



Request for Proposals
Next Level Indiana Trust Fund Program Administrator

August 7, 2017

Proposals due by 5:00 P.M. EST August 28, 2017

**Indiana Finance Authority
Request for Proposals
Next Level Indiana Trust Fund Program Administrator**

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I. INTRODUCTION

This Request for Proposals (“RFP”) is issued by the Indiana Finance Authority (“IFA”), a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions, to seek competitive proposals (individually, a “Proposal” and collectively, the “Proposals”) for a Program Administrator (“Respondent” or “Program Administrator”) to the Next Level Indiana Trust Fund (the “Next Level Fund”). The Program Administrator will be responsible for managing a portion of the investment portfolio of the Next Level Fund, as further described in this RFP.

The Investment Board (as described herein) shall select the Respondent that submits a Proposal demonstrating the greatest ability to effectively manage a portion of the Next Level Fund in accordance with the goals stated in this RFP. Respondents shall submit their Proposal to this RFP by 5:00 P.M. EST on August 28, 2017. Upon selection, the Respondent shall enter into a Professional Services Agreement (the “Agreement”) with the Next Level Fund’s Investment Board, as further described in this RFP.

II. BACKGROUND

During the 2017 Legislative Session, the Indiana General Assembly passed House Enrolled Act 1001-2017, which, among other items, directed all proceeds in the Next Generation Trust Fund to be transferred to the newly created Next Level Fund. Upon completion of such transfer, the Next Generation Trust Fund shall cease to exist. The transfer of the proceeds and creation of the Next Level Fund shall be effective on July 1, 2017.

The Next Level Fund shall be established by the IFA as a charitable trust, separate from the State of Indiana, and the proceeds transferred from the Next Generation Trust Fund include approximately Five Hundred Million Dollars (\$500,000,000).

The Next Level Fund Investment Board (the “Investment Board”) shall serve as trustee of the Next Level Fund, and consists of the following members:

- (1) The Indiana Secretary of Commerce or the Secretary’s designee, who shall serve as the chairperson of the Investment Board;
- (2) The Director of the Indiana Office of Management and Budget, or the Director’s designee;
- (3) Two (2) individuals appointed by the Governor of Indiana who have experience and knowledge in investments; and
- (4) The Treasurer of the State of Indiana or the Treasurer’s designee.

The Investment Board will adopt an investment policy that includes the following investment parameters pertaining to the Respondent:

- (1) For not more than fifty percent (50%) of the money in the Next Level Fund, the policy may provide that money in the trust may be invested in investments that:
 - (A) maximize risk appropriate returns, which may include the purchase of equity or debt securities;
 - (B) make significant investments in Indiana funds and companies; and
- (2) Not more than twenty-five million dollars (\$25,000,000) may be invested in any one particular investment fund or investment firm.

For purposes of this RFP, the Respondent shall assume that it will only be responsible for managing the investments of the portion of the Next Level Fund described above. Thus, based on the approximately Five Hundred Million Dollars (\$500,000,000) initial corpus of the Next Level Fund, the Respondent's Proposal should reflect an investment strategy pertaining to an amount not to exceed Two Hundred and Fifty Million Dollars (\$250,000,000). For clarity, any reference to the Next Level Fund in this RFP shall refer to only the fifty percent (50%) portion of the Next Level Fund.

The sections of House Enrolled Act 1001-2017 pertaining to the Next Level Fund are attached as Exhibit A to this RFP.

III. OBJECTIVES

A non-exhaustive list of objectives and goals for the Next Level Fund are as follows:

1. **Maximize risk appropriate returns** while abiding by applicable investments standards (Indiana Code 8-14-15.1-8). Achieving strong net-of-fees performance without taking undue risk is the primary objective of the Next Level Fund.
2. **Make significant investments in Indiana funds and companies** (*Id.*). For the purposes of this RFP, the Respondent should consider the following definitions:
 - "Indiana venture capital firm" means
 - (a) an entity that has a majority of its employees in Indiana or that has at least one managing partner domiciled in Indiana that has made or will commit to making significant capital investments in Indiana companies and that provides equity financing for early stage or expansion stage investments, or similar needs requiring risk capital; or
 - (b) an entity that has a track record of identifying, evaluating, and investing in Indiana companies and that provides equity financing for early stage or expansion stage investments, or similar needs requiring risk capital.
 - "Indiana companies", are companies that are headquartered or that otherwise have a significant presence in Indiana at the time of initial or follow-on investment or have a clear business plan to use the capital to create a significant presence in Indiana.

- “Significant presence” means at least one physical office and one full-time employee within the geographic borders of Indiana.
- 3. Drive measurable increases of economic activity within Indiana as well as indirect, positive economic externalities.
- 4. Help grow the amount of investment capital in Indiana.
- 5. Create a strong vibrant ecosystem for entrepreneurs, and raise the national profile of Indiana’s innovation community.

