

Request for Qualifications for

Professional Services for

Legal Services

Indianapolis Metropolitan Planning Organization

Release Date

Tuesday, January 8, 2019

Pre-Bid Conference Call (Q&A)

Wednesday, January 16, 2019, 10:00 – 11:00 a.m. EST

317.327.0300

(If you do not connect on the first try, attempt again - multiple attempts are sometimes required)

Responses Due

Friday, January 25, 2019, 3:00 p.m. EST

All responses must be addressed and returned to:

Taylor Firestine

[Indianapolis Metropolitan Planning Organization](#)

200 East Washington Street – Suite 2322

Indianapolis, Indiana 46204

317.327.3574

taylor.firestine@indympo.org



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01 RFQ / Selection Schedule

1/8/19	<i>RFQ Released</i>
1/16/19	<i>Pre-Bid Conference Call 10:00 to 11:00 am - 317.327.0300</i>
1/25/19	<i>Qualifications Packages due by 3:00 p.m. EST</i>
2/7-2/8/19	<i>Shortlist Interviews*</i>

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

1. Issue RFQ
2. Receive RFQ qualifications packages
3. Review RFQ qualifications with selection committee
4. Interview shortlisted respondents as necessary*
5. Submit selected vendor and project budget to Metropolitan Development Commission of Marion County (MDC) for approval during public hearing
6. Contracting process (takes 6 to 12 weeks to finalize contract and issue purchase order)
7. All bidders will be notified only after contracts are signed

**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 (Indianapolis MPO) 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 MPO 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 MPO's staff currently consists of 15 positions in 4 sections, with plans to add 2 more positions within five years.

The Indianapolis Regional Transportation Council (IRTC) Policy Committee is the governing body of the MPO. The IRTC Policy Committee contains the chief elected official, or their appointee, from dues-paying MPO 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 IRTC Technical Committee provides technical advice to the IRTC Policy Committee and is comprised of technical experts from the Central Indiana member agencies.

(view 2.5 minute "What is the MPO" video at indympo.org/who-we-are/about-the-mpo)

03 Context

The Indianapolis Regional Transportation Council's (IRTC) Policy Committee voted unanimously to adopt the MPO Strategic Plan, which details a 3-step growth process for the MPO:

1. Administratively separate from the City of Indianapolis and become an independent regional organization;
2. Expand formal MPO services from a strict focus on transportation to a broader set of services in the areas of land use planning, housing, water planning, and regional economic development, following a "convene, inform, plan, and fund" model of services; and
3. Work with State and regional partners to identify and enable the appropriate regional structure through State legislation.

The MPO has already received a letter redesignating the MPO Policy Committee as Central Indiana's MPO on June 1, 2020, so separating from the City and setting up a stand-alone organization is the most pressing task for the next 18 months.

The MPO will establish a set of internally-led, externally-supported teams to evaluate options and make recommendations about how to form the new organization. The internal team leaders will meet every other week through March 2019, with external advisors brought in as necessary. Internal team leads are not expected to become subject matter experts or sole decision-makers. Instead, they will serve as project managers, tasked with diving deep with the consultant in each topic, documenting the questions

that arise, and keeping the process moving at a relatively brisk pace. The final recommendations will be well-vetted, and will be presented to the MPO's Administrative Committee throughout 2019 and 2020.

04 Work Elements

Project Schedule

- The anticipated start date for the contract will be March 18, 2019.
- The MPO's official redesignation is June 1, 2020.
- The contract will expire on December 31, 2020.

Suggested Tasks

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

Section 1.0 Project Overview

This Request for Proposal is designed to solicit legal representation for Indianapolis Metropolitan Planning Organization (MPO) in broad areas of practice. Upon completion of this process, it is anticipated that the selected law firms or practitioners will execute formal contracts with City of Indianapolis/MPO for legal services. When a case or matter arises, the in-house counsel will refer the case or matter to the appropriate firm or practitioner.

Section 1.1 History of the Service

Since its inception, the Indianapolis Metropolitan Planning Organization has been hosted within the City of Indianapolis. As of June 1, 2020, the organization will become its own quasi-governmental agency. Currently, the organization intends to continue to look to the City of Indianapolis counsel to provide daily operations (contracts) through 6/1/2020; however, additional outside legal assistance will be needed to transition the organization to a freestanding government agency.

Section 1.2 Scope of Work

Description of Work:

The Indianapolis MPO is seeking the highest quality, most professional legal representation available. While the legal matters that MPO can be involved with are diverse, the legal work can be categorized into essentially five broad areas of practice.

Selected counsel will be required to perform certain tasks as part of the terms and conditions of the contract. These requirements will include, but not necessarily be limited to:

I. General Corporate, Organizational Creation and Advice

As a new governmental organization, there are several key documents and processes we will need assistance in creating. They include but are not limited to: procurement policies, taxation status, boilerplate contracts, articles of incorporation, bylaws, insurance and indemnification matters, interpretation of and compliance with Federal and State law, etc.

This area may involve advice and litigation regarding any business or corporate issue, assistance with breach of contract with vendors, including regulatory compliance issues involving State or Federal law other than those designated in other legal service areas (i.e., labor and employment, environmental).

II. Personal Injury

This area includes the defense of the Indianapolis Metropolitan Planning Organization and its employees in tort actions relating to the operation of vehicles, including bodily injury and property damage claims, and may include workers compensation claims.

