

CONSULTING CONTRACT

Contract #000000000000000000046104

This Contract ("this Contract") is made and entered into effective as of the date of approval by the Indiana Attorney General affixed to this Contract by and between the State of Indiana ("State"), acting by and through the Indiana Department of Transportation ("INDOT"), and **WSP USA, INC.** (the "CONSULTANT"), a corporation/limited liability company organized under the laws of the State of Indiana.

WITNESSETH

WHEREAS, INDOT wishes to hire the CONSULTANT to provide Project Development Services required for a SR 28 Pavement Replacement Project (Small Town Reconstruction) in the City of Tipton in Tipton County, Des. No.: 1900253. The total allocated construction budget allowed for this project is \$2,150,000.00.

WHEREAS, the CONSULTANT has extensive experience, knowledge and expertise relating to these Services; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the Services in connection therewith.

NOW, THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

SECTION I SERVICES BY CONSULTANT. The CONSULTANT will provide the services and deliverables described in **Appendix "A"** which is attached and made an integral part of this Contract.

SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY INDOT. The information and services to be furnished by INDOT is set out in **Appendix "B"** which is attached and made an integral part of this Contract.

SECTION III TERM. The term of this Contract shall be from the date of the Attorney General signature affixed to this Contract until November 01, 2024.

SECTION IV COMPENSATION. INDOT shall pay the CONSULTANT for the services performed under this Contract in accordance with **Appendix "D"** which is attached and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed \$422,148.00.

SECTION V NOTICE TO PROCEED AND SCHEDULE. The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from INDOT, and shall deliver the work to INDOT in accordance with the schedule contained in **Appendix "C"** attached and made an integral part of this Contract.

SECTION VI GENERAL PROVISIONS

"Subconsultant" as used in this contract refers to a subcontractor of the CONSULTANT performing services under this contract.

1. **Access to Records.** The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their

RFP: P200309

respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for the purpose of making inspection, audit, examination, excerpts and transcriptions by the recipient and sub recipient, as those terms are defined in 2 CFR §200.86 and §200.93 respectively, INDOT, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representatives, and copies thereof shall be furnished free of charge, if requested. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, correspondence, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. Assignment; Successors.

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

B. Any substitution of SUB-CONSULTANTS and/or disadvantaged business enterprises must first be approved and receive written authorization of INDOT's the Consultant Selection Review Committee and INDOT's Economic Opportunity Division Director, respectively, or their respective designee.

3. Audit. The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et seq. and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.

4. Authority to Bind Consultant. The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed hereto.

5. Certification for Federal-Aid Contracts Lobbying Activities.

A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to INDOT prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

- I. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

RFP: P200309

- II. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. The CONSULTANT also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

6. Changes in Work. The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by INDOT. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.

7. 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. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract shall be reviewed by INDOT and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.

B. The CONSULTANT represents to INDOT that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to INDOT prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:

- i. *Required State of Indiana Payments. Neither the CONSULTANT nor the CONSULTANT'S principal(s) are presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the CONSULTANT agrees that any payments in arrears and currently due to the State of Indiana 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 becomes current in its payments and has submitted proof of such payment to INDOT.*
- ii. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, CONSULTANT agrees that INDOT may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.

RFP: P200309

- iii. *Professional Licensing Standards.* The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract.
 - iv. *Work Specific Standards.* The CONSULTANT and its SUBCONSULTANTS, if any, have obtained, will obtain and/or will 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 INDOT.
 - v. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
 - vi. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State and will immediately notify INDOT of any such actions. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT or who has managerial or supervisory responsibilities for the Services.
 - vii. *Debarment and Suspension of any SUBCONSULTANTS.* The CONSULTANT's SUBCONSULTANTS are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The CONSULTANT shall be solely responsible for any recoupment, penalties of costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the State if any SUBCONSULTANT becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the SUBCONSULTANT for work to be performed under this Contract.
- C. *Ethics.* 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.* and the regulations promulgated thereunder. **If the CONSULTANT has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the CONSULTANT shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Contractor is not familiar with these ethical requirements, the CONSULTANT should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the CONSULTANT or its agents violate any applicable ethical standards, the 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, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
- D. *Telephone Solicitation.* 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

RFP: P200309

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.

E. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT'S violation of any of Section 7(A) through 7(D), INDOT may, at its sole discretion, do any one or more of the following:

- i. terminate this Contract; or
- ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract; or
- iii. bar the CONSULTANT from contracting with the State of Indiana.

F. *Disputes.* If a dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the State of Indiana or its agencies, and INDOT 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 INDOT. A determination by INDOT under this Section 7.F shall be final and binding on the parties and not subject to administrative review. Any payments INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

8. Condition of Payment. The CONSULTANT must perform all Services under this Contract to INDOT's reasonable satisfaction, as determined at the discretion of INDOT and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. INDOT will not pay for work not performed to INDOT's reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, "deficiencies") until all deficiencies are remedied in a timely manner.

9. Confidentiality of State Information.

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

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

10. Prompt Payment. The CONSULTANT agrees to pay each subconsultant under this Contract for satisfactory performance of its contract no later than ten (10) business days from the receipt of each payment the CONSULTANT receives from INDOT. Any delay or postponement of

RFP: P200309

payment from the above referenced time frame may occur only for good cause following written approval of INDOT. The explanation from the CONSULTANT shall be made in writing to INDOT. This clause applies to both DBE and non-DBE subconsultants. Failure to comply with this clause shall constitute a material breach of this Contract and may result in sanctions under this Contract.

11. [Reserved]

12. Delays and Extensions. The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by INDOT subject to the CONSULTANT's approval, it being understood, however, that permitting 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 INDOT of any of its rights herein. In the event of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character or complexity of work the CONSULTANT is to perform under this Contract; INDOT at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify INDOT in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

13. DBE Requirements.

A. Notice is hereby given to the CONSULTANT and any SUB-CONSULTANT, and both agree, that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification and failure to promptly cure such breach, may result in termination of this Contract or such remedy as INDOT deems appropriate. The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any SUB-CONSULTANT:

The CONSULTANT, sub recipient or SUB-CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

B. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE SUB-CONSULTANTS identified on its Affirmative Action Certification. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and approved by INDOT's Economic Opportunity Division.

14. Disputes

A. Should any disputes arise with respect to this Contract, the CONSULTANT and INDOT agree to act promptly and in good faith to resolve such disputes in accordance with this Section 14. Time is of the essence in the resolution of disputes.

B. The CONSULTANT agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs (including reasonable attorneys' fees and expenses) incurred by INDOT or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.

RFP: P200309

C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have ten (10) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing according to the following procedure:

- i. The parties agree to resolve such matters through submission of the dispute to the Commissioner of the Indiana Department of Administration (or his or her designee) ("IDOA Commissioner"). The submission shall include a written description of the dispute, any supporting documentation and each party's respective recommended resolution of such dispute. The IDOA Commissioner shall make a written decision and mail or otherwise furnish a copy thereof to the CONSULTANT and INDOT within ten (10) business days after presentation of such dispute for action. The IDOA Commissioner's decision shall be final and conclusive unless either party provides a written notice of appeal to the Commissioner within ten (10) business days after receipt of the IDOA Commissioner's decision. Within ten (10) business days of receipt by the IDOA Commissioner of a written request for appeal, the IDOA Commissioner may reconsider its decision. The IDOA Commissioner may then choose to reconsider the determination and make a separate determination or may request that the parties submit to a mediation procedure. If the IDOA Commissioner chooses not to reconsider its decision or fails to respond within ten (10) business days, then the dispute may be submitted to an Indiana court of competent jurisdiction.
- ii. The State may withhold payments on disputed items pending resolution of the dispute.

15. Drug-Free Workplace Certification.

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

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

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the CONSULTANT and made a part of the contract or agreement as part of the contract documents.

C. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:

RFP: P200309

- i. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - ii. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
 - iii. Notifying all employees in the statement required by subparagraph 15.C.i above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
 - iv. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision 15.C.iii(2) above, or otherwise receiving actual notice of such conviction;
 - v. Within thirty (30) days after receiving notice under subdivision 15.C.iii(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
 - vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 15.C.i through 15.C.v above.
- 16. Employment Option.** If INDOT determines that it would be in the State's best interest to hire an employee of the CONSULTANT, the CONSULTANT will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.
- 17. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Contract shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- 18. Funding Cancellation Clause.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support

RFP: P200309

continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive. The CONSULTANT may seek recovery from the State for any amounts unpaid for Services rendered or goods delivered through the date of cancellation.

19. Governing Laws. This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana. The parties acknowledge that the governing law includes I.C. 8-23-2-12.5. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.

20. IC 8-23-2-12.5. With respect to liability and indemnification issues, this Contract is subject to IC 8-23-2-12.5.

21. Indemnification. The CONSULTANT agrees to indemnify the State of Indiana, INDOT, and their agents, officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract, provided that if the CONSULTANT is a "contractor" within the meaning of I.C. 8-23-2-12.5, this indemnity obligation shall be limited by and interpreted in accordance with I.C. 8-23-2-12.5. INDOT shall not provide such indemnification to the CONSULTANT.

22. Independent Contractor. Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.

23. Insurance - Liability for Damages.

A. Subject to I.C. 8-23-2-12.5, the CONSULTANT shall be responsible for the accuracy of the Services performed under this Contract and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from INDOT. Acceptance of the Services by INDOT shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities. The CONSULTANT shall have no liability for the errors or deficiencies in designs, drawings, specifications or other services furnished to the CONSULTANT by INDOT on which the Consultant has reasonably relied, provided that the foregoing shall not relieve the CONSULTANT from any liability from the CONSULTANT'S failure to fulfill its obligations under this Contract, to exercise its professional responsibilities to INDOT, or to notify INDOT of any errors or deficiencies which the CONSULTANT knew or should have known existed.

B. During construction or any phase of work performed by others based on Services provided by the CONSULTANT, the CONSULTANT shall confer with INDOT when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes for a minimum of delay to the project.

RFP: P200309

C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred by the State as a result of any negligent act, error or omission of the CONSULTANT, and for the State's losses or costs to repair or remedy construction. Acceptance of the Services by INDOT shall not relieve the CONSULTANT of responsibility for subsequent correction.

D. The CONSULTANT shall be required to maintain in full force and effect, from the date of the first authorization to proceed until INDOT's acceptance of the work product, at least the following minimum coverage. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.

E. The State of Indiana, INDOT, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, sub-consultants or any agent of any of them, and the obligations of indemnification in Section 21 herein shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.

F. The CONSULTANT shall furnish a certificate of insurance and all endorsements to INDOT prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of Contract entitling INDOT to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For INDOT Prequalification **Work Types** 1.1, 12.2-12.6, 12.8 the CONSULTANTS shall provide not less than \$250,000.00 professional liability insurance per claim and \$250,000.00 aggregate for all claims for negligent performance. For **Work Types** 2.2, 3.1, 3.2, 4.1, 4.2, 5.5, 5.8, 5.11, 6.1 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 -- 10.4, 11.1, 13.1, 14.1 -- 14.5, the CONSULTANTS shall carry professional liability insurance in an amount not less than \$1,000,000.00 per claim and \$1,000,000.00 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two (2) years after substantial completion of construction.

II. Commercial General Liability Insurance

The CONSULTANT must obtain and carry Commercial / General liability insurance as follows: For INDOT Prequalification **Work Types** 2.1, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANT shall carry \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.
2. The policy shall provide thirty (30) days notice of cancellation to INDOT.
3. The CONSULTANT shall name INDOT as an additional insured.

