

Request for Proposals for

Professional Services for

# Federal Fund Exchange Program Guidance Document Indianapolis Metropolitan Planning Organization

## Release Date

November 5, 2020, 1:00 p.m. ET

## Responses Due

**November 25, 2020, 3:00 p.m. ET**

All of the responses must be addressed and returned to:

Danielle Gerlach

[Indianapolis Metropolitan Planning Organization](#)

200 East Washington Street – Suite 2322

Indianapolis, Indiana 46204

317.327.5135

[Danielle.Gerlach@IndyMPO.org](mailto:Danielle.Gerlach@IndyMPO.org)

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## 01 RFP / Selection Schedule

November 5, 2020	<i>RFP Released</i>
November 12, 2020	<i>Questions due by <b>10:00 a.m. ET</b> (See Section 05 Response Requirements)</i>
November 25, 2020	<i>Proposal Packages due by <b>3:00 p.m. ET</b></i>
December 4, 2020	<i>Shortlist Interviews*</i>

The Indianapolis MPO adheres to the following selection and contracting process:

1. Issue RFP
2. Receive RFP packages
3. Review proposal with selection committee
4. Interview shortlisted respondents as necessary\*
5. Contracting process (takes roughly up to a month to finalize contract and issue purchase order)

*\*Optional. The Indianapolis MPO reserves the right to select a consultant based solely on qualifications. The Indianapolis MPO also reserves the right not to hold shortlist interviews or change the date and time if deemed necessary.*

## 02 History

The Indianapolis Metropolitan Planning Organization (IMPO) is the regional entity that plans and programs federal transportation funds for highways, transit, non-motorized transportation, and other means of moving people and goods for the Indianapolis region. The IMPO works within federal transportation requirements to guide the development of a multi-modal transportation system within the Metropolitan Planning Area (MPA), an area that includes the urbanized area plus areas expected to urbanize by 2030. The Indianapolis MPA currently incorporates 1,520 square miles, 39 jurisdictions, and approximately 1.5 million residents.

The IMPO Transportation Policy Committee is the governing body and contains the chief elected official, or their appointee, from dues-paying IMPO members, including eight (8) counties, eleven (11) cities, and seventeen (17) towns, in addition to nine (9) partner organizations who plan for and/or provide transportation services within the region. The IMPO Transportation Technical Committee provides technical advice to the IMPO Policy Committee and is comprised of technical experts from the Central Indiana member agencies.

## 03 Context

Each State Fiscal Year, the IMPO receives an allocation of Federal Transportation funds from the Indiana Department of Transportation (INDOT) to administer totaling roughly fifty million dollars. Since 2015, the IMPO has been operating under INDOT's Annual Allocation policy, which requires the IMPO to spend the full annual allocation of Federal funds to the dollar each fiscal year or risk losing funds to INDOT. The IMPO has been successful each year in spending the full allocation, however there have been significant impacts to the IMPO and the Local Public Agencies (LPA's) business and project delivery processes. As a result, the IMPO has been actively working to gain flexibility in the policy to improve project delivery and reduce risks to the overall program.

As a result of these discussions, INDOT proposed a full exchange of the IMPO's annual Federal allocation for State funds to give the IMPO and member agencies flexibility in project development and delivery. Given the significant change a full exchange could have on the IMPO and the LPAs processes, the MPO created a sub-committee of the IMPO Policy and Technical Committees. to consider the proposal and concluded that the IMPO should work with INDOT to develop a mutually beneficial exchange agreement.

This past September, INDOT and the IMPO executed an agreement in which the IMPO will exchange the full annual Federal allocation with INDOT for an established amount of State funds. The executed agreement includes the following key elements:

- The agreement reflects a grant agreement format and is not project specific.
- The exchange rate is set at \$.90 of state funds for every \$1.00 of federal funds.

- The exchange applies to the IMPO's annual allocation of funds including CMAQ, HSIP, STBG, TAP and penalty funds.
- INDOT will continue to be a resource as appropriate but will not be directly responsible for any element of the process.

This agreement will have potentially significant impacts to both the IMPO's and the LPA's project programming, development and delivery processes. Moving these projects outside of the Federal Aid process will mean more flexibility but will also require a new or revised set of policies, procedures and standards to ensure that the process achieves the IMPO's required mission of a continuing, cooperative and comprehensive planning process as set forth in 23 CFR 450.104. At the same time, the new process should offer more flexibility, less complexity and reduce time and cost of development and delivery of regionally important transportation projects.

The broad goals the IMPO has for the Federal Fund Exchange Program Guide are:

- Develop a guide for the IMPO and its LPAs to administer and work within the Federal Fund Exchange process that is clear, consistent and fair.
- Identify critical elements and fatal flaws at each step of the process.
- Define the roles and responsibilities of the IMPO, the LPA and their consultants/contractors in the program.
- Establish operating procedures to ensure compliance with the Federal Funds Exchange agreement as well as with State and applicable Federal laws.

The Federal Fund Exchange Program Guide will need to be clear and consistent and ensure projects are developed and delivered according to best practices and industry standards while continuing to represent the best use of regional funds.