III. Labor and Employment Law

The MPO will be hiring a Human Resource professional to assist with development of the organization's new HR manual. Firm may be asked to review final product or advise on a few policies. Firm could be required to assist during hiring process, termination and/or unemployment hearings.

IV. Environmental Law

This area will involve State regulatory litigation concerning land, groundwater and air quality issues as it relates to transportation projects funded by the MPO.

V. Miscellaneous

This area may involve several practice specialties that historically have been either non-recurring isolated matters or smaller projects. This could include, but not be limited to, financial operations and collections, real estate, taxation, intellectual property and pension law. Services may include advice, litigation and negotiations.

05 Response Requirements

Consultants must submit a digital copy of their response; no paper copies are required. 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 p.m. EST on Friday, January 25, 2019**. All digital responses must be sent via

email to the attention of Taylor Firestine at taylor.firestine@indympo.org and should read "Legal Services RFQ" 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.**

At a minimum, 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 RFQ packet and include:

- General Information
- Qualifications Statement
- Project Manager and Key Staff Information
- References

Cover Letter: (1-3 pages)

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

- Include information on lead and any sub-consultants on the team. Denote the project manager or primary point of contact. 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.
- 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.
- 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 MPO experience is encouraged, **but do not include Indianapolis MPO references.**

Resumes: (1 pager per person, no max)



- Denote the project manager. Provide a detailed resume, job description, 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 job descriptions and qualifications of each employee, as well as expected roles and responsibilities for this project.
- Firms that are Disadvantaged Business Enterprises (DBE; Minority, Women's or Veteran Business Enterprises) should be identified in the organization chart. Certification of business status is required with the City of Indianapolis. **DBE goals will be established prior to contract execution. DBE participation is strongly encouraged.** The INDOT DBE goal for this project is 0%. However, lead consultants are strongly encouraged to meet the City of Indianapolis MBE/WBE/VBE/DOBE goals of 15%/8%/3%/1% respectively. Lead consultants shall include with their response the listing and percentage breakdown of MBE/WBE/VBE/DOBE subcontractors, if applicable.
- Project team credentials will be subject to verification.

Signed Questions Addendum Form:

Written questions will be accepted and directed to Taylor Firestine (taylor.firestine@indympo.org) until the Pre-Bid Conference Call at **10:00 a.m. EST on Wednesday, January 16, 2019 (317.327.0300)**. All written questions will remain anonymous. Verbal questions will also be accepted and answered on the Pre-Bid Conference Call. The Questions Addendum Form with answers to all questions – written and verbal – will be posted on the Indianapolis MPO website (<http://www.indympo.org/how-we-work/contract-opportunities>) after the Pre-Bid Conference Call. **The 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.

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 RFQ evaluation criteria.

Project Approach: (40 Points)

- Points awarded based upon the description of approach in the cover letter, as submitted according to Section 05 Response Requirements.
- Response demonstrates a well-thought-out process and an understanding of the key decisions, timing, and common obstacles this process could encounter.

Project Team & Experience: (60 Points)



- Points awarded based upon the experience listed in the cover letter and in individual bios as submitted according to Section 05 Response Requirements.
- Response demonstrates a capable, experienced professional or team of professionals.

References: (required)

- Points awarded based upon “References” as submitted according to Section 05 Response Requirements (Form C).

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 RFQ can be found at: <http://www.indympo.org/how-we-work/contract-opportunities>

All consultants shall abide by the Federal Fiscal Year 2016/2017 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 City of Indianapolis.

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 MPO and its planning partners.

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 City of Indianapolis/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 City of Indianapolis/Metropolitan Planning Organization.

Taxes:

The City of Indianapolis/ 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 City of Indianapolis/Indianapolis Metropolitan Planning Organization, and shall recognize that they are not an employee or officer of the City.

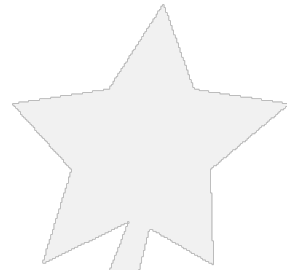
Contract Required:

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)
- Disadvantaged Business Enterprise (DBE)
- Veterans Business Enterprise (VBE)

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 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.

Please attach the following items:

A brief history of the vendor. A current company brochure may be submitted, if available. The history should outline the vendor's familiarity with the planning activity(s) and the planning area(s).



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 (1-3 pages)
2. Resumes (1 page per person, no max)
3. Signed Questions Addendum



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 #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 #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.



**Attachment B:
Sample Contract**



Federal Grant Contract
Highway Planning & Construction
CFDA# 20.205

AGREEMENT BETWEEN
THE DEPARTMENT OF METROPOLITAN DEVELOPMENT
OF THE CITY OF INDIANAPOLIS
AND

CONSULTANT NAME

TO PERFORM CONTRACT NAME/DESCRIPTION

THIS AGREEMENT, made and entered into this ___ day of __ ____, 2017 by and between the Department of Metropolitan Development of the City of Indianapolis, Indiana (hereinafter referred to as the "Planning Agency" or "City") and **Consultant Name, located at ADDRESS, City, State Zip,** hereinafter referred to as the "Consultant");

WITNESSETH THAT:

WHEREAS, the Department of Metropolitan Development through its Division of Metropolitan Planning Organization is engaged in transportation planning for the Indianapolis urbanized area and, as staff to the Metropolitan Planning Organization (MPO) is responsible for the continuing, cooperative, and comprehensive transportation program, including development of a regional transportation plan that actively involves data development in the planning process, and