IV. SCOPE OF WORK

The Program Administrator’s scope of services to be provided to the Next Level Fund and the Investment Board include, but are not limited to, the following:

1. Source investment opportunities located in Indiana and present them to General Partners.
2. Cultivate relationships with established Indiana businesses and help connect them with new and emerging technologies and companies that receive investment, directly or indirectly, through this program.
3. Quarterly reports on economic impact of the recipients of funds from the Next Level Fund investments on the State’s economy, including, but not limited to, the growth of the employee payrolls at portfolio companies, the growth of their physical real estate presence in the State, tax revenue, and other associated economic data.
4. A formal, written assessment of the Indiana venture capital landscape at both the onset and conclusion of the term of the Next Level Fund (i.e. changes to the amount of venture capital under management, number of venture-backed startups, etc.).
5. Provide recommendations to the Next Level Fund, including overall portfolio allocation and particular investment decisions. Overall portfolio allocation should provide due consideration surrounding J-curve mitigation, business stage/capital structure diversification, sector diversification, vintage year diversification, and investment term/time horizon.
6. Identify, venture capital and private equity firms and their associated investment funds that will be best able to invest in accordance with the aforementioned program objectives.
7. Perform up front due diligence on potential investments, including but not limited to:
 - a. Research;
 - b. Reference checking;
 - c. Financial analysis;
 - d. Vetting of funds, firms, executives, managers;

- e. Evidence of prior performance track records for prior investments offerings as well as for key individuals;
 - f. Level of fit or complementary characteristics of a given investment in the context of the rest of the portfolio and broad allocation targets (i.e. sector and business stage diversification);
 - g. Review and negotiation of contractual fee structure; and
 - h. Review and negotiation of favorable side letter provisions (when possible).
8. When possible, seek to act as agent of the Investment Board on Limited Partner Advisory Committees of individual program investments and attend annual board meetings of recipient partnerships.
9. Present and review co-investment opportunities.
10. Quarterly onsite update presentations to the Investment Board and/or its advisors, consultants, or investment committee.
11. Coordinate standardized reporting of accounting data (ex. capital account balances, capital calls, distributions, revenues, expenditures, realized and unrealized gains and losses, etc.) across all recipients of funds from the Next Level Fund.
12. Document quarterly portfolio characteristics of both recipients of funds as well as for the aggregate Next Level Fund, including, but not limited to:
 - a. Quarterly cash flows (e.g., commitments, calls, distributions, etc);
 - b. Asset Class;
 - c. Vintage Year;
 - d. Internal Rate of Return / Net Performance;
 - e. Beginning and ending Net Asset Values (NAV);
 - f. Fees;
 - g. Contractual dates and fund investments;
 - h. Benchmark comparison (including public market equivalents);
 - i. Size of Fund;
 - j. Percent (%) of Capital Called;
 - k. Percent (%) of Ownership in Fund;
 - l. Total Companies in Portfolio;
 - m. Holdings;
 - n. Portfolio Company Sectors;
 - o. Portfolio Company Revenues;
 - p. Pertinent Portfolio Company Updates; and
 - q. Figures related to underlying portfolio company full-time employment and payroll with descriptions of notable increases or decreases.
13. Any other matters as requested and deemed necessary by the Investment Board.

The Respondent shall assume that, at a minimum, the items described above shall be included in the Scope of Services described in Exhibit A to the Agreement.

V. GUIDELINES FOR RESPONSE

Respondent's Proposal must be a complete response, including all aspects outlined in this section.

The Respondent's Proposal shall include the following:

- **Letter of Transmittal** (not to exceed one (1) page)
 - Respondent shall include a signed letter of transmittal, including a certification that, to the best of the Respondent's knowledge, all information provided therein is accurate and complete. Any false or misleading information may result in disqualification of the Respondent, at the Investment Board's discretion.
- **Introduction** (not to exceed three (3) pages)
 - Include any introductory remarks, such as briefly describing the Respondent's background, management, facilities, staffing, related experience, and financial stability.
- **High-Level Overview** (not to exceed five (5) pages)
 - Provide a narrative describing the general conceptual approach to the delivery of specific services and any other information the Respondent believes is relevant.
- **Answers to Questions**
 - Respondent must respond to all of the questions listed in Section VI of this RFP. Respondent's answers must be numbered and labeled in the order provided in Section VI of this RFP.
- **Agreement Terms**
 - Respondent shall include a detailed proposal(s) for all fees and costs that would be incurred by providing the Scope of Services described in Section IV of this RFP, including information regarding preferred compensation structure (i.e., hourly rate, lump sum, percentage of assets, or other criteria).
 - Respondent shall include a proposed term length for the Agreement, and why the Respondent feels such term length is appropriate.
 - If applicable, Respondent shall provide any additional items to the Scope of Services in Section IV that Respondent feels are proper or necessary to be included in Exhibit A to the Agreement.
 - Respondent should identify any additional terms of the Agreement that it feels need to be further negotiated between the Investment Board and the Respondent.
- **Information on Personnel**
 - Respondent shall provide an organization chart and resumes for the proposed service team, including analytical investment and research staff and support staff.

Please identify the primary contact person and describe the role of each key person.

- Respondent shall include the name, address, email, and telephone number of an individual with authority to answer questions or clarify their Proposal.

- **Policy Information**
 - Respondent shall provide a summary of its policies on:
 - Prohibition of discriminatory employment practices;
 - Affirmative action/equal opportunities;
 - Use of Minority Business Enterprises;
 - Use of Women-owned Business Enterprises;
 - Enforcement of Drug-Free Workplace Initiatives;
 - Disaster Recovery Policy.

- **Completed Forms**
 - Respondent shall complete and sign Forms I and II, both of which are attached as Exhibit B to this RFP.

VI. QUESTIONS FOR RESPONDENTS

Respondent's Background and Experience

1. What is your firm's ownership structure? Please provide a breakdown of firm ownership percentages, specifically identifying levels of ownership of women, minorities, disabled individuals, and military veterans where possible. If your firm has a formal policy on workplace diversity, please submit it along with your RFP response.
2. Describe any current and known foreseeable litigation, potential litigation, or claim exposure that would adversely affect your ability to perform.
3. Is your firm registered with the SEC and/or FINRA? Is your firm in good standing with these organizations? Has your firm ever been found by these or any other government regulatory entity to have engaged in unethical or unsatisfactory conduct?
4. Will your firm contractually agree to be a fiduciary to the Next Level Fund?
5. Please provide a brief history of your company's (or investment team, if part of a large financial services company) experience in the venture capital or private equity industry. Please include a biographic sketch of your top executives as well as the key employees who will oversee the day to day management of the program.
6. Provide a list of all investment professionals, senior client service staff, and senior executives who have left the firm within the past three (3) years. Please include name, title, years with the firm, and reason for departure.