III. Automobile Liability

RFP: P200309

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than \$1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

1. Contractual Liability coverage shall be included.
2. The policy shall provide thirty (30) days notice of cancellation to INDOT.
3. The CONSULTANT shall name INDOT as an additional insured.

IV. Watercraft Liability (When Applicable)

1. When necessary to use watercraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT, or any SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the watercraft shall carry watercraft liability insurance in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.
2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:
 - i. United States Longshoremen & Harbor workers
 - ii. Maritime Coverage - Jones Act
3. The policy shall provide thirty (30) days notice of cancellation to INDOT.
4. The CONSULTANT or SUB-CONSULTANT shall name INDOT as an additional insured.

V. Aircraft Liability (When Applicable)

1. When necessary to use aircraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT or SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the aircraft shall carry aircraft liability insurance in the amount of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.
2. The policy shall provide thirty (30) days notice of cancellation to INDOT.
3. The CONSULTANT or SUB-CONSULTANT shall name INDOT as an additional insured.

24. Progress Reports. The CONSULTANT shall submit progress reports to INDOT upon request. The report shall be oral, in person or by phone, unless INDOT, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the

RFP: P200309

purpose of assuring INDOT that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

25. Merger and Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

26. Non-Discrimination

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

Under IC 22-9-1-10 CONSULTANT covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran.

B. The CONSULTANT understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, income status, limited English proficiency, or status as a veteran.)

C. During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, and the Federal Highway Administration Title 23, CFR Part 200 as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

RFP: P200309

2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, age, national origin, religion, disability, ancestry, income status, limited English proficiency or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in **Appendix B** of the Regulations.
 3. Solicitations for Subcontracts, Including Procurements 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 procurements of materials or leases of 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 nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, age, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.
 4. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, documents, papers, correspondence, records, accounts, other sources of information, and its facilities as may be determined by the recipient, the subrecipient, the Indiana Department of Transportation, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representatives, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses furnish this information, the CONSULTANT shall so certify to the recipient, the subrecipient, the Indiana Department of Transportation, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States or any of their duly authorized representatives as appropriate, and shall set forth what efforts it has made to obtain the information.
 5. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it, the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives may determine to be appropriate, including, but not limited to: (a) withholding payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
 6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraph C, Section 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
- D. The CONSULTANT shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for

RFP: P200309

non-compliance, provided, however, that 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 Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the CONSULTANT may request the United States of America to enter into such litigation to protect the interests of the United States of America.

27. Notice to Parties: Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

A. Notices to the State shall be sent to:
Contract Administrator
Indiana Department of Transportation
100 N Senate Avenue, Room N725
Indianapolis, IN 46204

With a copy to:
Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 N. Senate Avenue, Room N758
Indianapolis, IN 46204

B. Notices to the CONSULTANT shall be sent to:
WSP USA, Inc.
115 W Washington St. Suite 1270S
Indianapolis, IN 46204
jeff.hill@wsp.com

or to such other address or addresses as shall be furnished in writing by any party to the other party. Unless the sending party has actual knowledge that a Notice was not received by the intended recipient, a Notice shall be deemed to have been given as of the date (i) when personally delivered; (ii) three (3) days after the date deposited with the United States mail properly addressed; or (iii) the next day when delivered during business hours to overnight delivery service, properly addressed and prior to such delivery service's cut off time for next day delivery. The parties acknowledge that notices delivered by facsimile or by email shall not be effective.

C. As required by IC 4-13-2-14.8, payments to the CONSULTANT shall be made via electronic funds transfer in accordance with instructions filed by the CONSULTANT with the Indiana Auditor of State.

28. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by INDOT, (3) RFP document, (4) the CONSULTANT's response to the RFP document, and (5) attachments prepared by the CONSULTANT. All of the foregoing is incorporated fully by reference.