## 04 Work Elements

### Project Schedule

- The anticipated start date for the contract will be January 2021
- Draft final product delivery is anticipated spring 2021
- The contract will expire in January 2022

### Tasks

The Indianapolis MPO requests the following tasks as part of the project scope. The consultant may propose a different approach to the project, as long as the following tasks are included. The IMPO reserves the right to request changes to the scope, as appropriate, during contract negotiation.

#### I: Project Management and Coordination

- 1.1: Kickoff Meeting

- General project management tasks for this project, including monthly invoicing and progress reports to be uploaded to the MPO's online Invoice Portal.
- Regular check-ins between the vendor and the MPO's project manager and the steering committee at key points.

## **II: Policies and Procedures**

- 2.1: Review and Confirmation of Existing Programming Process
  - Work with MPO to review existing programming policies and procedures document.
  - Consultant will document existing policies and procedures. Policies will include, but are not limited to roles and responsibilities, project selection, project programming, funding types, scoring and application, eligibility determinations, cost estimating procedures, change orders, amendments and modifications.
- 2.2: Develop Revised Policies and Procedures for the Federal Exchange Programming Process
  - Work with MPO to identify needed revisions to existing policies and procedures for the Federal Exchange Programming Process.
  - Consultant along, with MPO staff will present draft policies and procedures to steering committee to gather input.
  - Work with MPO and steering committee to form consensus on final programming policies and procedures.

## **III: Operating Procedures**

- 3.1: MPO and Local Public Agency Project Coordination
  - MPO and LPA roles and responsibilities
  - Work with MPO and MPO legal counsel to develop MPO-LPA contract and process
  - INDOT responsibilities
  - Document State legal requirements of process
  - References to guidance materials
- 3.1: Local Public Agency requirements
  - Certification requirements
  - Local fiscal and procurement standards requirements
- 3.2: Consultant Contracting
  - Local contracting process minimum requirements
  - QBS selection requirements
  - Construction inspection
  - Code of ethics and conflicts of interest
- 3.3: Environmental Process
  - State environmental requirements and review process
  - Process to ensure environmental Justice (EJ) populations, including minority, low-income, elderly, and other vulnerable groups are addressed during the environmental review process.
  - Federal Environmental and/or permit requirements

## **IV: Technical Standards and Specifications**

- 4.1: Plan Preparation
  - Engineering and design including pavement design
  - INDOT design manual and local design standards
  - LPA INDOT certification
  - Forms and checklists
- 4.2: Utility and Railroad Coordination
  - Minimum process requirements
- 4.3: Right-of-way
  - Land acquisition process minimum requirements and approval process
  - Right-of-way engineering
  - Right-of-way services
  - Legal requirements
- 4.4: Letting
  - LPA letting process and required documentation
  - Accommodations for small and inexperienced LPAs
  - Awarding bids process, review, acceptance
  - Simplified financial process and requirements of MPO and LPA including issuing Purchase Orders

## **V: Construction**

- 5.1: Construction Administration
  - Construction Engineering
  - Change orders
  - Leftover funds
  - Final construction record

## **VI: Post Construction**

- 6.1: Final Audit
  - Financial reconciliation with MPO
  - Audit results and resolution if needed
  - Final reimbursement or payments process
- 6.2: Project Close Out
  - Required documentation.
  - Schedule and cost performance summary
- 6.3: Reporting
  - Required reporting to INDOT
  - Project summary report for MPO files including time and costs for comparison to Federal Aid process

## **VII: Draft and Final Guidance Document**

- 7.1: Final Deliverables

- The vendor will produce a draft Guidance Document for the IMPO’s review and comment.
- The final FFE Guidance Document should be clear, concise, and easy for the LPAs to navigate and include the following:
  - A table of contents and a summary of policies and procedures and how they were developed
  - Roles and responsibilities in each process step
  - Legal requirements
  - Listing of resources and process checklists
- A final Guidance Document in electronic format, GIS files, and any other native files for maps and other graphics
- PowerPoint for use in presenting the Federal Exchange Program
- Training materials and at least two training sessions for LPAs

## 05 Response Requirements

Consultants must submit a digital copy of their response; no paper copies are required. Additionally, consultants must provide a separate **password protected** PDF that contains an estimated quote for the contract amount that would cover all work included in Section 04 of this document. The password shall be “QUOTE”. All digital files should be in PDF format. Responses must be no larger than 20 MB in size. All responses should be submitted no later than **3:00 pm ET on November 25, 2020**. All digital responses must be sent via email to the attention of Danielle Gerlach at [Danielle.Gerlach@IndyMPO.org](mailto:Danielle.Gerlach@IndyMPO.org) and should read “RFP Federal Fund Exchange Program Guidance Document” in the subject line.