7. Provide total firm assets under management, all products, in millions, as of year-end for each of the past five (5) years.
8. Provide the client name, address, phone number, contact name, title, and account type (e.g. defined benefit, defined contribution, endowment) of those accounts that are investing in a manner similar to the one proposed by this RFP that can be contacted as references. Also indicate the length of your relationship and assets under management for each reference.
9. Describe your firm's competitive advantage or unique attributes that will help you fulfill this mandate.
10. Describe your firm's investment selection process. What factors are most critical to the due diligence process? Please provide a sample of due diligence materials you have prepared for a relevant investment opportunity in the past.
11. Describe the firm's tracking system or database for prospective investments. How many partnership opportunities and managers are tracked? How many of those investments meet the criteria used to define Indiana Venture Capital Firms?
12. Discuss your deal sourcing capabilities and/or general partner access. How many deals and/or investment funds do you review each year and how many investments/commitments on average have you made?
13. Describe how the firm monitors a client's existing investments. What criteria are evaluated?
14. Identify any clients that have terminated separate account relationships with your firm over the past three (3) years. Provide the client name, contact person and title, phone number, product name, fund account value and reason for termination.
15. Please provide at least two references for each of the following categories:
 - a. Existing clients who have been with your firm for over three years
 - b. New clients who been with your firm for less than one year
16. Have you entered into any side letter agreements or other arrangements with any general or limited partners? Do you anticipate doing so prior to or at the final closing? Are there 'special' limited partners or limited partners who also have investments in, or special rights from, the general partner or manager? If so, please explain.
17. Please identify any other anticipated subcontractors that will be engaged in the administration of the Next Level Fund, their roles, and their geographic location(s).
18. Describe the compensation and incentive program for professionals that would be directly involved in the Next Level Fund. How are they evaluated and rewarded? What incentives are provided to attract and retain superior individuals?
19. Please provide a summary of all your current and prior funds and funds-of-funds including total fund capital commitments, vintage year, total amount funded (including fees), total amount distributed (net distributions returned), residual value, the number of investments made and remaining, and Net Internal Rate of Return (IRR) to Limited Partners (LPs).

20. Please provide detailed information (gross data) regarding each co-investment your firm has made in the last three years. This information relates to cost and valuation of the underlying portfolio companies, data from the initial transaction, current operational performance, and a description of the company, as well as a status update.
21. Please describe the experience your firm has managing or advising on venture capital, private equity and private credit funds and/or funds-of-funds over the past five (5) years. Please include detailed information on each strategy managed or advised on, its purpose, projected and actual returns and any economic development statistics available.
22. In regard to finding firms:
 - a. What experience does the firm have planning and implementing alternative asset investment programs for public plan sponsors? Please list specific client engagements.
 - b. Please describe recent projects (last three (3) years) that closely relate to the services for which you are submitting a proposal. Please include the name of the project, a brief description of the project, the number of professionals involved, and your firm's area(s) of specialization.

Respondent's Vision for Indiana Engagement

23. Please describe what presence or ties, if any, the Respondent has in Indiana. Such "presence" can be demonstrated by the percentage of Respondent's full-time employees or employees who spend more than half their time in Indiana and having physical offices or a principal place of business located in Indiana. Please cite with supporting data.
24. How do you plan to make use of existing entities/organizations (governmental, investment, entrepreneurial, educational, etc.) within the state to source and create investment opportunities? What if any existing relationships do you have with such organizations across the state?
25. Please describe your firm's ability to create a visible platform or website that allows Indiana-based, profit-driven entrepreneurial ventures to submit their endeavors for potential capital/funding to the Program Administrator. Describe the process by which the Program Manager review these submissions and/or encourage underlying fund managers to evaluate these opportunities. If you cannot provide this function, please state your willingness to enter into a relationship (at the Respondent's cost) with an entity that can.
26. What are your thoughts on the investment opportunity set for private equity or private credit in Indiana? Please describe Indiana's private investment environment as your firm understands it.
27. Please detail your domain expertise in the advanced industry sectors you believe to be Indiana strengths.

28. What additional steps should be taken to generate deal flow, specifically in Indiana, for the Next Level Fund?
29. Please detail your experience cultivating and investing with emerging managers. What role could emerging managers or first time funds best play in the Next Level Fund?

Respondent's Commitment Strategy and Market Assumptions

30. The Investment Board envisions committing the Next Level Fund's capital over an investment period of several years. Please speak to your recommended commitment strategy of the \$250 million portfolio, outlining the appropriate rate of commitment in the context of the targeted investment market and your views on vintage year and style diversification.

