

PROFESSIONAL SERVICES CONTRACT

Contract Number:

This Professional Services Contract (“Contract”), entered into by and between the **Indiana Housing and Community Development Authority** (“IHCDA”) and **CONTRACTOR** (the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor.

The duties of the Contractor are set forth in **Exhibit A**, attached hereto and incorporated fully herein, and are summarized below:

2. Consideration.

The Contractor will be paid in the manner described more fully in **Exhibit B**, attached hereto and made a part hereof. Total remuneration under this Contract shall not exceed **Dollars and 00/100 Dollars (\$00.00)**.

3. Term.

This Contract shall take effect as of _____, **2018** (“Effective Date”) and shall be effective for a period of twelve (12) months and remain in effect through _____, **2018** (the “Term”).

4. Access to Records.

The Contractor 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 the Term of this Contract, and for five (5) years from the date of final payment under this Contract, for inspection by IHCDA or its authorized designees. Copies shall be furnished at no cost to IHCDA if requested.

5. Assignment; Successors.

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without IHCDA’s prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of IHCDA, provided that the Contractor gives written notice (including evidence of such assignment) to IHCDA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Assignment of Antitrust Claims.

As part of the consideration for the award of this Contract, the Contractor assigns to the IHCDA all right, title and interest in and to any claims the Contractor 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 Contractor 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 IHCDA.

IHCDA considers the Contractor to be a “Contractor” under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a “subrecipient” and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

8. Authority to Bind Contractor.

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

9. Changes in Work.

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by IHCDA. Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws.

A. The Contractor 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 IHCDA and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6 *et seq.*, IC §4-2-7, *et. seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a State officer, employee, or special State appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC §4-2-6-10.5 prior to the execution of this Contract.** If the Contractor is not familiar with these ethical requirements, the Contractor 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 Contractor or its agents violate any applicable ethical standards, IHCDA may, in its sole discretion, terminate this Contract

immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor 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 State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the IHCDA.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify IHCDA of any such actions. During the term of such actions, the Contractor agrees that IHCDA may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and IHCDA decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the IHCDA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for IHCDA. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with IHCDA.

G. The Contractor 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. As required by IC §5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, 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 Contractor 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 Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) 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.

11. Condition of Payment.

All services provided by the Contractor under this Contract must be performed to the IHCDA's reasonable satisfaction, as determined at the discretion of the undersigned IHCDA representative and in accordance with all applicable federal, State, local laws, ordinances, rules and regulations. The IHCDA 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. As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the IHCDA Controller. As a further condition of payment, the Contractor shall complete in full and return to IHCDA a federal Form W-9 (Request for Taxpayer Identification Number and Certification), the form of which is attached hereto as **Exhibit C** and made a part hereof. IHCDA 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.

12. Confidentiality of State Information.

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

The parties acknowledge that the services to be performed by Contractor for IHCDA under this Contract may require or allow access to data, materials, and information containing Social Security numbers or other personal information maintained by or on behalf of IHCDA in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and IHCDA agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

13. Continuity of Services.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either IHCDA or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the IHCDA's written notice:
1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the IHCDA's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.
- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension.

- A. The Contractor 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 of Indiana. 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 Contractor.
- B. The Contractor certifies that it has verified the State and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify IHCDA if any subcontractor becomes debarred or suspended, and shall, at IHCDA's request, take all steps required by IHCDA to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

15. Default by IHCDA.

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

16. Disputes.

A. Should any disputes arise with respect to this Contract, the Contractor and IHCDA agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor 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 Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by IHCDA or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against IHCDA for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. IHCDA may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by IHCDA to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as

described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of IHCDA should be processed consistent with Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.

17. Drug-Free Workplace Certification.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to IHCDA within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor 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 State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor 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 Contractor'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 Contractor'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 Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying IHCDA 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.

18. Employment Eligibility Verification.

As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

A. **Intentionally Omitted.**

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. **Intentionally Omitted.**

The IHCD A may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the IHCD A.

19. Employment Option.

If the IHCD A determines that it would be in the IHCD A's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the IHCD A or the employee.

20. 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 or as soon as is reasonably possible under the circumstances 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.

21. Funding Cancellation.

When the Executive Director of IHCD A or 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 Executive Director or the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Law.

This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in courts located in Marion County, Indiana.

23. HIPAA Compliance.

If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

24. Indemnification.

The Contractor agrees to indemnify, defend, and hold harmless IHCDA, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses arising from or connected with any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. IHCDA shall not provide such indemnification to the Contractor.

25. Independent Contractor; Workers' Compensation Insurance.

The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Except as provided for in Section 24 above, 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 Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the IHCDA with a Certificate of Insurance evidencing such coverage, upon request.