29. Ownership of Documents and Materials. All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT assigns and transfers any ownership claim to INDOT and all such materials ("Work Product") will be the property of INDOT. The

RFP: P200309

CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by INDOT. Use of these materials, other than related to contract performance by the CONSULTANT, without INDOT's prior written consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to any of the Work Product developed for or supplied by INDOT and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide INDOT full, immediate, and unrestricted access to the Work Product during the term of this Contract. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this Contract by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in **Appendix "A"** on other projects without the express written consent of the CONSULTANT or as provided in **Appendix "A"**. INDOT acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.

30. Payments. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the CONSULTANT in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or Services that are the subject of this Contract except as permitted by IC 4-13-2-20.

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

32. Pollution Control Requirements. If this Contract is for \$100,000 or more, the CONSULTANT:

- i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
- ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
- iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

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

34. Status of Claims. The CONSULTANT shall give prompt written notice to INDOT any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping INDOT currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, IN 46204-2249

35. Sub-consultant Acknowledgement. The CONSULTANT agrees and represents and warrants to the State of Indiana, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, identical to the form attached as **Appendix "E"** of this Contract, from all SUB-CONSULTANTS providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to INDOT for approval prior to performance of the Services by any SUB-CONSULTANT.

36. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.

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

38. Termination for Convenience.

- A. INDOT may terminate, in whole or in part, whenever, for any reason INDOT determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. INDOT will not be liable for Services performed after the effective date of termination.
- B. If INDOT terminates or partially terminates this Contract for any reason regardless of whether for convenience or for default in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within ten (10) days to INDOT. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to INDOT any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.

39. Termination for Default.

- A. With the provision of twenty (20) days written notice to the CONSULTANT, INDOT may terminate this Contract in whole or in part if (i) the CONSULTANT fails to:
 - 1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;
 - 2. Deliver the supplies or perform the Services within the time specified in this Contract or any amendment or extension;
 - 3. Make progress so as to endanger performance of this Contract; or
 - 4. Perform any of the other provisions of this Contract to be performed by the CONSULTANT; or

RFP: P200309

- (ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.
- B. If INDOT terminates this Contract in whole or in part, it may acquire, under the terms and in the manner INDOT considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to INDOT for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.
- C. INDOT shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and INDOT shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 14). INDOT may withhold from the agreed upon price for Services any sum INDOT determine necessary to protect INDOT against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of INDOT in this Contract are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. **Default by INDOT.** If the CONSULTANT believes INDOT is in default of this Contract, it shall provide written notice immediately to INDOT describing such default. If INDOT fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses *if Ordered by a court*, provided that if such cure is not reasonably achievable in such time, INDOT shall have up to one hundred twenty (120) days from such notice to effect such cure if INDOT promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the State or INDOT.

40. Travel. No expenses for travel will be reimbursed unless specifically permitted under the scope of Services or consideration provisions of this Contract. Expenditures made by the CONSULTANT for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.

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

42. Work Standards/Conflicts of Interest.

- A. The CONSULTANT shall understand and utilize all relevant INDOT standards including the Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence

RFP: P200309

required in **Appendix "A"** or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.

- B. The CONSULTANT agrees to comply with the "Indiana Department of Transportation Consultant Conflict of Interest Policy" (Conflict of Interest Policy) attached hereto as **Appendix "F"**. Failure to comply with the Conflict of Interest Policy may be grounds for INDOT to terminate this Contract under either Section 38 (Termination for Convenience) or Section 39 (Termination for Default) at INDOT's discretion.

43. No Third-Party Beneficiaries.

This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.

44. Employment Eligibility Verification

The Consultant affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Consultant shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Consultant is not required to participate should the E-Verify program cease to exist. Additionally, the Consultant is not required to participate if the Consultant is self-employed and does not employ any employees.

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

The Consultant shall require his/her/its sub-consultants, who perform work under this contract, to certify to the Consultant that the sub-consultant does not knowingly employ or contract with an unauthorized alien and that the sub-consultant has enrolled and is participating in the E-Verify program. The Consultant agrees to maintain this certification throughout the duration of the term of a contract with a sub-consultant.