31. Please complete the following schedule with your firm’s initial draft proposal for the Next Level Fund’s asset allocation. Additionally, please provide an explanation of the underlying capital markets and asset class assumptions, reflecting on each allocation’s role within the broader portfolio. The Fund will ideally place as much focus on early to late stage venture capital investments as is economically advisable:

| For the draft Indiana portfolio below, please fill in your recommended targets and explain the assumptions used. | <i>Anticipated % Target Allocation</i> | <i>Anticipated Allocation Range Limits (i.e. Min. x% to Max y%)</i> | <i>Anticipated % of Target Allocation with Indiana Nexus (defined below)</i> | <i>Anticipated % of Target Allocation Reserved for Co-Investment</i> | <i>Reasonable Net IRR Assumption (End of program)</i> |
|--|--|---|--|--|---|
| Venture – Seed/Angel | | | | | |
| Venture – Series A | | | | | |
| Venture – Subsequent Rounds | | | | | |
| Private Equity – Growth | | | | | |
| Private Equity – Buyout | | | | | |
| Private Equity - Mezzanine | | | | | |
| Private Equity – Distressed | | | | | |
| Private Credit | | | | | |
| Other (please detail) | | | | | |
| Total Portfolio | 100% | N/A | % | % | % |

The approved legislation prohibits more than \$25 million being committed to any one particular investment or investment firm.

- Indiana nexus is defined to include both Indiana-based funds and funds with an Indiana investment track record.
 - Indiana based fund is defined as one with a majority of its employees in Indiana, or at least one managing partner domiciled in the state.
 - Indiana track record is defined as a fund that has at least one investment in an Indiana company.
- National Funds (i.e. those not meeting the Indiana nexus criteria) will be required to target Indiana and commit in side letters to evaluating at Indiana opportunities.

32. Describe potential risk factors related to the stated asset allocation strategy.
33. Regarding the return expectations for the Next Level Fund, how does this differ from what should be expected from a less constrained private equity co-investment opportunity?
34. Please describe how you intend to seek, recruit, and source National Funds (non-Indiana Nexus) investment funds to complement the opportunity set in Indiana. What access do you have to most highly-sought or top tier venture and private equity funds?
35. Please detail anticipated average investment and transaction sizes, number of total investments, and any proposed constraints.
36. Please detail the Next Level Fund's potential strategy within each industry in regards to types of businesses targeted (size, financial performance, stage of life cycle, capital structure, management, etc.)
37. Please discuss if and how your firm would envision using co-investments to achieve the goals of the Next Level Fund. If you plan to make co-investments, please discuss plans for sourcing, criteria for investment, and appropriate constraints on amount of investment and targeted percentage of ownership.
38. What is the estimated length of time before the Next Level Fund will be fully invested?

Due Diligence and Ongoing Monitoring

39. Considering, among other things, the potential political sensitivities of the Next Level Fund, please outline suggested investment policies, objectives and guidelines under which the Next Level Fund should operate.
40. How do you envision your firm and the Investment Board working together in Next Level Fund in the investment approval process?
41. Please describe what steps your firm will take to ensure proper vetting of personnel, funds, etc. to avoid conflict of interest and other ethics violation situations (Please be as detailed as possible).
42. In regards to screening, analyzing, and recommending potential firms for investments for the Next Level Fund specifically:
 - a. Please describe the firm's approach to the investment selection/due diligence process.
 - b. At what levels is the information available (i.e., total portfolio, asset class, fund, individual company)?
 - c. What ability to customize due diligence materials exists?
43. Please describe how your firm will present and review co-investment opportunities.

44. Does your firm plan to incorporate Impact investing or Environmental, Social and Governance (“ESG”) criteria into the management of the Next Level Fund?
45. In regard to negotiating LP Agreements, please describe the firm’s legal due diligence process? Does the firm use in-house counsel or does the firm use independent legal counsel? Are your proposed fees inclusive of all legal costs?
46. The Indiana Finance Authority values transparency and operates in accordance with the Indiana Code 5-14-3 (“Public Records Act”). Please discuss how your firm’s reporting will facilitate compliance with the Public Records Act without compromising the confidential propriety information of underlying investment companies.
47. Given the regional focus of the Next Level Fund, please outline your approach to benchmarking. Expound the definition of success for the Next Level Fund and how you plan to monitor/measure whether it has been achieved.
48. Does your firm have the capacity to perform benchmark comparisons against public market equivalents portfolios?
49. Please describe in what detail and to what extent your firm will report on the portfolio diversification to the Investment Board (i.e. company sectors/industries, geographical, demographic, socio-economic characteristics); jobs created and tax revenue paid; portfolio company developmental stage (Seed, VC, Buyout); etc. (Please be as detailed as possible).
50. Please describe how your firm will prepare an out-facing annual report that includes:
 - a. a performance summary of recipients of funds from the Next Level Fund;
 - b. impact on Indiana companies and Indiana’s economy;
 - c. percentage and amounts of investment options/returns; and
 - d. other pertinent information to ensure the Next Level Fund’s impact.

VII. EVALUATION OF PROPOSALS

Mandatory Requirements

1. Respondent’s Proposal must be a complete response, including all aspects outlined in Section V of this RFP.
2. Respondent must have substantial experience advising, or assisting in the advisement of, assets, funds, and funds of funds. The following criteria are required and exceptions will not be granted:
 - a. The Respondent must have at least three (3) years’ experience in managing or advising assets for government entities;
 - b. The senior professionals in charge of providing the services under the Agreement must have at least five (5) years relevant experience in venture capital and/or private equity investing; and

- c. The Respondent must agree to submit reports and other supporting materials, as requested, in a timely manner.
3. Willingness to establish a physical presence within the state or maintain existing presence.
 4. Respondent is a firm having not less than \$500 million in assets under management/advisement, **Or** Respondent is an Indiana-domiciled firm having not less than \$100 million in assets under management/advisement, **Or** Respondent has invested, as a general partner (or as an 1940 act investment company or private investment fund), not less than \$100 million in Indiana-based private companies over the life of the Respondent. Investment track records from prior firm experience of investment professionals who will be involved in the management of this program may be considered valid for the purposes of satisfying this requirement provided they are adequately disclosed in the Respondent’s submission and directly attributable to the individual. Any track record of an investment professional at a prior firm referenced here within shall be presented clearly distinct from the Respondent’s track record. In the instance of multiple firms partnering together to meet the mandatory requirements of a Respondent to this RFP, a detailed breakdown of how each firm would be compensated must be submitted with your single response.