Submissions should be prepared simply and economically, providing a straightforward, concise description of the consultant’s qualifications. Submissions should be no more than 20 pages, with each of those pages using standard 8.5” x 11” sheets. Resumes are included in this 20-page limit. Forms A, B, and C are not included in this 20-page limit. Only one Form A and Form C is required for the responding vendor. Sub-consultants are only to be included in Form B, under “Partnering Vendor.” If there are multiple sub-consultants, attach additional Form B pages in this section. **Any information beyond these limitations will not be considered in evaluating the project response.**

The submission should include the following items:

**Completed Forms:** Complete one each of Forms A, B, and C. The forms are included in Attachment A of this RFP packet and include:

- General Information
- Qualifications Statement
- Project Manager and Key Staff Information (*staff is encouraged to have a strong IMPO understanding through client project or IMPO experience*)

References

**Cover Letter:** (1 page)

Indicate your interest in the project and any unique qualifications that should be taken into consideration.

**Firm Overview:** (1-2 pages)

Include information on lead and any sub-consultants on the team. Please identify type of organization for each firm (corporation, partnership, etc.).

The lead consultant would be required to carry liability insurance for this project. Section XII of the attached draft contract indicates the insurance requirements that must be met. If this is an issue, please address it in this section.

The INDOT DBE goal for this project is 3%.

**Project Approach:** (1-3 pages)

Include your approach to the project, indicating how you will incorporate the suggested tasks, and whether additional tasks would be recommended. Be clear and concise.

**Project Team/Firm:**

- Identify the project manager / main point of contact for the project. Provide a detailed resume, qualifications, and references of the personnel who will be involved in the management of the delivery of the services proposed.
- Include resumes of key team members. Resumes should detail educational qualifications and previous work assignments related to the services proposed. Include qualifications of each employee, as well as expected roles and responsibilities for this project.
- Firms that are Disadvantaged Business Enterprises (DBE; Minority or Women Owned Business Enterprises) should be identified in the organization chart. Certification of business status is required with the [State of Indiana](#). **DBE goals will be established prior to contract execution. DBE participation is strongly encouraged.**
- Project team credentials will be subject to verification.

**Project Team Experience:**

Include at least three (3) projects that demonstrate relevant project experience according to the suggested tasks (Section 03 Context). The three examples should come from relevant team members' experience, identifying specifically what role each team members played in the projects. For teams, please include at least one relevant project per firm that highlights expertise similar to the task(s) currently proposed. Listing Indianapolis MPO experience is acceptable, **but do not include Indianapolis MPO references.**



### **Signed Questions Addendum Form:**

Questions will be accepted and directed to Danielle Gerlach ([Danielle.Gerlach@IndyMPO.org](mailto:Danielle.Gerlach@IndyMPO.org)) until 10:00 a.m. ET, November 12, 2020. All questions will remain anonymous. The Questions Addendum Form with answers to questions will be posted on the Indianapolis MPO website ([www.indympo.org/RFP](http://www.indympo.org/RFP)) after the questions deadline. Addenda will **not** be sent directly to vendors. Vendors will be responsible for periodically checking this website for any related addenda up to and including the due date. Vendors should print, sign, and return written acknowledgement(s) with their submission.

### **Password Protected Quote:**

Include a password protected PDF that contains a quote for the scope of work in Section 04. Initial reviews will solely be based on proposal packages. Once a short list is determined, IMPO staff will then review quotes to factor into final decisions. The password should be "QUOTE".

## **06 Evaluation Criteria**

The Indianapolis MPO may use an evaluation committee consisting of representatives from the Indianapolis MPO staff and/or Indianapolis Regional Transportation Council (IRTC) members. Each member of the team will be given a copy of the accepted responses and will evaluate each response against this RFP evaluation criteria.

### **Project Approach: (40 points)**

- Points awarded based upon "Project Approach," as submitted according to Section 05 Response Requirements.
  - Response demonstrates an in-depth understanding of all elements of the programming, project development and project delivery process from MPO, LPA and private sector experience as well as a solid understanding of the Federal planning process and requirements.

### **Project Team (Manager / Staff): (30 Points)**

- Points awarded based upon "Project Team Experience," as submitted according to Section 05 Response Requirements.
  - Response demonstrates robust experience with the MPO planning and programming process, LPA project development and delivery process and INDOT LPA program.

### **Past Project Experience / Examples of Work: (20 points)**

- Points awarded based upon "Project Team / Firm" as submitted according to Section 05 Response Requirements.
  - Responses will be scrutinized based on all or part of the project's comparability to the proposed project.

#### **DBE: (10 Points)**

- Based on meeting the DBE goal of 3% as stated in Section 05 Response Requirements. “References” as submitted according to Section 05 Response Requirements (Form C).
  - Responses will be scrutinized based on all or part of the Firm Overview and Project Team/Firm section of the submittal and to what extent the DBE goal is satisfied.

#### **References: (No Points – Yes/No)**

- Based on “References” as submitted according to Section 05 Response Requirements (Form C).
  - IMPO staff will contact all references and base this pass/fail result on their responses. Teams are strongly encouraged to include references for the past project experience / examples of work submitted for this the RFP.

#### **Quote Amount: (No points – Yes/No)**

- Based on the quoted amount for the scope of work
  - IMPO staff will open the password protected PDF after shortlist interviewees have been determined and notified.