26. Information Technology Enterprise Architecture Requirements.

If the Contractor provides any information technology related products or services to IHCDA, the Contractor shall comply with all IOT standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by IHCDA shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC §4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. IHCDA may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

27. Insurance.

A. The Contractor and their subcontractors (if any) shall secure and keep in force during the Term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$2,000,000 per occurrence unless additional coverage is required by IHCDA. IHCDA is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Intentionally Omitted.

3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the IHCDA shall continue for a period of two (2) years after the date of service provided under this Contract.

4. Fiduciary Liability is required if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. These contractors face potential claims for mismanagement brought by plan members. Limits should be no less than \$700,000 per cause of action and \$2,000,000 per occurrence.

5. Valuable Papers coverage, available under an Inland Marine policy, is required when any plans, drawings, media, data, records, reports, billings and other documents are produced or used under this agreement. Insurance must have limits sufficient to pay for the re-creation and reconstruction of such records.

6. The Contractor shall secure the appropriate Surety or Fidelity Bond(s) as required by State or by applicable statute.

7. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned IHCDA representative a certificate of insurance upon request and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2, upon request. 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.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the State in which the policy was issued.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3. IHCDA will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify IHCDA under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to IHCDA.

5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against IHCDA.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling IHCDA to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to IHCDA upon request.

28. 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, IHCDA shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of IHCDA.

C. Nothing in sections A and B, above shall be construed to prevent the Contractor 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 Contractor 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 is/are **Name(s)**.

29. Licensing Standards.

The Contractor, 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 Contractor pursuant to this Contract. IHCDA will not pay the Contractor for any services performed when the Contractor, its employees, or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify IHCDA immediately and IHCDA, at its option, may immediately terminate this Contract.

30. 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, except by written agreement signed by all necessary parties.

31. Minority and Women’s Business Enterprises Compliance.

Award of this Contract was based, in part, on the MBE/WBE participation plan. The following certified MBE or WBE subcontractors will be participating in this Contract:

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE/ PRODUCTS and/or SERVICES</u>	<u>UTILIZATION</u>	<u>DATE</u>	<u>AMOUNT</u>

A copy of each subcontractor agreement must be submitted to IDOA’s MBE/WBE Division within thirty (30) days of the effective date of this Contract. Failure to provide a copy of any subcontractor agreement will be deemed a violation of the rules governing MBE/WBE procurement, and may result in sanctions allowable under 25 IAC 5-7-8. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA’s MBE/WBE Division before changing the participation plan submitted in connection with this Contract. The Contractor shall report payments made to MBE/WBE Division subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as “Pay Audit.” MBE/WBE Division subcontractor payments shall also be reported to the Division as reasonably requested and in a format to be determined by Division.

32. Nondiscrimination.

Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to 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’s 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”). Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph

shall be construed to imply or establish an employment relationship between IHCDA and any applicant or employee of the Contractor or any subcontractor.

IHCDA is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

33. Notice to Parties.

Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to IHCDA shall be sent to:

**Indiana Housing and Community
Development Authority
30 South Meridian Street, Suite 900
Indianapolis, Indiana 46204**

With a copy to:

**David W. Stewart
General Counsel
Indiana Housing and Community
Development Authority
30 South Meridian Street, Suite 900
Indianapolis, Indiana 46204**

B. Notices to the Contractor shall be sent to:

34. 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 IHCDA, (3) IHCDA's Request for Proposals for _____ (the "RFP"), (4) Contractor's Response to the RFP, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

35. Ownership of Documents and Materials.

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, source code and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to IHCDA so that all Materials will be the property of the IHCDA. If ownership interest in the

Materials cannot be assigned to IHCDA, the Contractor grants IHCDA a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy, and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of IHCDA, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by IHCDA and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide IHCDA full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

36. Payments.

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the IHCDA Controller. 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 IC §4-13-2-20.

37. Penalties/Interest/Attorney's Fees.

IHCDA 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, IC §34-13-1 and IC §34-52-2-3.

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

38. Progress Reports.

The Contractor shall submit progress reports to IHCDA upon request. The report shall be oral, unless IHCDA, 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 IHCDA that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

39. Public Record.

The Contractor acknowledges that IHCDA will not treat this Contract as containing confidential information. Use by the public of the information contained in this Contract shall not be considered an act of IHCDA.

40. Renewal Option.

This Contract may be renewed under the same terms and conditions, subject to the approval of the IHCDA Board of Directors, and in compliance with IC §5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.

41. 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.

42. 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.

43. Taxes.

IHCDA is exempt from most State and local taxes and many federal taxes. IHCDA will not be responsible for any taxes levied on the Contractor as a result of this Contract.