WHEREAS, the 2017 Unified Planning Work Program specifies transportation planning activities that need to be completed for the **Indianapolis Metropolitan Planning Area as required by the Fixing America's Surface Transportation Act, (FAST Act);** and

WHEREAS, federal transportation planning funds will be utilized to pay for these professional services; and

WHEREAS, federal transportation funds have been made available to the Department of Metropolitan Development, Division of Metropolitan Planning Organization from the U.S. Department of Transportation, Federal Highway Administration; and

WHEREAS, **the federal transportation funds will be matched by local funds;**

NOW THEREFORE, the parties hereto do mutually agree as follows:



SECTION I. Interpretation and Intent

- A. The "Agreement", as referred to herein, shall mean this Agreement executed by Planning Agency and Consultant, and shall include these Terms and Conditions, the Attachments described in Sections II and IV and attached hereto, all addenda issued prior to receipt of RFPs, quotes, or bids, whether or not receipt thereof has been acknowledged by Consultant, all conditions, plans, specifications and standards, instructions and notice to vendors, and any written supplemental agreement or modification entered into between Planning Agency and Consultant, in writing, after the date of this Agreement.
- B. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between Planning Agency and Consultant. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by Planning Agency or Consultant 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 Planning Agency and Consultant.
- C. In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Consultant or other rights or obligations of Planning Agency or Consultant the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Consultant and affording the greater right or remedy to Planning Agency, shall govern.
- D. 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 Planning Agency solely by virtue of Planning Agency or Planning Agency's representatives having drafted all or any portion of this Agreement.
- E. 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.

SECTION II Services to be Performed by the Consultant

All work to be performed by the Consultant will be in accordance with the scope of services outlined in Attachment D, attached to this Agreement, and made an integral part hereof.

SECTION III Compensation

The Consultant shall receive payment for the work performed under this Agreement as outlined in Attachment B. Total payment is not to exceed **\$XX,XXX.XX** as authorized by Metropolitan

Development Commission Resolution 2017-MPO-XXX attached to this Agreement as Attachment A, and made an integral part hereof.

SECTION IV Duration of Agreement

The term of the agreement will begin on execution of this Agreement and will continue through MONTH, DAY, YEAR. The Director of the Planning Agency, 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 Consultant's compensation or which, in the judgment of the Director, substantially changes the scope of the work or any extension beyond the six (6) month period allowed herein must be approved by the Metropolitan Development Commission of Marion County, Indiana.

SECTION V Renewal of Agreement

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 Planning Agency and Consultant and attached hereto as an amendment. All other terms and conditions of the Agreement shall remain the same as set forth herein.

SECTION VI General Provisions

- A. Independent Contractor. The parties agree that Consultant is an independent contractor as that term is commonly used and is not an employee of the Planning Agency, City or Consolidated City of Indianapolis and/or Marion County. As such, Consultant is solely responsible for all taxes and none shall be withheld from the sums paid to Consultant. Consultant acknowledges that it is not insured in any manner by Planning Agency or City for any loss of any kind whatsoever. Consultant has no authority, express or implied, to bind or obligate Planning Agency or City of Indianapolis in any way.

- B. Confidentiality. 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. Consultant understands that the information provided to it or obtained from Planning Agency during the performance of its services is confidential and may not, without prior written consent of Planning Agency, be disclosed to a person not in Planning Agency's employ except to employees or agents of Consultant who have a need to know in order to provide the services. Further, Consultant's work product generated during the performance of this Agreement is confidential to Planning Agency. 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: (i) was known by Consultant at the time it was received; (ii) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Consultant; (iii) is made known to Consultant by a third person who does not impose any

obligation of confidence on Consultant with respect to such information; (iv) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order whereupon Consultant shall provide notice to Planning Agency prior to such disclosure; or (v) information that is independently developed by Consultant without references to the confidential information.

Consultant shall not, under any circumstances, release information provided to it by, or on behalf of, Planning Agency that is required to be kept confidential by Planning Agency pursuant to Indiana law except as contemplated by Section (v), above.

- C. **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 Consultant:	To Planning Agency:
CONSULTANT LEGAL NAME	Indps. Metropolitan Planning Org.
STREET ADDRESS	200 E. Washington St. Ste. 2322
CITY, STATE ZIP	Indianapolis, IN 46204

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

F. Applicable Laws; Forum.

(i) Consultant 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 Planning Agency and Consultant to determine whether the provisions of the Agreement require formal modification.

(ii) This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the Consolidated City of Indianapolis, County of Marion. Suit, if any, shall be brought in the State of Indiana, County of Marion.

G. Waiver. Planning Agency'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 Planning Agency's rights or remedies.

H. 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.

I. Attorney's Fees. Consultant shall be liable to Planning Agency for reasonable attorneys' fees incurred by Planning Agency in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Consultant, or from Consultant's failure to fulfill any provisions or responsibility provided herein.

J. Authority to Bind Consultant. Notwithstanding anything in this Agreement to the contrary, the signatory for Consultant represents that he/she has been duly authorized to execute agreements on behalf of Consultant and has obtained all necessary or applicable approval from the home office of Consultant to make this Agreement fully binding upon Consultant when his/her signature is affixed and accepted by Planning Agency.