## **07 Supplemental Information**

A submittal does not guarantee that the firm will be contracted to perform any services, but only serves as notice to the Indianapolis MPO that the firm desires to be considered. The Indianapolis MPO assumes no obligation to accept or take action on any response. The Indianapolis MPO assumes no liability for any costs incurred in preparing or submitting a response.

An electronic version of the RFP can be found at: [www.indympo.org/RFP](http://www.indympo.org/RFP)

All consultants shall abide by the Federal Fiscal Year 2018/2019 Certifications and Assurances that the Federal Highway Administration (FHWA) requires.

#### **Bonds, Insurance, and Special Requirements:**

The consultant selected for this project will be required to carry insurance as detailed in Section XV of the attached boilerplate, Professional Services Agreement (see Attachment B), unless granted a waiver by the Indianapolis Metropolitan Planning Organization.

#### **Federal Participation:**

The Indianapolis Metropolitan Planning Organization is a sub recipient of Federal Funding through the Federal Highway Administration and Federal Transit Administration of the United States Department of

Transportation. Specifically, this project will use federal planning funds as well as local match provided by the IMPO.

**Reserved Right:**

The Indianapolis Metropolitan Planning Organization reserves the right to withdraw this solicitation at any time in the process prior to contracting, upon notification to all vendors in receipt of the solicitation documents by fax, letter, or email to their last known business address. If such action is taken by the Indianapolis Metropolitan Planning Organization, no vendor will have claim for recompense.

## 08 Vendor Instructions

**Notice to Vendors:**

Vendors are furnished the following instructions to clarify conditions for work, development and presentation of offers, clarification of contents, review of concerns, and other pertinent information from which knowledge of preparing and offering a responsible and responsive offer may be developed. All forms required in the certification pages must be completed or the response will be considered as non-responsive.

**Limitation of Responsibility:**

The Indianapolis Metropolitan Planning Organization is not responsible, and will not accept any responsibility, for the cost incurred by any vendor in the specific preparation or the associated activities aiding in the preparation of any project idea. The Indianapolis Metropolitan Planning Organization is not responsible for returning submitted project ideas to any vendor.

**Vendor Warrants and Sub-Contractor Restrictions:**

Vendor will warrant that all information provided by it in connection with this offer is true and accurate, and that vendor by virtue of its submission is capable of supplying all work requested herein without brokering or delegating to a third party.

Vendor will warrant that it will not delegate or sub-contract its responsibilities under the Agreement beyond the level revealed in the solicitation without the prior written permission of the Indianapolis Metropolitan Planning Organization.

**Taxes:**

The Indianapolis Metropolitan Planning Organization is tax exempt from Federal and State excise, use, and sales taxes.

**Independent Contractor:**

The successful vendor shall be considered and shall accept status as being that of an “Independent Contractor” to the Indianapolis Metropolitan Planning Organization, and shall recognize that they are not an employee.

**Contract Required:**

The Contract included as Attachment B is that contract proposed for use on this procurement. The vendor **must** include notification with their response of any exception taken to the proposed contract. Failure to provide exceptions shall result in the mandatory acceptance of the contract as submitted herein by default.



## **Attachment A: Required Forms**

**Form A: General Information** (submit one Form A)

Company Name: [Click here to enter text.](#)  
Street: [Click here to enter text.](#)  
City, State, Zip: [Click here to enter text.](#)  
Primary Contact: [Click here to enter text.](#)  
Telephone: [Click here to enter text.](#)  
Email: [Click here to enter text.](#)  
Web site: [Click here to enter text.](#)

**Type of organization:**

- Individual                       Partnership
- Joint Venture                       Corporation
- Other (explain) [Click here to enter text.](#)

**Is the vendor a:** (check all that apply)

- Minority Business Enterprise (MBE)
- Woman Business Enterprise (WBE)

**Does the company presently carry errors/omissions professional liability insurance?**

- Yes. Amount: [Click here to enter text.](#)
- No. Would the vendor do so if awarded a contract? [Click here to enter text.](#)

**Does the company currently have or has had litigation in the last five (5) years with the City of Indianapolis or Indianapolis MPO?**

- Yes.
- No.

**Does the company presently find the attached contract boilerplate acceptable?**

- Yes.
- No. (Potential changes discussed if vendor selected? *Does not guarantee the exemption requests will be accepted and could delay the contract execution.*) [Click here to enter text.](#)

**Form B: Qualifications Statement** (submit one Form B)

**Project Manager**

Name: Click here to enter text.  
Years of relevant experience: Click here to enter text.  
% of time for this project: Click here to enter text.  
Street: Click here to enter text.  
City, State, Zip: Click here to enter text.  
Telephone: Click here to enter text.  
Email: Click here to enter text.

**Other Key Staff**

Name: Click here to enter text.	Years of Relevant Experience: Click here to enter text.
Name: Click here to enter text.	Years of Relevant Experience: Click here to enter text.
Name: Click here to enter text.	Years of Relevant Experience: Click here to enter text.

**Partnering Vendor**

(if appropriate; if more than one vendor, attach separate sheet(s) with contact information)

Company Name: Click here to enter text.  
Street: Click here to enter text.  
City, State, Zip: Click here to enter text.  
Telephone: Click here to enter text.  
Email: Click here to enter text.  
Web site: Click here to enter text.