Evaluation Factor Weighting Table

| Evaluation Factor | Weight |
|--|---------------|
| Background & Experience | 15 |
| Advisory & Administrative Services | 15 |
| Reporting Abilities | 10 |
| Investment Duties | 20 |
| Cost Proposal | 15 |
| Firm Diversity | 5 |
| Plan to Incorporate/Engage Local Community | 20 |
| TOTAL | 100 |

VIII. TIMELINE

This RFP is being issued on August 7, 2017 (“Issue Date”), and will be posted on the website of the IFA. If a Respondent intends to provide a Proposal, the Respondent should provide its contact information (including email address) to the Authorized Representative (as defined below) upon receipt hereof. The IFA may elect to issue addenda to this RFP, which will also be posted on the IFA’s website. If a Respondent provides its contact information, the IFA will also provide a copy of the addenda to the Respondent by email. Any questions related to this RFP must be received by the Authorized Representative in writing (email is acceptable) by August 14, 2017. At the discretion of the Authorized Representative, responses to pertinent questions will be provided to all self-identified intended Respondents and posted on the IFA’s website in a fair and equitable manner. The Authorized Representative and pertinent contact information is as follows:

Mark Pascarella
Indiana Finance Authority
(317) 233-4332
NLIF_RFP@ifa.in.gov

Following the Issue Date, the Respondent shall not contact any person who is an employee, officer, elected official or agent of the State, its agencies or instrumentalities, an employee, officer, member or agent of the IFA, or a member of the Investment Board with respect to this RFP, except the Authorized Representative identified above. The IFA may disqualify the Proposal of any Respondent who makes such contact.

A Proposal shall be delivered by email to the Authorized Representative at the email address provided above no later than 5:00 p.m. EST on August 28, 2017 (the "RFP Due Date"). The Investment Board shall disqualify any response not received by such date or which does not follow the procedures and guidelines described in this RFP.

Following receipt of the responses, the Authorized Representative may contact the Respondent for clarification and questions with respect to the contents of the Proposal. Following a review period by the IFA, it is anticipated that candidates selected as finalists will make initial presentations to the Investment Board in September 2017 with program implementation commencing in late 2017. The Investment Board reserves the right to alter the anticipated timeline at any time to allow for contract negotiation as well as adjustments to changes in the investment environment. Therefore, if a Respondent's Proposal has an expiration date, please reflect it in the Proposal.

IX. CONTRACTUAL TERMS

If selected, the Respondent shall enter into negotiations to come to an Agreement with the Investment Board. If the parties are unable to come to terms, the Investment Board reserves the right to enter into negotiations with another Respondent. The Respondent shall review the Exhibit C to this RFP and attached hereto, which contains key contractual provisions that will not differ materially in the Agreement. By responding to this RFP, the Respondent acknowledges such provisions will be in the Agreement.

X. MISCELLANEOUS

Confidentiality of Proposal

The Respondent's Proposal is not confidential and will be subject to disclosure in its entirety except the parts of the Proposal that may be treated as confidential, in the sole discretion of the IFA, in accordance with Indiana Code 5-14-3 ("Public Records Act"). Each Respondent, by submitting a Proposal consents to such disclosure and expressly waives any right to contest such disclosure under the Public Records Act.

Upon receipt of a records request, the IFA will work with the Respondent to develop a redacted version of its Proposal, containing only those redactions consistent with the Public Records Act. The Respondent's submission of a redacted form of its Proposal will confirm the Respondent's intent to defend against any challenges as to the adequacy of the response to a public records request, including but not limited to the Respondent's agreement to pay all costs and fees (including attorneys' fees and costs) incurred by the IFA or the Investment Board in connection with any litigation, proceeding or request for disclosure, including in the event that the IFA or the Investment Board determines, in its sole discretion, to intervene or participate in such proceeding.

Notwithstanding any proposed redactions and/or claims of exemption asserted by any Respondent, the IFA and the Investment Board shall have sole discretion to determine the applicability of any exemptions under the Public Records Act and of the contents to be disclosed in response to a request thereunder. Under no circumstances will the IFA or its employees, agents (including the Authorized Representative), or members, or the Investment Board, be responsible or liable to a Respondent or any other party as a result of disclosing any such materials, including the redacted material, whether the disclosure is deemed required by law or by an order of court or occurs through inadvertence, mistake or negligence on the part of the IFA, or its employees, agents, or members, or the Investment Board.

Submission of Proposal constitutes the Respondent's agreement to the provisions of this section of the RFP.

Communication Between Respondent and Authorized Representative

The Authorized Representative is the sole point of contact concerning this RFP. Respondents should submit questions about the intent or content of this RFP and request clarification of any and all procedures used for this RFP prior to submission of a Proposal.

The Authorized Representative may also communicate with Respondent's via e-mail. Each Respondent should provide an e-mail address with its response for ease of communication through this RFP process.

Amendments to RFP

The IFA reserves the right to cancel this RFP, modify the RFP, modify the process, or the defined Scope of Services. This RFP does not commit or bind the IFA or the Investment Board to enter into an Agreement or proceed with the procurement described herein.

Proposal is an Offer

A Proposal submitted to this RFP is a binding offer valid for one hundred eighty (180) days after the RFP Due Date. If a Proposal is submitted before the RFP Due Date, the Respondent may withdraw its Proposal at any time prior to the RFP Due Date by submitting a written withdrawal request. Such withdrawal request must be addressed to the Authorized Representative and be signed by the Respondent's duly authorized representative.