K. Key Persons. The parties agree that the work described in this Agreement to be performed by Consultant 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 Planning Agency. The parties therefore agree that in the event of the death or disability of Consultant, or, if Consultant 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, Planning Agency 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.

- L. Post-Employment Restrictions. Consultant, providing supplies, real property, or services under this Agreement, certifies to Planning Agency that no employee, contract employee, or sub-contractor of Consultant:
- (i) Participated in any way in the solicitation, negotiation, or awarding of this Agreement while previously employed by an agency of the City of Indianapolis or Marion County for a period of one (1) year prior to the execution of this Agreement;
 - (ii) For a period of one (1) year after such employee ceased supervising the administration or performance of this Agreement on behalf of an agency of the City of Indianapolis or Marion County, shall perform any functions on behalf of Consultant under this Agreement with respect to the City, unless the employee's former agency has consented to the employee's performance for Consultant in writing;
 - (iii) Has violated any provision of Chapter 293 of the Revised Code of the Consolidated City of Indianapolis and Marion County, regarding the solicitation, negotiation, awarding, or performance of this Agreement;
 - (iv) Is currently an official or deputy mayor of, or has appointing authority to, any agency of the City of Indianapolis or Marion County; and
 - (v) Was previously employed by the City of Indianapolis or Marion County within one (1) year of this Agreement and currently has the performance of lobbying activity (as that term is defined in Section 909-101 of the Revised Code of the Consolidated City of Indianapolis and Marion County) related to an agency or an official as a responsibility of his or her employment or contractual relationship with Consultant.

Violation of this certification shall constitute a material breach of this Agreement and, upon such a violation, Planning Agency may terminate this Agreement. In addition, upon a violation of this certification, Planning Agency shall report such violation to the Office of Corporation Counsel who may, at its discretion, debar Consultant from eligibility for future City and/or county purchasing, bids, contracts, and/or projects.

- M. Ban the Box. Consultant acknowledges Sections 670-101 to 670-108 of the Revised Code of the Consolidated City of Indianapolis and Marion County and will make available its policies, practices and standards for the hiring of applicants with prior criminal convictions upon the City's request.

- N. Wage Theft/Payroll Fraud. The Consultant shall report, and shall require its subcontractors to report, all complaints or adverse determinations of Wage Theft or Payroll Fraud against the Consultant or its subcontractors to the City's Office of Finance and Management within thirty (30) days of notification of the complaint or adverse determination. If an adverse decision is rendered against the Consultant with respect to services provided to the City, the City may terminate this Agreement, reduce the incentives or subsidies to be provided under this Agreement, or seek other remedies. Consultant shall provide a sworn statement on whether the Consultant had any adverse determinations rendered against the Consultant within the preceding three (3) years.

SECTION VII Subcontracting and Assignment of Agreement

The Consultant agrees to perform the work within its organization except for specialized service. No portion of the Agreement shall be subcontracted, assigned, or otherwise disposed of without the consent of the Planning Agency. The consent to subcontract, assign, or otherwise dispose of any portion of the Agreement shall not be construed to relieve the Consultant of any responsibility for the fulfillment of the Agreement.

SECTION VIII Employment

Attachment C, covering City, State and U.S. Department of Transportation Regulations on Nondiscrimination and attached to this Agreement is to be considered an integral part hereof and is to be complied with by the Consultant on this study.

- A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Planning Agency 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 fee, commission, percentage, brokerage fee, gift, or contingent fee.
- B. Consultant 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.
- C. In connection with the performance of this Agreement, the Consultant will cooperate with the City in meeting its commitments and goals with regard to the maximum utilization of

disadvantaged business enterprises, and will use its best effort to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for sub-contract work under this contract.

SECTION IX Disadvantaged Business Enterprise Program

A. General

1. Notice is hereby given to the Consultant or subcontractor that failure to carry out the requirements set forth in 49 CFR, Part 26 shall constitute a breach of contract and, after notification, may result in termination of the contract or such remedy as the Planning Agency deems appropriate.

2. The referenced section requires the following policy and Disadvantaged Business Enterprise (DBE) obligation to be included in all subsequent agreements between the Consultant and any subcontractor:

a. It is the policy of the Indiana Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of the 49 CFR, Part 26, apply to this contract.

b. The Consultant agrees to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard, the Consultant shall take all necessary and reasonable steps, in accordance with 49 CFR, Part 26, to ensure that Disadvantaged Businesses Enterprises have the maximum opportunity to compete for, and perform contracts. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of federally assisted contracts.

3. As part of the Consultant's equal opportunity affirmative action program it is required that the Consultant shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize Disadvantaged Business Enterprise subcontractors, vendors or suppliers.

4. Failure to carry out these requirements shall constitute a breach of contract and, after notification by the Planning Agency, may result in termination of the Agreement by the Planning Agency or such remedy as the Planning Agency deems appropriate.

B. Definitions

The following definitions apply to this section:

1. "Disadvantaged Business Enterprise" means a small Business Concern: (a) which is at least 51 percent owned by one or more Socially and Economically Disadvantaged Individuals, or, in the case of any publicly owned Business, at least 51 percent of the stock of which is owned by one or more Socially and Economically Disadvantaged Individuals; and (b) whose management and daily Business operations are controlled by one or more of the Socially and Economically Disadvantaged Individuals who own it.