**Please attach the following items:**

1. Cover Letter (maximum one page)
2. Firm Overview (maximum two pages)
3. Project Approach (maximum three pages)
4. Project Team/Firm Experience
  - a. Relevant Experience for Project (maximum two pages)
  - b. Relevant Project Sheets Including Client Name (at least three projects, listing staff who worked on each project and their role)
  - c. Resumes for Key Staff

**Form C: References** (submit one Form C)

**Reference #1** (specific to project, no IMPO references please)

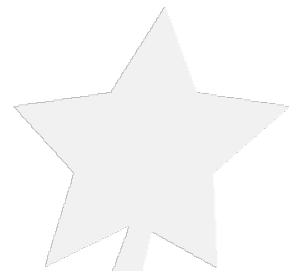
Name: Click here to enter text.  
Organization: Click here to enter text.  
Street: Click here to enter text.  
City, State, Zip: Click here to enter text.  
Telephone: Click here to enter text.  
Email: Click here to enter text.  
Referenced Project: Click here to enter text.

**Reference #2** (specific to project, no IMPO references please)

Name: Click here to enter text.  
Organization: Click here to enter text.  
Street: Click here to enter text.  
City, State, Zip: Click here to enter text.  
Telephone: Click here to enter text.  
Email: Click here to enter text.  
Referenced Project: Click here to enter text.

**Reference #3** (specific to project, no IMPO references please)

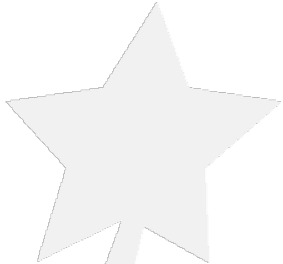
Name: Click here to enter text.  
Organization: Click here to enter text.  
Street: Click here to enter text.  
City, State, Zip: Click here to enter text.  
Telephone: Click here to enter text.  
Email: Click here to enter text.  
Referenced Project: Click here to enter text.







**Attachment B:  
Sample Contract**



# **SAMPLE CONTRACT ONLY – DO NOT FILL OUT**

**PROFESSIONAL SERVICES/ SERVICES AGREEMENT**  
**BETWEEN**  
**THE INDIANAPOLIS METROPOLITAN PLANNING ORGANIZATION - XXXX**  
**AND**  
**CONSULTANT/FIRM**  
**FOR**  
**PROJECT**

This **Professional Services/Services** Agreement (hereinafter referred to as “Agreement”), entered into by and between the **Indianapolis Metropolitan Planning Organization** (hereinafter referred to as “MPO”) and **XXXXX** (hereinafter referred to as “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:

## **SECTION I. INTERPRETATION AND INTENT**

- 1.01 The “Agreement”, as referred to herein, shall mean this Agreement executed by MPO and Contractor, and shall include these Terms and Conditions, any Attachments hereto, all addenda issued prior to receipt of RFPs, quotes, or bids, whether or not receipt thereof has been acknowledged by Contractor, all conditions, plans, specifications and standards, instructions and notice to vendors, and any written supplemental agreement or modification entered into between MPO and Contractor, in writing, after the date of this Agreement.
- 1.02 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between MPO and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by MPO or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both MPO and Contractor.
- 1.03 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of MPO or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to MPO, shall govern.
- 1.04 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against MPO solely by virtue of MPO or MPO’s representatives having drafted all or any portion of this Agreement.

- 1.05 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.
- 1.06 This Agreement was prepared in cooperation with the State of Indiana, Indiana Department of Transportation and the Federal Highway Administration.

## **SECTION II. DUTIES OF CONTRACTOR**

- 2.01 Contractor shall provide services as specified in Attachment A, \_\_\_\_\_, attached hereto and incorporated into this Agreement. Contractor shall perform and carry out the professional services relating to this Agreement in a timely and professional manner consistent with industry standards.

## **SECTION III. TERM**

- 3.01 The term of this Agreement shall begin upon execution of this Agreement by all parties and MPO's receipt of a Purchase Order and shall terminate on \_\_\_\_\_ unless terminated earlier in accordance with this Agreement. The Executive Director of the MPO, may, for good cause shown, extend the time for completion for up to six (6) months beyond the time specified in this Section; provided that any such extension which also involves an increase in the Contractor's compensation or which, in the judgment of the Executive Director, substantially changes the scope of the work or any extension beyond the six (6) month period allowed herein must be approved by the Executive Committee of the MPO.
- 3.02 This Agreement may be renewed by agreement of parties. The term of the renewal may be less but shall not be longer than the term of the original Agreement. A renewal shall be only by written instrument signed by both MPO and Contractor and attached hereto as an amendment. All other terms and conditions of the Agreement shall remain the same as set forth herein.

## **SECTION IV. COMPENSATION**

- 4.01 Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Agreement necessary to complete the work as defined in Attachment A at the rates set forth in Attachment B, attached hereto and incorporated herein. However, in no event shall compensation for services under this Agreement exceed \_\_\_\_\_ (\$XXXX.XX).
- 4.02 Contractor shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement and shall cooperate with and provide any other necessary information to MPO. MPO will pay Contractor within thirty (30) days after receipt of such properly itemized claim forms.