A Respondent may submit an amended Proposal before the RFP Due Date. Such amended Proposal must be a complete replacement for the previously submitted Proposal and must be clearly identified as such in the submission.

XI. **EXHIBITS**

- A. Excerpts of House Enrolled Act 1001-2017
- B. Forms I and II
- C. Key Contractual Provisions

Exhibit A

Excerpts of House Enrolled Act 1001-2017

SECTION 69. IC 8-14-15.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:

Chapter 15.1. Next Level Indiana Trust Fund

Sec. 1. As used in this chapter, "authority" refers to the Indiana finance authority.

Sec. 2. As used in this chapter, "board" refers to the next level Indiana fund investment board established by section 7 of this chapter.

Sec. 3. As used in this chapter, "trust" refers to the next level Indiana trust fund established under section 5 this chapter.

Sec. 4. As used in this chapter, "trustee" refers to the trustee of the trust designated under sections 7 and 9 of this chapter.

Sec. 5. (a) The authority has established the next level Indiana trust fund to hold title to proceeds transferred to the trust under IC 8-15.5-11, including as held in trust under IC 8-14-15-5 as previously in effect before July 1, 2017, to be used exclusively for the provision of highways, roads, and bridges for the benefit of the people of Indiana and the users of those facilities.

(b) The trust as established is a charitable trust, separate from the state, but for the benevolent public purpose provided in this section.

(c) The trust consists of the proceeds transferred to the trust under IC 8-15.5-11, including as held in trust under IC 8-14-15-5, and any income that accrues from the investment of these proceeds.

Sec. 6. The chairman of the authority may enter into a trust agreement on behalf of the authority with the board in furtherance of the purposes of this chapter. Any trust agreement must conform with this chapter. Any provision of the trust agreement entered into under this section that is inconsistent with the provisions or intent of this chapter is void and of no further force or effect.

Sec. 7. (a) The next level Indiana fund investment board is established. The board consists of the following members:

(1) The secretary of commerce or the secretary's designee, who shall serve as the chairperson of the board.

(2) The director of the office of management and budget or the director's designee.

(3) Two (2) individuals appointed by the governor who have experience and knowledge in investments.

(4) The treasurer of state or the treasurer's designee.

(b) The board shall serve as trustee of the trust and direct the investment of the trust.

- (c) The board shall adopt an investment policy in conformance with section 8 of this chapter.
- (d) The board shall hold regular meetings at least quarterly. The board may hold special meetings at the call of the treasurer of state or with a written request signed by at least two (2) members of the board.
- (e) The board may hold its meetings at offices in Indiana that the chairperson or the requesting members designate. All meetings must be open to the public in accordance with IC 5-14-1.5. The board shall keep a record of its proceedings.
- (f) Three (3) members of the board constitute a quorum for the transaction of business of the board. Each member of the board is entitled to one (1) vote. A vote of at least three (3) members of the board present is required for the board to adopt a resolution or take other action at a regular or special meeting.

Sec. 8. (a) The board shall adopt an investment policy that includes all the following:

(1) For not more than fifty percent (50%) of the money in the trust, the policy may provide that money in the trust may be invested in investments that:

- (A) maximize risk appropriate returns, which may include the purchase of equity or debt securities;
- (B) make significant investments in Indiana funds and companies; and
- (C) have such other investment parameters and procedures as the board determines are prudent to ensure that investments are consistent with this chapter.

(2) For at least fifty percent (50%) of the money in the trust, the policy must provide that such money in the trust shall be invested in the same manner as money invested by the Indiana public retirement system as required by subsection (d). The investment policy adopted by the board may not allow the treasurer of state to invest the money in the trust in equity securities under this subdivision.

(3) Not more than twenty-five million dollars (\$25,000,000) may be invested in any one (1) particular investment fund or investment firm.

(4) Such other investment parameters and procedures as the board determines are prudent to ensure that investments are consistent with this chapter.

(b) The investment policy adopted by the board must give adequate time to change current investments in a prudent manner.

(c) The board may contract with investment management professionals, investment advisers, and legal counsel to assist in the investment of the fund and may pay the expenses incurred under those contracts from the fund.

(d) The board has the powers, duties, restrictions, limitations, and penalties in connection with the board's and the treasurer of state's investment and management of the assets of trust as if the following provisions pertaining to the public pension and retirement funds made reference to the trust and the board:

- (1) IC 5-10.2-2-2.5.
- (2) IC 5-10.2-2-13.
- (3) IC 5-10.3-5-3.
- (4) IC 5-10.3-5-4.
- (5) IC 5-10.3-5-5.
- (6) IC 5-10.3-5-6.
- (7) IC 5-10.4-3-10.

- (8) IC 5-10.4-3-12.
- (9) IC 5-10.4-3-13.
- (10) IC 5-10.4-3-14.
- (11) IC 5-10.4-3-15.
- (12) IC 5-10.4-3-16.

(e) Compliance with the established investment policy is definitive evidence of compliance with the applicable investment standards in subsection (d).

Sec. 9. The board established by section 7 of this chapter shall act as trustee of the trust.

Sec. 10. A trust established under this chapter may not be revoked or terminated by the authority, the board, the treasurer of state, or any other person, nor may it be amended or altered by the authority, the board, the treasurer of state, or any other person. However, the terms of the trust provide that the trust terminates when no funds remain in the trust.