2. "Small Business Concern" means a small Business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

3. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

4. "Women Business Enterprises" means a small Business concern: (a) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned Business, at least 51 percent of the stock of which is owned by one or more women; and (b) whose management and daily operations are controlled by one or more of the women who own it.

5. Women Business Enterprises (WBE) are included in the INDOT Disadvantaged Business Enterprise Program. However, WBE's are not to be considered and may not be utilized to comply with Disadvantaged Business Enterprise (DBE) requirements unless the woman or women are Socially and Economically Disadvantaged Individuals.

C. Subcontracts

1. If the Consultant intends to subcontract a portion of the work, the Consultant is required to take affirmative actions to seek out and consider Disadvantaged Business Enterprises as potential subcontractors prior to any subcontractual commitment.
2. The contacts made with potential Disadvantaged Business Enterprise subcontractors and the results thereof shall be documented and made available to the Planning Agency and the FHWA when requested.
3. In those cases where the Consultant originally did not intend to subcontract a portion of the work and later circumstances dictate subletting a portion of the contract work, the affirmative action contacts covered under paragraph C.1. and C.2. of this Section shall be performed.
4. Approval required. The parties agree that Consultant shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of Planning Agency. In the event that Planning Agency approves of any such subcontracting, assignment or delegation, Consultant shall remain solely responsible for

managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. Planning Agency shall have no obligation whatsoever toward such persons. Consultant 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 Consultant of any responsibility for performing under this Agreement.

Violation of this Subsection shall constitute a breach of this Agreement.

D. Affirmative Action

The Consultant agrees to establish and conduct a program which will enable Disadvantaged and Women Business Enterprises to be considered fairly as subcontractors and suppliers under this contract. In this connection the Consultant shall:

1. Designate a liaison officer who will administer the Consultant's Disadvantaged Business Enterprise program.
2. Ensure that unknown Disadvantaged and Women Business Enterprises will have an equitable opportunity to compete for subcontracts, so as to facilitate the participation of disadvantaged and Women Business Enterprises.
3. Maintain records showing (1) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of Disadvantaged and Women Business Enterprises, (2) awards to top Disadvantaged and Women Business Enterprises on the source list, and (3) specific efforts to identify and award contracts to Disadvantaged and Women Business Enterprises.
4. Cooperate with the Planning Agency in any studies and surveys of the Consultant's Disadvantaged Business Enterprise procedures and practices that the Planning Agency may from time to time conduct.
5. Submit periodic reports of subcontracting to known Disadvantaged and Women Business Enterprise with respect to the records referred to in Subparagraph (3) above, in such form and manner and at such items as the Planning Agency may prescribe.

E. Leases and Rentals

The Consultant shall notify the INDOT when purchases or rental of equipment (other than leases of hauling) are made with Disadvantaged or Women Business Enterprises. The information submitted shall include the name of Business, the dollar amount of the transaction, and the type of purchase made or type of equipment rented.

- F. Unless otherwise specified in this Agreement, the DBE program developed by the Planning Agency and approved by the Federal Highway Administration applies to this project.

SECTION X Compliance with Laws

A. The Consultant shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Consultant to determine whether the provisions of this Contract require formal modification.

B. The Consultant and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 et seq., IC § 4-2-7, et. seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Consultant is not familiar with these ethical requirements, the Consultant should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Consultant or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Consultant. In addition, the Consultant may be subject to penalties under IC §§ 4-2-6 and 4-2-7.

C. The Consultant certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Consultant agrees that any payments currently due to the State may be withheld from payments due to the Consultant. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Consultant is current in its payments and has submitted proof of such payment to the State.

D. The Consultant 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 the State of any such actions. During the term of such actions, the Consultant agrees that the State 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 Consultant's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Consultant, the Consultant may request that it be allowed to continue, or receive work, without delay. The Consultant 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.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC § 5-17-5.

G. The Consultant warrants that the Consultant and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, as well as comply with all

health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

H. The Consultant affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

I. As required by IC 5-22-3-7:

(1) the Consultant and any principals of the Consultant certify that (A) the Consultant, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Consultant will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Consultant and any principals of the Consultant certify that an affiliate or principal of the Consultant and any agent acting on behalf of the Consultant or on behalf of an affiliate or principal of the Consultant (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

SECTION XI Conflict of Interest

- A. Consultant certifies and warrants to Planning Agency that neither it nor any of its officers, agents, employees, or subcontractors will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City or Planning Agency.
- B. For Purposes of compliance with IC 36-1-21, Consultant certifies and warrants to Planning Agency that Consultant, or a person who wholly or partially owns Consultant, is not a *relative*, as that term is defined by IC 36-1-21-3, of either the Mayor of Indianapolis, Indiana, or a member of the City-County Council of Indianapolis and Marion County, Indiana.
- C. Consultant 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.

SECTION XII Debarment and Suspension

- A. Consultant 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 the Consultant.

- B. Consultant 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.
- C. Consultant shall provide immediate written notice to Planning Agency if, at any time after entering into this Agreement, Consultant learns that its certifications were erroneous when submitted, or Consultant 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.

