been completed and submission to the Authority of invoice(s) detailing costs and expenses incurred by the Consultant in the completion of such activities.

- B. All payments shall be made in arrears in conformance with fiscal policies and procedures of the Authority and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Consultant in writing. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by the Authority in its sole discretion.
- C. To facilitate payment timeliness, the Authority will distribute funds to the Consultant in accordance with the "Federally-Funded Project Payment and Disbursement Procedures" attached hereto as Exhibit C. The Authority agrees to pay all eligible costs within thirty (30) days of receipt of all information necessary for its review of invoice(s).

36. Penalties/Interest/Attorney's Fees. The Authority will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

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

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

38. Renewal Option. This Contract may be renewed under the same terms and conditions but the term of the renewed contract may not be longer than the term of the original contract.

39. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

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

41. Taxes. The Authority is exempt from most state and local taxes and many federal taxes. The Authority will not be responsible for any taxes levied on the Consultant as a result of this Contract.

42. Termination at Will. This Contract may be terminated, in whole or in part, at any time, by either party, with the provision of thirty (30) days notice prior to the termination effective date by providing written notice to the other party, specifying the extent to which performance of services under such termination becomes effective. The Consultant shall be compensated for services properly rendered and for ancillary costs incurred prior to the effective date of termination but in no case shall total payment made to the Consultant exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. The Authority shall not be liable for duties or services performed or costs incurred after the effective date of termination.

43. Termination for Default.

- A. With the provision of thirty (30) days notice to the Consultant, the Authority may terminate this Contract in whole or in part if the Consultant fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the Authority determines progress is being made and the extension is agreed to by the parties;
 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 3. Make progress so as to endanger performance of this Contract; or
 4. Perform any of the other provisions of this Contract.
- B. If the Authority terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the Authority considers appropriate, supplies or services similar to those terminated, and the Consultant will be liable to the Authority for any excess costs for those supplies or services. However, the Consultant shall continue the work not terminated.
- C. The Authority shall pay the Contract price for completed supplies delivered and services accepted. The Consultant and the Authority shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Authority may withhold from these amounts any sum the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

44. Travel. Expenditures made by the Consultant for travel will be reimbursed at the current rate paid by the Authority and in accordance with the State of Indiana Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the Authority for availability of funds and for appropriateness.

45. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the Authority's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the Authority in accordance with applicable law for all damages to the Authority caused by the Consultant's negligent performance of any of the services furnished under this Contract.

46. Work Standards. The Consultant shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards customary in the locality for similar projects. If the Authority becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract for reasonable cause, the Authority may request in writing the replacement of any or all such individuals, and the Consultant shall grant such request.

47. Execution and Counterparts. Copies of this Contract may be executed separately by the parties, and once executed by the parties to this Contract, all such copies taken together shall constitute a single document. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes.

Non-Collusion and Acceptance.

The undersigned attests, subject to the penalties for perjury, that he/she is the Consultant, or that he/she is the properly authorized representative, agent, member or officer of the Consultant, that he/she has not, nor has any other member, employee, representative, agent or officer of the Consultant, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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

“Consultant”

“Authority”

[insert name of consulting firm]

INDIANA FINANCE AUTHORITY

By _____

By _____

James P. McGoff
Director of Environmental Programs

PRINTED NAME, TITLE

DATE

DATE

ATTEST:

ATTEST:

By _____

By _____

Meredith M. Gramelspacher
Director & General Counsel
Indiana Brownfields Program

PRINTED NAME, TITLE

DATE

DATE

EXHIBIT A
PROJECT AMENDMENT

**EXHIBIT B
SPECIAL CONDITIONS**

In addition to the terms and conditions set forth herein, the parties agree to abide by the following special conditions:

Notice to Parties.

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses:

Notices to the Authority:

Notices to Consultant: [insert contact name and information]

Key Person(s).

In addition to the terms specified in this contract, the Key person(s) to this Contract are:

Licensed Professional Geologist: [insert name]

Professional Engineer: [insert name]

Environmental Professional: [insert name]

EXHIBIT C
FEDERALLY-FUNDED PROJECT PAYMENT & DISBURSEMENT PROCEDURES

EXHIBIT D
PROPERTY PROFILE FORM

EXHIBIT E
BROWNFIELDS PROJECT SURVEY FORM