Sec. 11. (a) The treasurer of state shall:

- (1) administer and manage the trust;
- (2) invest the money in the trust at the direction of the trustee consistent with the investment policies adopted by the board; and
- (3) deposit in the trust:
 - (A) any accrued interest from the investment of money in the trust;
 - (B) proceeds from the sale of trust assets; and
 - (C) other income or returns from the investment of money in the trust.

(b) Notwithstanding IC 5-13, the treasurer of state shall invest the money in the trust not currently needed to meet the obligations of the trust under the investment policies adopted by the board. The treasurer of state on behalf of the board may contract with investment management professionals, investment advisers, and legal counsel to assist in the investment of the trust and may pay the expenses incurred under those contracts from the trust.

(c) IC 4-9.1-1-8 and IC 4-9.1-1-9 do not apply to a trust established under this chapter.

(d) Money and investments in the trust at the end of the state fiscal year do not revert to the state general fund.

Sec. 12. IC 30-2-12 and IC 30-4 do not apply to a trust established under this chapter.

Sec. 13. (a) The principal of the trust may not be distributed during the term of the trust.

(b) The income that accrues from the investment of the trust shall be deposited in the trust.

(c) On March 15 in years set forth in the investment policy adopted by the board, the treasurer of state shall transfer all income accruing to the trust to the major moves construction fund.

Sec. 14. Any records, files, or documents relating to the trust may be examined by the state board of accounts at a time selected by the state board of accounts. The trustee shall upon request of the state board of accounts:

- (1) produce and submit any records, files, or documents related to the trust; and
- (2) assist in every way the state board of accounts in its work in making an examination.

Sec. 15. (a) This section applies to the authority, the board, the treasurer of state, and any other person that does any of the following with respect to the trust established under this chapter:

- (1) Commits a breach of the trust.
- (2) Violates the mandate of the trust or the trust agreement.
- (3) Violates a duty imposed by this chapter or the trust agreement.

(b) The attorney general may petition a court to impose one (1) or more of the following remedies for a breach or violation enumerated in subsection (a):

- (1) Injunctive relief.
- (2) Appointment of temporary receivers.
- (3) Permanent removal of any person serving on the board.
- (4) Appointment of a permanent replacement for any person serving on the board pending approval of a replacement by the governor.

Any remedy under this subsection is in addition to any other remedy available at law or in equity.

Sec. 16. The trustee shall report to the budget committee every six (6) months concerning the investment of trust assets, the returns on those investments, and other actions taken by the trustee and the board.

Exhibit B

Forms I and II

FORM I - INFORMATION REGARDING RESPONDENT FIRM

Name of Respondent Firm: _____

Name of Contact Person: _____

Title of Contact Person: _____

Address of Contact Person: _____

Telephone No. of Contact Person: _____

Email of Contact Person: _____

Business Organization (check one):

Corporation (If yes, complete Sections A-B and the Certification form for the corporation)

Partnership (If yes, complete Sections A-C and the Certification form for each member.)

Joint Venture (If yes, complete Sections A-C and the Certification form for each member.)

Limited Liability Company (If yes, complete Sections A-C and the Certification form for each member.)

Other (If yes, describe and complete Sections A-C and the Certification form)

A. Firm Name: _____

B. CEO/Chairman Name: _____

Address of Firm Headquarters: _____

Federal Tax ID No: _____

Year Established: _____

Jurisdiction in which Firm Established: _____

C. If the entity is a Joint Venture, Partnership or Limited Liability Company, indicate the name and role of each member firm in the space below.

| <u>Name of Firm</u> | <u>Role</u> |
|---------------------|-------------|
| | |
| | |
| | |
| | |
| | |

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am authorized to represent these matters on behalf of the firm:

By: _____
Title: _____

Print Name: _____
Date: _____

FORM II – CERTIFICATION

Respondent: _____

Name of Firm: _____

1. Has the firm or any affiliate, or any current officer, director or employee of either the firm or any affiliate, been indicted or convicted of bid (i.e., fraud, bribery, collusion, conspiracy, antitrust, etc.) or other contract related crimes or violations or any other felony or serious misdemeanor within the past ten years?

Yes No

If yes, please explain:

2. Has the firm or any affiliate ever sought protection under any provision of any bankruptcy act within the past ten years?

Yes No

If yes, please explain:

3. Has the firm or any affiliate ever been disqualified, removed, debarred or suspended from performing work for the federal government, any state or local government, or any foreign governmental entity within the past ten years?

Yes No

If yes, please explain:

4. Has the firm or any affiliate ever 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 within the past ten years?

Yes No

If yes, as to each such inquiry, state the name of the public agency, the date of the inquiry, the grounds on which the public agency based the inquiry, and the result of the inquiry.

5. Has any project performed or managed by the firm or, to the knowledge of the undersigned, any affiliate involved repeated or multiple failures to comply with safety rules, regulations, or requirements within the past ten years?

Yes No

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am authorized to represent these matters on behalf of the firm:

By: _____

Print Name: _____

Title: _____

Date: _____

Exhibit C

Key Contractual Provisions

By responding to this RFP, the Respondent acknowledges the following contractual provisions that will be included in the final Agreement with the awarded service provider. Such provisions are non-negotiable, and thus will not differ materially from the form set forth below.