SECTION XIII: Compliance With E-Verify Program

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

- A. Consultant and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Consultant or its subcontractor subsequently learns is an unauthorized alien. If Consultant violates this Section, Planning Agency shall require Consultant to remedy the violation not later than thirty (30) days after Planning Agency notifies Consultant. If Consultant fails to remedy the violation within the thirty (30) day period, Planning Agency shall terminate the contract for breach of contract. If Planning Agency terminates the contract, Consultant shall, in addition to any other contractual remedies, be liable to Planning Agency for actual damages. There is a rebuttable presumption that Consultant did not knowingly employ an unauthorized alien if Consultant verified the work eligibility status of the employee through the Program.
- B. If Consultant employs or contracts with an unauthorized alien but Planning Agency determines that terminating the contract would be detrimental to the public interest or public property, Planning Agency may allow the contract to remain in effect until Planning Agency procures a new Consultant.
- C. Consultant shall, prior to performing any work, require each subcontractor to certify to Consultant that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Consultant shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Consultant determines that a subcontractor is in violation of this Section, Consultant may terminate its contract with the subcontractor for such violation.

- D. 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 Consultants enrollment in the Program, unless the Program no longer exists, shall be filed with Planning Agency prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with the Planning Agency.

SECTION XIV Responsibility for Claims and Liabilities

The Consultant shall be responsible for all damages to life and property due to negligence of the Consultant, its subcontractors, agents, or employees, while carrying out the activities under this Agreement, and shall be responsible for all parts of the work, both temporary and permanent, until the services under the agreement are declared accepted by the Planning Agency. It is expressly understood that the Consultant shall indemnify, defend, and hold harmless the Planning Agency, the City of Indianapolis, and the Metropolitan Development Commission, the INDOT and their officers, agents, officials, and employees from any and all third party claims, suits, actions, damages, judgments and liens and costs of every name and description to the extent they arise out of any negligent or wrongful act or omission by Consultant 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. The City shall not provide such indemnification to the Consultant, provided, however, that the Consultant shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omission of the Planning Agency.

SECTION XV Insurance

Consultant shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect it and City from the claims set forth below which may arise out of or result from Consultant's operations under this Agreement, whether such operations be by Consultant 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.

Consultant'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

B. Auto Liability \$1,000,000.00
(combined single limit)
(owned, hired & non-owned)

Bodily injury & property damage \$1,000,000.00
each accident

C. Excess/Umbrella Liability \$1,000,000
(each occurrence and aggregate)

D. Worker's Compensation Statutory

E. Employer's Liability

Bodily Injury Accident \$100,000
each accident

Bodily Injury by Disease \$100,000
each employee

Bodily Injury by Disease \$500,000
policy limit

F. [Reserved for Professional Liability or additional riders as needed]

Certificates of Insurance, naming the City of Indianapolis 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 Planning Agency prior to commencement of any work. These certificates shall contain a provision that the policies and the coverage afforded

will not be canceled until at least thirty (30) days after written notice has been given to Planning Agency.

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

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

SECTION XVI Delays and Extensions

Delays or hindrances beyond the control of the Consultant shall be compensated for by an extension of time for such reasonable period as may be mutually agreed upon between the parties; it being understood, however, that the permitting of the Consultant to proceed to complete any services or any part of them after the date to which the time of completion may have been extended shall in no way operate as a waiver on the part of the Planning Agency of any of its rights herein.

SECTION XVII Termination and Abandonment

A. Termination for Cause or Convenience.

(i) If Consultant 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 Planning Agency may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Consultant shall be given (1) not less than ten (10) calendar days' written notice of Planning Agency's intent to terminate, and (2) an opportunity for consultation with Planning Agency prior to termination. In determining the amount of final payment to be made to Consultant 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 Planning Agency to be incurred by reason of Consultant's default.

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

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

B. Termination for Failure of Funding. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by Planning Agency are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then Planning Agency 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. Planning Agency 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.

C. Abandonment. If the Planning Agency shall abandon the services herein mentioned, the Consultant shall deliver to the Planning Agency all documents, including tracings, drawings, reports, computations, computer programs, and data processing output, as instruments of services and they shall become the property of the Planning Agency. The earned value of the work performed shall be based upon an audit of the portions of the total services as have been rendered by the Consultant to the date of the abandonment. The payment made to the Consultant shall be paid as final payment in full settlement of all services rendered hereunder.

(i) If at any time the Consultant shall abandon or delay the operation and completion of plans beyond the dates mutually agreed upon by the Planning agency and the Consultant, the Planning Agency may give written notice, as herein provided, of such delay or abandonment and, if the Consultant shall not, within twenty (20) calendar days thereafter, have complied with the requirements of this Agreement then the Planning Agency shall have the power to terminate this Agreement by a second written notice, either mailed or personally delivered. Upon the mailing or delivery of such second notice, this Agreement shall cease and terminate and the Planning Agency may by any method it deems to be necessary designate and employ other Consultants by contract or otherwise, to perform and complete the services herein described.

(ii) In case the Planning Agency shall act under the last preceding paragraph, then and in such event, all documents, including tracings, drawings, reports, computations, computer programs, and data processing output, as instruments of services pertaining to the project, prepared under the terms or in fulfillment of this Agreement, shall be delivered within twenty (20) days to the Planning Agency. In the event of the failure by the

Consultant to make delivery upon demand, the Consultant shall pay to the Planning Agency any damage it may sustain by reason thereof.

(iii) In the event of termination under this article, Consultant shall be compensated for services properly rendered and non-cancellable commitments incurred prior to the effective date of termination. Planning Agency will not be liable for services performed after the effective date of termination.