44. Termination for Convenience.

This Contract may be terminated, in whole or in part, by IHCDA, which shall include and is not limited to the Indiana Department of Administration (“IDOA”) and the State Budget Agency whenever, for any reason, IHCDA determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination may continue. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. IHCDA will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor 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. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

45. Termination for Default.

A. With the provision of thirty (30) days’ notice to the Contractor, IHCDA may terminate this Contract in whole or in part if the Contractor 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 IHCDA 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 IHCDA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner IHCDA considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to IHCDA for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. IHCDA shall pay the contract price for completed supplies delivered and services accepted. The Contractor and IHCDA shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. IHCDA may withhold from these amounts any sum IHCDA determines to be necessary to protect IHCDA against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of IHCDA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

E. This Contract may be suspended and/or terminated immediately if the Contractor has breached, defaulted, or committed fraud under this Contract or another contract between the Contractor and IHCDA. Further, Contractor’s breach or default of other agreements or obligations related to this Contract shall constitute a material breach of this Contract.

46. Travel. Intentionally Omitted.

47. Indiana Veteran’s Business Enterprise Compliance.

Award of this Contract was based, in part, on the Indiana Veteran’s Business Enterprise (“IVBE”) participation plan. The following IVBE subcontractors will be participating in this Contract:

<u>IVBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE / PRODUCTS and/or SERVICES</u>	<u>UTILIZATION</u>	<u>DATE</u>	<u>AMOUNT</u>

A copy of each subcontractor agreement shall be submitted to IDOA within thirty (30) days of the request. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA before changing the IVBE participation plan submitted in connection with this Contract.

The Contractor shall report payments made to IVBE subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as “Pay Audit.” IVBE subcontractor payments shall also be reported to IDOA as reasonably requested and in a format to be determined by IDOA.

48. 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 IHCDA’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 Contractor shall be and remain liable to IHCDA in accordance with applicable law for all damages to IHCDA caused by the Contractor's negligent performance of any of the services furnished under this Contract.

49. Work Standards.

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If IHCDA becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, IHCDA may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

50. Public Statements, Press Releases, and Media.

Contractor acknowledges that IHCDA is solely responsible for all public statements, press releases and media related to services provided by Contractor under this Contract. Contractor shall (a) distribute the marketing material provided by IHCDA at the times and according to the instructions given by IHCDA; (b) promptly refer all media inquiries regarding the services provided under this Contract to IHCDA; (c) immediately contact IHCDA with any questions about media or marketing materials; (d) not alter the marketing materials provided by IHCDA; (e) not contact media (traditional or otherwise) regarding the services provided by Contractor under this Contract; and (f) not create marketing materials related to the Contract, unless approved by IHCDA. Breach of this Section 50 may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with IHCDA.

51. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

If the total remuneration under this contract exceeds \$150,000 the Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

52. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

Contractors that apply or bid for a federal award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

53. Prohibited Terms and Conditions.

IHCDA will not agree to any of the following terms or conditions:

- A. Any provision requiring IHCDA to provide insurance
- B. Any provision requiring IHCDA to provide indemnity
- C. Any provision providing that this Contract be construed in accordance with laws other than those of the State of Indiana
- D. Any provision providing that suit be brought in any state other than Indiana
- E. Any provision providing for resolution of contract disputes
- F. Any provision requiring IHCDA to pay any taxes
- G. Any provision requiring IHCDA to pay penalties, liquidated damages, interest or attorney's fees
- H. Any provision modifying the applicable Indiana statute of limitations
- I. Any provision relating to the time within which a claim must be made
- J. Any provision requiring payment of consideration in advance unless authorized by an exception listed in IC 4-13-2-20
- K. Any provision limiting disclosure of this Agreement in violation of the Access to Public Records Act, IC 5-14-3
- L. Any provision providing for automatic renewal
- M. Any provision requiring IHCDA to agree to limit the liability of the Respondent

54. State Boilerplate Affirmation Clause.

I swear or affirm under the penalties of perjury that I have not altered, modified, changed, or deleted the State's Boilerplate contract clauses (as contained in the *2016 OAG/IDOA Professional Services Contract Manual*) in any way except for the following clauses which are named below:

11. Condition of Payment. Added "as required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with IHCDA Controller." Added "As a further condition of payment, the Contractor shall complete in full and return to IHCDA a federal Form W-9 (Request for Taxpayer Identification Number and Certification), the form of which is attached hereto as **Exhibit C** and made a part hereof" to comply with requirements of IHCDA's accounting department.

12. Confidentiality of State Information. Added the words "or other personal information" into the first sentence in the second paragraph of this section after the words "Social Security numbers". Added "or on behalf of IHCDA" into the first sentence in the second paragraph of this section after the phrase "maintained by".