## **SECTION V. GENERAL PROVISIONS**

- 5.01 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of MPO. As

such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by MPO for any loss of any kind whatsoever. Contractor has no authority, express or implied, to bind or obligate MPO in any way.

5.02 Subcontracting. The parties agree that Contractor may subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder. In the event of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. Contractor shall be responsible for compliance by any person or persons to whom such responsibilities or obligations are sublet, assigned or delegated under this Agreement and Contractor shall be held liable for any such person or persons not following the provisions of this Agreement. MPO shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.

5.03 Necessary Documentation. Contractor certifies that it will furnish MPO, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules, regulations and ordinances of MPO, and all other units of local government, the State of Indiana, and the United States. Contractor further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain its license, permit, registration, authorization, or certification, as applicable, in force during the term of this Agreement. Failure of Contractor to comply with this paragraph shall constitute a material breach of this Agreement.

5.04 Confidentiality.

5.04.1 The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Contractor understands that the information provided to it or obtained from MPO during the performance of its services is confidential and may not, without prior written consent of MPO, be disclosed to a person not in MPO's employ except to employees or agents of Contractor who have a need to know in order to provide the services. Further, Contractor's work product generated during the performance of this Agreement is confidential to MPO. The failure to comply in all material respects with this section shall be considered a material breach of this Agreement. Confidential information shall not include information, that: (a) was known by Contractor at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Contractor; (c) is made known to Contractor by a third person who does not impose any obligation of confidence on Contractor with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order whereupon Contractor shall provide

notice to MPO prior to such disclosure; or (e) information that is independently developed by Contractor without references to the confidential information.

5.04.2 Contractor shall not, under any circumstances, release information provided to it by, or on behalf of, MPO that is required to be kept confidential by MPO pursuant to Indiana law except as contemplated by Section 5.04.1, above.

5.04.3 Contractor acknowledges that MPO will not treat this Agreement as confidential information. Use by the public of any document or the information contained therein shall not be considered an act of MPO.

5.05 Records; Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement for inspection by MPO or any other authorized representative of MPO. Copies thereof, if requested, shall be furnished at no cost to MPO.

5.06 Ownership.

5.06.1 “Works” means works of authorship fixed in any tangible medium of expression by Contractor or its officers, employees, agents or subcontractors in the course of performing the services under this Agreement, including, but not limited to, computer programs, electronic art, computer generated art, notes, specifications, drawings, flow charts, memoranda, correspondence, records, notebooks, documentation, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.

5.06.2 All Works made or created by Contractor, either solely or jointly with MPO, in the course of Contractor’s performance of services under this Agreement shall be deemed to be works for hire and are and shall be the exclusive property of MPO. At MPO’s request, Contractor will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in MPO. Without the prior written consent of MPO, Contractor shall not use, copy or prepare derivative works of the Works, or any parts of them, other than as related to the performance of this Agreement. During the performance of this Agreement, Contractor shall be responsible for loss or damage to the Works while they are in Contractor’s possession or control. Any loss or damage shall be restored at Contractor’s expense. MPO shall have free and unlimited access to the Works at all times and, upon demand, shall have the right to claim and take possession of the Works and all copies. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers for archival purposes only, in accordance with applicable professional standards.

5.06.3 Contractor shall retain all rights in and to its know-how, methods, techniques, discoveries, concepts, and ideas, whether patentable or not, and whether possessed by Contractor prior to or acquired by Contractor during the performance of this Agreement. Contractor also shall retain all rights in and to all works of authorship fixed in a tangible medium of expression which were made, created or acquired by Contractor prior to the effective date of this Agreement ("Pre-Existing Works"), provided that a listing of such Pre-Existing Works is attached to this Agreement.

5.07 Insurance. Contractor shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect it and MPO from the claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

- 1) Claims under Worker's Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work;
- 2) Claims for damages because of bodily injury and personal injury, including death, and;
- 3) Claims for damages to property.

Contractor's insurance shall be not less than the amounts shown below:

A. Commercial General Liability (Occurrence Basis)

Bodily Injury, personal injury, property damage, Contractual liability, product/completed operations

Each Occurrence Limit	\$1,000,000.00
Damage to Rented Premises	\$100,000.00 (each occurrence)
Medical Expense Limit	\$5,000.00
Personal and Advertising Injury Limit	\$500,000.00
General Aggregate Limit	\$2,000,000.00 (Other than Products Completed Operations)

NOTE: GENERAL AGGREGATE TO APPLY PER PROJECT

Products/Completed Operations	\$1,000,000.00
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B. Auto Liability	\$1,000,000.00 (combined single limit) (owned, hired & non-owned)
C. Excess/Umbrella Liability	\$1,000,000.00 (each occurrence and aggregate)
D. Worker's Compensation	Statutory
E. Employer's Liability	
Bodily Injury Accident	\$100,000.00 each accident
Bodily Injury by Disease	\$100,000.00 each employee
Bodily Injury by Disease	\$500,000.00 policy limit
F. [Reserved for Professional Liability or additional riders as needed]	

5.07.1 Certificates of Insurance, naming the Indianapolis Metropolitan Planning Organization as an "additional insured," (A. B. and C. only) showing such coverage then in force (but not less than the amount shown above) shall be filed with MPO prior to commencement of any work. The coverages afforded under the policies shall not be cancelled or not renewed until at least thirty (30) days after written notice has been given to MPO. Upon cancellation, Contractor shall obtain a new insurance policy in accordance with Section 5.07 of this Agreement and send a copy of the new policy to the MPO.