(iv) If, after termination for Consultant's default, it is determined that Consultant was not in default, the termination shall be deemed to have been made for the convenience of Planning Agency. In such event, adjustment of the price provided for in this Agreement shall be made as provided in Subsection A(2)(ii) above and the recovery of such price adjustment shall be Consultant's sole remedy and recovery.

D. Necessary Approvals. The Planning Agency may terminate this Agreement, if, for the current fiscal year, the Planning Agency does not have each of the following: (1) approved annual HPR/PL work program, (2) approved unified work program, and (3) valid MPO-State agreement for Transportation planning.

SECTION XV III Ownership of Documents and Publications Provisions

All documents, including tracings, drawings, reports, computations, computer programs, and data processing output, as instruments of services, are to be the joint property of the INDOT and the Planning Agency. During the performance of the services provided for herein the Consultant shall be responsible for any loss or damage to the documents, herein enumerated, including information furnished by the Planning Agency to the Consultant. The Planning Agency and the INDOT shall have the right to review and inspect the Consultant's activities at any time. The Planning Agency, the INDOT and the Federal Highway Administration reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, the work for government purposes.

Consultant acknowledges that Planning Agency will not treat this Agreement as confidential information and will post the Agreement on the City's website as required by Section 141-105 of the Revised Code of the Consolidated City of Indianapolis and Marion County. Use by the public of any document or the information contained therein, shall not be considered an act of City.

SECTION XIX Successors and Assigns

The Planning Agency, insofar as authorized by law, binds itself and its successors, and the Consultant binds his successors, executors, administrators, and assigns, to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, as the case may be insofar as authorized by law, in respect to all covenants of this Agreement. Except

as above set forth, neither the Planning Agency nor the Consultant shall assign, sublet, or transfer its or his interest in this Agreement without consent of the other.

SECTION XX Access to Records

The Consultant shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred and shall make such materials available at its respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment to this Consultant. The costs principles contained in 48 CFR Subpart 31.2 shall be adhered to for work under this Agreement. Such materials are to be available for inspection by any authorized representatives of the INDOT, the Planning Agency, or the Federal Government and copies thereof shall be furnished if requested.

SECTION XXI Effective Date

This Agreement shall not be effective unless and until approved by the Planning Agency Attorney as to legality and form, and until the Agreement has been signed by the Indianapolis City Controller, the Planning Agency and the Consultant.

SECTION XXII Headings

The headings of this Agreement are used for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION XXIII Electronic Signature

This Agreement may be executed in any number of counterparts, each of which when executed and delivered (email sufficient) shall constitute a duplicate original, but all counterparts together shall constitute a single agreement. A signature may be delivered by facsimile transmission or by email of a “.pdf” format data file. Such signature shall create a valid and binding obligation on the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page was an original thereof.

SIGNATURE PAGE

DEPARTMENT OF METROPOLITAN DEVELOPMENT OF THE CITY OF INDIANAPOLIS, MARION COUNTY, INDIANA - (Planning Agency)

By: _____ Date: _____

Emily Mack
Director

Department of Metropolitan Development

CITY OF INDIANAPOLIS, INDIANA

Approved for availability of funding:

By: _____ Date: _____

Fady Qaddoura, City Controller
Consolidated City of Indianapolis and Marion County

_____ (Consultant) Date: _____

By: _____

Printed: _____

Title: _____

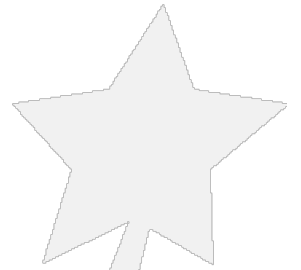
**APPROVED AS TO LEGAL FORM AND
LEGAL ADEQUACY THIS _____ DAY OF _____, 2017**

Christopher Steinmetz, Assistant Corporation Counsel



ATTACHMENT A

AUTHORIZING RESOLUTION



ATTACHMENT B

COMPENSATION

A. Amount of Payment

The CONSULTANT shall receive as payment for the work performed under this Agreement the total fee not to exceed \$XX,XXX.XX unless a modification of the Agreement is approved in writing by the Planning Agency.

B. Method of Payment

The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to:

City of Indianapolis
Department of Metropolitan Development
Division of Metropolitan Planning Organization
200 East Washington Street
City-County Building, Suite 2322
Indianapolis, Indiana 46204

The invoice voucher shall represent the value, to the Planning Agency, of the partially completed work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of activities and milestones, where applicable, percentage completed and prior payments.

Consultant shall accept invoice payments via City/County check, City/County Purchasing Card (Master Card) or Automated Clearing House (ACH) at the City's sole option and discretion. The City will not be responsible for any card fees or other bank charges incurred by the Consultant.

If the Planning Agency does not agree with the amount claimed by the CONSULTANT on an invoice voucher it will send the CONSULTANT a letter by regular mail listing the differences between actual and claimed progress. The Planning Agency will continue to process the invoice voucher as corrected by the Planning Agency.

ATTACHMENT C

NON-DISCRIMINATION

A. Pursuant to I.C. 22-9-1-10 and Chapter 581 of the Revised Code of the Consolidated City and County, the CONSULTANT and his subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, sexual orientation, gender identity, national origin, ancestry, age, disability, or United State military service veteran status. Breach of this covenant may be regarded as a material breach of the contract.