18. Employment Eligibility Verification. Deleted A and C, since IHCDA is a public body corporate and politic and does not meet the definition set forth in IC 4-6-3-1 referenced in IC 22-5-1.7-7.

21. Funding Cancellation. Referenced the Executive Director of IHCDA along with the Director of the State Budget Agency since some of IHCDA's funding comes from other non-State sources.

- 22. Governing Law.** Substituted “courts located in Marion County, Indiana” for “the State” at the end of the last sentence of the section.
- 25 Independent Contractor.** Inserted “Except as provided in Section 24 above,” before the sentence beginning with “Neither party shall assume”.
- 27. Insurance.** Changed paragraph A(1) to lower limits to \$700,000 per person and \$2,000,000 per occurrence. The reduced coverage amounts are acceptable to IHCDA, given that the higher limit of \$5,000,000 would require multiple layers of insurance coverage at a cost that is disproportionate to the contract amount. Deleted paragraph A(2). Modified Paragraph (A)4 to reduce the per occurrence liability limit to \$2,000,000. Modified the first sentence of paragraph A(7) to make the Contractor obligated to provide the proof of insurance upon request. Modified the second sentence of paragraph (C) to make the Contractor obligated to provide the proof of insurance upon request.
- 33. Notice to Parties.** Deleted “As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.” after address of Contractor.
- 36. Payments.** Deleted “35 days” before “in arrears” in subsection A. Substituted “IHCDA Controller” for “Indiana Auditor of State” in subsection A because IHCDA manages its funds separately from the State. Substituted “IHCDA” for “The State Budget Agency” in subsection B.
- 44. Termination for Convenience.** Substituted “may continue” for “becomes effective” in lines 4 – 5 of this paragraph.
- 45. Termination for Default.** Added subsection E: This Contract may be suspended and/or terminated immediately if the Contractor has breached, defaulted, or committed fraud under this Contract or another contract between the Contractor and IHCDA. Further, Contractor’s breach or default of other agreements or obligations related to this Contract shall constitute a material breach of this Contract.
- 50. Public Statements, Press Releases, and Media.** Added this provision.
- 51. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Required for federally-funded awards.
- 52. Byrd Anti-Lobbying Amendment.** Required for federally-funded awards.
- 53. Prohibited Terms and Conditions.** Added this section. Prohibited terms and conditions are referenced in the state contract addendum but should also be referenced in the state contract boilerplate to put the Contractor on notice.

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NON-COLLUSION AND ACCEPTANCE

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a State officer, employee, or special State appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

In Witness Whereof, Contractor and IHCDA 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 agree to the terms thereof.

Indiana Housing and Community Development Authority

By: _____
Printed: J. Jacob Sipe
Title: Executive Director
Date: _____

Contractor

By: _____
Printed: _____
Title: _____
Date: _____

Contract Number:

EXHIBIT A
SCOPE OF SERVICES

Contract Number:

PURPOSE

The purpose of this Contract to which this Exhibit A is attached is to **[insert purpose]**. To accomplish this purpose, the Contractor shall perform the following services in accordance with the conditions and/or specifications stated in this Contract and any proposal submitted by the Contractor for which IHCDA awarded this Contract. The services must be performed to the reasonable satisfaction of IHCDA, and any deficiency identified by IHCDA's authorized representative shall be corrected as provided in this Contract.

PERFORMANCE SCHEDULE

Although the term of this Contract is stated in Section 3 of the Contract, the Contractor's services are to be performed in accordance with the following schedule, unless this Exhibit is amended in writing by mutual agreement of the parties:

Activity/Service	Date Due

EXHIBIT B
PROJECT COST/FEE SCHEDULE

Contract Number:

For performing the services required by this Contract, as more fully described in Exhibit A, to the satisfaction of the IHCDA, the Contractor will be reimbursed in accordance with the following fee schedule. Unless otherwise indicated in the schedule, the Contractor is responsible for any and all expenses incurred in rendering its services under this Contract.

SERVICE	FEE	PAYABLE	PROCESS	BUDGETED AMOUNT
			Contractor submits an invoice referencing Contract No. _____, along with appropriate documentation. IHCDA will pay within 30 days of receipt and approval of each properly documented invoice.	\$
			Contractor submits an invoice referencing Contract No. _____, along with appropriate documentation. IHCDA will pay within 30 days of receipt and approval of each properly documented invoice.	\$

Unless modified in writing and signed by the parties in the same manner as the Contract to which this Exhibit B is attached, the total amount of fees and/or reimbursed costs under this Contract shall not exceed _____ **Dollars and 00/100 Dollars (\$00.00).**

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