- A. Governing Laws.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State and suit, if any, must be brought in the State of Indiana, County of Marion. The Service Provider specifically consents to this jurisdiction and venue.
- B. Indemnification.** The Service Provider agrees to indemnify, defend, and hold harmless the Investment Board 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 Service Provider and/or its subcontractors, if any, in the performance of this Agreement. The Investment Board and the State shall **not** provide such indemnification to the Service Provider.
- C. Confidentiality.** The Service Provider understands and agrees that data, materials, and information disclosed to the Service Provider may contain confidential and protected information. The Service Provider covenants that data, material, and information gathered, based upon, or disclosed to the Service Provider for the purpose of this Agreement will not be disclosed to or discussed with third parties without the prior written consent of the Investment Board. Confidential information includes all information but the following:
- a. Information already known or independently developed by the recipient;
 - b. Information required to be released by law;
 - c. Information in the public domain through no wrongful act of the recipient; and
 - d. Information received from a third party who was free to disclose it.

This Section shall survive the termination of the Agreement.

- D. Assignment; Successors.** The Service Provider binds its successors and assignees to all the terms and conditions of this Agreement. The Service Provider shall not assign or subcontract the whole or any part of this Agreement without the Investment Board's prior written consent. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party. Any attempt by the Service Provider to transfer or assign any rights or obligations related to the Agreement, without the prior written consent of the Investment Board, shall render the Agreement voidable by the Investment Board.
- E. Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Service Provider hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Service Provider will give written notice to the Investment Board within ten (10) days after receiving actual notice that the Service Provider or an employee of the Service Provider in the State, 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 Agreement and/or debarment of contracting opportunities with the Investment Board for up to three (3) years.

In addition to the provisions of the above paragraph, the Service Provider hereby further agrees that this Agreement 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 Service Provider and made a part of the contract or agreement as part of the contract documents.

F. Standard of Care; Fiduciary Status. The Service Provider agrees and acknowledges that it owes fiduciary duties to the Investment Board in regard to the Services provided under the Agreement in respect to the Next Level Fund and the investment and accounts therein. The Service Provider further acknowledges that it shall manage the Next Level Fund in trust for the Investment Board and that it is subject to the requirement to use prudence and care in its dealing with the Next Level Fund and the investments relating to the Next Level Fund, in accordance with applicable law, and all other fiduciary requirements to which it is subject. The Service Provider accepts its appointment as such fiduciary and specifically agrees that in performing its duties hereunder it will act with the care, skill, prudence and diligence under the circumstances then prevailing, specifically including, but not by way of limitation, the general economic conditions, the anticipated needs of the investments relating to the Next Level Fund, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to seek to attain the goals of the Next Level Fund as determined by the Investment Board's Investment Policy Statement. The Service Provider agrees to discharge its duties with respect to the Next Level Fund solely in the interest of the Investment Board.

G. Review. The Investment Board will conduct periodic performance reviews of the Service Provider, during which its compliance with all aspects of the Agreement with the Investment Board will be reviewed and assessed.

H. Work Product. Except as otherwise agreed to in writing, all work product including, but not limited to, documents, reports, data, information, and ideas specially produced, developed or designed by Service Provider under any agreement for the Investment Board, whether preliminary or final, will become and remain the property of the Investment Board, including any copyright or service marks Service Provider developed on behalf of the Investment Board. The Investment Board shall have the right to use all such work product without restriction or limitation and without further compensation to Service Provider.

Within thirty (30) days after expiration or termination of the Agreement, the Service Provider shall deliver to Investment Board, or to a third party, if so instructed by the Investment Board, all work product in Service Provider's possession in the performance of the

Agreement. If requested by the Investment Board, the Service Provider shall certify in writing that all such work product has been delivered to the Investment Board.

- I. Access to Records.** The Service Provider and its approved assignees and subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Agreement. They shall make such materials available at their respective offices at all reasonable times during the Term of this Agreement, and for three (3) years from the date of final payment under this Agreement, for inspection by the Board or its authorized designees. Copies shall be furnished at no cost to the Board if requested.
- J. Change in Work.** The Service Provider shall not commence any additional work or change the scope of the work until authorized in writing by the Board. The Service Provider shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Agreement may only be amended, supplemented, or modified by a written document executed in the same manner as this Agreement.
- K. Termination.** Notwithstanding any foregoing language to the contrary, the Agreement may be terminated by the Board under any of the following circumstances:
- a. Service Provider fails to furnish a satisfactory performance within the time specified.
 - b. Service Provider fails to perform any of the provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms.
 - c. Any services provided under the Agreement are rejected and are not promptly corrected by Service Provider, or repeatedly rejected even though Service Provider offers to correct services promptly.
 - d. There is sufficient evidence to show that fraud, collusion, conspiracy, or other unlawful means were used to obtain the Agreement.
 - e. Service Provider is guilty of misrepresentation in connection with another contract for services to the State.
 - f. Service Provider is adjudged bankrupt or enters into a general assignment for the benefit of their creditors or receivership due to insolvency.
 - g. Service Provider disregards laws and ordinances, rules, or instructions of a contracting officer or acts in violation of any provision of the Agreement or this part, or the Agreement conflicts with any statutory or constitutional provision of the State of Indiana or of the United States.
 - h. Any other breach of contract or other unlawful act by Service Provider occurs.

Prior to terminating the Agreement for cause, the Board shall issue a written warning that outlines the remedial action necessary to bring the Service Provider into conformance with the Agreement. If such remedial action is not completed to the satisfaction of the Board within thirty (30) business days, a second written warning may be issued. If satisfactory action is not taken by Service Provider within five (5) business days of the date of the second written warning, the Agreement may be cancelled and the Board may recover any and all damages involved with the transition to a new

vendor including incidental and consequential damages. Failure by the Board to issue a warning or cancel this Agreement does not waive any of the Board's rights to issue subsequent warnings.

In addition, the Board reserves the right to reduce the fee paid to Service Provider as compensation for services under the Agreement during any period Service Provider fails to perform with reasonable care any of its obligations under the Agreement.