B. The CONSULTANT, and any agent of the CONSULTANT, in the performance of the work under this contract, shall comply with 42 U.S.C. 2000e, provided the CONSULTANT has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. 42 U.S.C. 2000e states in part that it shall be unlawful for the CONSULTANT to:

1. fail to refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, ancestry, age, disability, or United State military service veteran status, with breach of this section being regarded as a material breach of this Agreement; or

2. to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, national origin, ancestry, age, disability, or United State military service veteran status, with breach of this section being regarded as a material breach of this Agreement.

The CONSULTANT shall comply with 42 U.S.C. 2000e, the terms of which are incorporated herein and made a part of this contract. Breach of this covenant may be regarded as a material breach of contract.

C. The CONSULTANT agrees to comply with the Regulations of the Department of Transportation relative to non-discrimination in federally assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, effectuates 42 U.S.C. 2000e above, and is herein incorporated by reference and made a part of this contract. Pursuant to 49 CFR, Part 21, the CONSULTANT agrees as follows:

1. Nondiscrimination: The CONSULTANT, with regard to the work performed by it after award and prior to completion of the contract, work, will not discriminate on the grounds of race, color, religion, sex, national origin, ancestry, age, disability, or United State military service veteran status in the selection or retention of subcontractors, including procurement of materials and leases of

equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A" of the Regulations. Breach of this section shall be regarded as a material breach of this Agreement.

2. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the Consultant's obligations under this contract and the Regulations relative to non-discrimination.

3. Information and Reports: The CONSULTANT will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall set forth what efforts it has made to obtain the information.

4. Sanctions for noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the STATE shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to, suspension or termination or refusal to grant or to continue Federal financial assistance or by any other means authorized by law.

5. Incorporation of Provisions: The CONSULTANT will include the provision of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT will take such action with respect to any subcontract or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

6. Successors and Assignees: The CONSULTANT binds its successors, executors, administrators and assignees to all covenants of this contract. Except as above set forth the CONSULTANT shall not assign, sublet or transfer its interest in this contract without the prior written consent of the STATE.

CERTIFICATE OF CONSULTANT

I hereby certify that I am the _____ and duly authorized representative of the firm of CONSULTANT LEGAL NAME, whose address is ADDRESS, CITY, STATE ZIP and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this contract.
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract except as here expressly stated (if any):_____.

I further certify that no employee, officer or agent or partner or any member of their immediate families of this firm is employed or retained either full or part-time in any manner by the Indiana Department of Transportation; except as herein expressly stated (if any):_____.

I acknowledge that this certificate is to be furnished to the Indiana Department of Transportation and the Federal Highway Administration, Department of Transportation in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

(Date)

(Signature)

CERTIFICATE OF INDIANAPOLIS DEPARTMENT
OF METROPOLITAN DEVELOPMENT

I hereby certify that I am the Director of the Department of Metropolitan Development of the City of Indianapolis, Indiana, and the above consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

(a) employ or retain, or agree to employ or retain, any firm or person, or

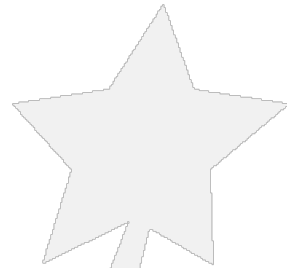
(b) pay, or agree to pay, to any firm, person, or organization, any fee contribution, donation, or consideration of any kind except as here expressly stated (if any)

_____.

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, Department of Transportation, in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

(Date)

(Signature)



NON-COLLUSION AFFIDAVIT

STATE OF _____)
)SS:
COUNTY OF _____)

The undersigned, being duly sworn on oath, says that he is the contracting party, or, that he is the representative, agent, member, or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of the annexed contract other than that which appears upon the face of the contract.

Signature

Printed Name

Title

Company

Before me, a Notary Public in and for said County and State personally appeared _____, who acknowledged the truth of the statements in the foregoing on this _____ day of _____, 2017

Resident County:

Notary Public

My Commission Expires:

Printed Name

AFFIDAVIT

A. E-Verify. Pursuant to Indiana Code 22-5-1.7-11, the Consultant entering into a contract with the Planning Agency is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Consultant 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 Consultant, being first duly sworn, deposes and states that the Consultant does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the Planning Agency, the undersigned Consultant will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

B. Wage Enforcement. Pursuant to the Wage Enforcement provisions found in Chapter 272 of the Revised Code of the Consolidated City of Indianapolis and Marion County, the undersigned, on behalf of the Consultant, being first duly sworn, deposes and states the following: (please check one of the following)

1. _____ That there has not been any adverse determination against the Consultant within the proceeding 3-year period for wage theft or payroll fraud; Or
2. _____ That there has been an adverse determination against the Consultant within the preceding 3-year period for wage theft or payroll fraud.

(Consultant): _____

By (Written Signature):

(Printed Name): _____

(Title): _____

Important - Notary Signature and Seal Required in the Space Below

STATE OF _____

SS:

COUNTY OF _____

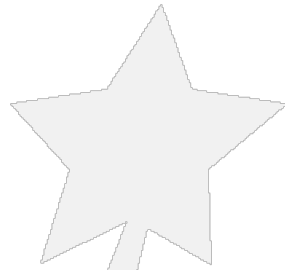
Subscribed and sworn to before me this _____ day of _____,

20 ____



My commission expires: _____ (Signed) _____

Residing in _____ County, State of _____





**ATTACHMENT D
SCOPE OF SERVICES**