5.07.2 With the prior approval of MPO, Contractor may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced. Contractor shall be responsible for all deductibles.

5.07.3 Nothing in the above provisions shall operate as or be construed as limiting the amount of liability of Contractor to the above enumerated amounts.

--OR--

Insurance. Pursuant to agreement from all parties, in light of the nature of this Agreement (i.e. personal and professional services) no insurance shall be required.

5.08 Termination for Cause or Convenience.

5.08.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed

work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then MPO may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Contractor shall be given (1) not less than ten (10) calendar days' written notice of MPO's intent to terminate, and (2) an opportunity for consultation with MPO prior to termination. In determining the amount of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by MPO to be incurred by reason of Contractor's default.

5.08.2 This Agreement may be terminated in whole or in part in writing by MPO for MPO's convenience; provided that Contractor is given (1) not less than ten (10) calendar days' written notice of intent to terminate and (2) an opportunity for consultation with MPO prior to termination. If MPO terminates for convenience, Contractor's compensation shall be equitably adjusted.

5.08.3 Upon receipt of notice of termination for default or for MPO's convenience, Contractor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to MPO all Works and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.

5.08.4 If, after termination for Contractor's default, it is determined that Contractor was not in default, the termination shall be deemed to have been made for the convenience of MPO. In such event, adjustment of the price provided for in this Agreement shall be made as provided in Section 5.08.2 and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

5.09 Termination for Failure of Funding. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by MPO are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then MPO shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. MPO agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

5.10 Indemnification. Contractor agrees to indemnify, defend, and hold harmless MPO and their respective officers, agents, officials and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission or breach of any provision of this



Agreement by Contractor or any of its officers, agents, employees or subcontractors regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder.

Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. MPO shall not provide such indemnification to Contractor, provided, however, that Contractor shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omissions of MPO.

- 5.11 MPO Premises/Facility. Contractor agrees to take all action necessary while on MPO's premises to ensure that anyone performing work under this Agreement, shall not jeopardize, injure, threaten or in any way compromise the health, safety and/or well being of the person at MPO's facility, including, but not limited to its employees. In addition thereto, Contractor agrees to adhere to any and all applicable safety and procedure policies in place and used at MPO's facility. Contractor further agrees that any property situated on MPO's premises and owned by MPO, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by MPO personnel at any time with or without notice.
- 5.12 Notice. Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To Contractor:

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

To MPO:

Indianapolis Metropolitan  
Planning Organization  
200 East Washington St.  
Suite 2322  
Indianapolis, IN 46204

- 5.13 Disputes. Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with MPO. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and MPO may otherwise agree in writing. Should Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by MPO or Contractor as a result of such failure to proceed shall be borne by Contractor, and Contractor shall make no claim against MPO for such costs. MPO may withhold payments on disputed items pending resolution of the dispute.

- 5.14 Non-discrimination. Contractor and its officers, agents, employees, and subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- 5.15 Conflict of Interest. Contractor certifies and warrants to MPO that neither it nor any of its officers, agents, employees, or subcontractors who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with MPO.
- 5.16 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty MPO shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 5.17 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party’s reasonable control (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended except for payment obligations with respect to services already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- 5.18 Applicable Laws; Forum.
- 5.18.1 Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by MPO and Contractor to determine whether the provisions of the Agreement require formal modification.
- 5.18.2 This Agreement shall be construed in accordance with the laws of the State of Indiana. Contractor hereby expressly consents to the personal jurisdiction of the state and federal courts located in Marion County, Indiana

for any lawsuit filed there against Contractor by MPO arising from or related to this Agreement.

- 5.19 Waiver. MPO's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of MPO's rights or remedies.
- 5.20 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 5.21 Attorneys' Fees. Contractor shall be liable to MPO for reasonable attorneys' fees incurred by MPO in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.
- 5.22 Successors and Assigns. MPO and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of MPO. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of MPO.
- 5.23 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for Contractor represents that he/she has been duly authorized to execute agreements on behalf of Contractor and has obtained all necessary or applicable approval from the home office of Contractor to make this Agreement fully binding upon Contractor when his/her signature is affixed and accepted by MPO.
- 5.24 Debarment and Suspension.
- 5.24.1 Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement 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 Contractor.
- 5.24.2 Contractor certifies, by entering into this Agreement, that it does not engage in investment activities in Iran as more particularly described in IC 5-22-16.5.

5.24.3 Contractor shall provide immediate written notice to MPO if, at any time after entering into this Agreement, Contractor learns that its certifications were erroneous when submitted, or Contractor is debarred, suspended, proposed for debarment, declared ineligible, has been included on a list or received notice of intent to include on a list created pursuant to IC 5-22-16.5, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.

5.24.4 Contractor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.

5.25 Compliance With E-Verify Program. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program ("Program"). Contractor is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

5.25.1 Contractor and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Contractor or its subcontractor subsequently learns is an unauthorized alien. If Contractor violates this Section 5.24, MPO shall require Contractor to remedy the violation not later than thirty (30) days after MPO notifies Contractor. If Contractor fails to remedy the violation within the thirty (30) day period, MPO shall terminate the contract for breach of contract.

If MPO terminates the contract, Contractor shall, in addition to any other contractual remedies, be liable to MPO for actual damages. There is a rebuttable presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status of the employee through the Program.

5.25.2 If Contractor employs or contracts with an unauthorized alien but MPO determines that terminating the contract would be detrimental to the public interest or public property, MPO may allow the contract to remain in effect until MPO procures a new contractor.

5.25.3 Contractor shall, prior to performing any work, require each subcontractor to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Contractor determines that a subcontractor is in violation of this Section 5.23, Contractor may terminate its contract with the subcontractor for such violation.

5.25.4 Pursuant to IC 22-5-1.7 a fully executed affidavit affirming that the business entity does not knowingly employ an unauthorized alien and confirming

Contractor's enrollment in the Program, unless the Program no longer exists, shall be filed with MPO prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with MPO.

- 5.26 Key Persons. The parties agree that the work described in this Agreement to be performed by Contractor is a personal service, highly professional in nature, and that the identity of the individual who is to be personally responsible for such work is of prime importance to MPO. The parties therefore agree that in the event of the death or disability of Contractor, or, if Contractor is a firm, partnership, or corporation, in the event of the death, or disability or termination of employment of anyone understood to be personally responsible for the work described in this Agreement, MPO may, without penalty and in its discretion, terminate this Agreement, and make its own new Agreement with any other party for completion of the work herein described.
- 5.27 Electronic Signature. Contractor and MPO agree to signature both in counterparts and by facsimile.
- 5.28 Method of Payment. Contractor shall submit invoices and accept invoice payments as prescribed by MPO in its sole option and discretion. All invoices shall be submitted via the MPO invoice portal. MPO will not be responsible for any card fees or other bank charges incurred by the Contractor.
- 5.29 Additional Information upon Request. The Contractor shall, upon request of MPO, make available its policies, practices and standards for the hiring of applicants, except as prohibited under IC 22-2-17-3, to the extent such information is related to the provision of services under this Agreement.
- 5.30 Wage Theft/Payroll Fraud. The Contractor shall report, and shall require its subcontractors to report, all complaints or adverse determinations of Wage Theft or Payroll Fraud against the Contractor or its subcontractors to MPO within thirty (30) days of notification of the complaint or adverse determination. If an adverse decision is rendered against the Contractor with respect to services provided to MPO, MPO may terminate this Agreement, reduce the incentives or subsidies to be provided under this Agreement, or seek other remedies. Contractor shall provide a sworn statement on whether the Contractor had any adverse determinations rendered against the Contractor within the preceding three (3) years.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

**XXXXXXXXXX** ("Contractor")

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

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

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

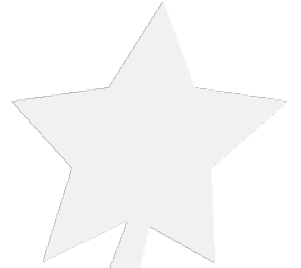
Title: \_\_\_\_\_

**THE INDIANAPOLIS METROPOLITAN PLANNING ORGANIZATION ("MPO")**

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

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

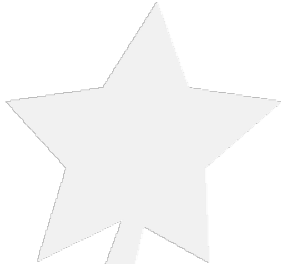
**XXXXXX, XXXXXX**



## ATTACHMENT A: SCOPE OF SERVICES

In accordance with the terms and conditions of the attached Professional Services Agreement (hereinafter "Agreement") by and between the **Indianapolis Metropolitan Planning Organization** (hereinafter "MPO") and **XXXXXXX** (hereinafter "Contractor"), Contractor shall do, perform, and carry out in a good and professional manner the following services:

**ATTACHMENT B: PRICING**





**AFFIDAVIT**

E-Verify. Pursuant to Indiana Code 22-5-1.7-11, the Contractor entering into a contract with MPO is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the MPO, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): \_\_\_\_\_

By (Written Signature):  
\_\_\_\_\_

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

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

**Important - Notary Signature and Seal Required in the Space Below**

STATE OF \_\_\_\_\_

SS:

COUNTY OF \_\_\_\_\_

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

My commission expires: \_\_\_\_\_ (Signed) \_\_\_\_\_

Residing in \_\_\_\_\_ County, State of \_\_\_\_\_

4820-0297-2349v6