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

45. Prohibited Telecommunications and Video Surveillance Equipment and Services.

In accordance with federal regulations (including 2 CFR 200.216 and 2 CFR 200.471), the Contractor is prohibited from purchasing, procuring, obtaining, using, or installing any telecommunication or video surveillance equipment, services, or systems produced by:

(A) Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), OR

(B) Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities), for any purpose to fulfill its obligations under this Contract. The Contractor shall be responsible to ensure that any subcontractors are bound by and comply with the terms of this provision. Breach of this provision shall be considered a material breach of this Contract.

46. Assignment of Antitrust Claims.

The CONSULTANT assigns to the State all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

[Remainder of Page Intentionally Left Blank]

Non-Collusion and Acceptance

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

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCT S.GBL

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

WSP USA, INC.

Indiana Department of Transportation

DocuSigned by:
By:
F7629E61A17A4A8...

DocuSigned by:
By:
2A055294F128470...

Title: Area Manager/Vice President

Title: Deputy Commissioner

Date: 9/29/2020 | 19:10 PDT

Date: 9/30/2020 | 06:44 EDT

| | |
|---|--|
| Electronically Approved by: Department of Administration By: _____ (for) Lesley A. Crane, Commissioner | |
| Electronically Approved by: State Budget Agency By: _____ (for) Zachary Q. Jackson, Director | Electronically Approved as to Form and Legality: Office of the Attorney General By: _____ (for) Curtis T. Hill, Jr., Attorney General |

APPENDIX "A"

Services to be furnished by CONSULTANT:

In fulfillment of this Contract, the CONSULTANT shall comply with the requirements of the appropriate regulations and requirements of the Indiana Department of Transportation (INDOT or Department) and Federal Highway Administration (FHWA).

The CONSULTANT shall be responsible for performing the following activities:

- | | |
|--------|--|
| Task 1 | Project Intent Definition |
| Task 2 | Environmental Document Preparation |
| Task 3 | Topographic Survey Data Collection |
| Task 4 | Geotechnical Services (services to be provided under a future amendment) |
| Task 5 | Road Design and Plan Development (including Signing, Lighting and Signal Plan Development, if applicable) (up to Preliminary Field Check only) |
| Task 6 | Right of Way Plan Development (services to be provided under a future amendment) <ol style="list-style-type: none"> 1. R/W Engineering 2. Title Research 3. R/W Staking |
| Task 7 | Real Estate Services (services to be provided under a future amendment) <ol style="list-style-type: none"> A. R/W Management B. Early Assessment of the Real Estate Cost Estimate C. Appraisal and Other Valuation Services D. Negotiation/Buying E. Negotiation/Buying Review F. Relocation G. Relocation Review H. General |
| Task 8 | Utility Coordination Services |
| Task 9 | Construction Phase Services (services to be provided under a future amendment) |

Task 1 Project Intent Definition

In select cases, a project advanced for design development may call for additional front-end effort to refine or verify essential intent (proposed action, or basic scope); that is, further analyze site conditions, assess corrective treatment options, and define which counter-measure is most cost-effective.

If that initial task is required, the CONSULTANT shall perform those three primary activities and prepare associated documentation — commonly referenced by such titles as, as Project Intent Report, Engineer's Report, Abbreviated Engineer's Report or Engineering Assessment. The report will be written as a compilation of primarily technical engineering features of the project, describing, among other special circumstances, (a) site conditions, (b) status or level of performance for physical infrastructure or service (depending on project type), (c) problem to be addressed (need), (d) alternative solutions targeting the performance problem, (e) discussion of cost and positive effect on performance of treatment alternatives, and (f) statement suggesting the apparent most cost-effective solution. The report is typically made up of written description, and supporting tables/charts and sketch-plan engineering drawings. It represents a

preliminary improvement plan, outlining primary features of the project (corrective measures), at a level of refinement suitable to enable design development to proceed. The procurement of essential data and analysis shall be limited to no more than necessary to reach an informed decision, and the associated report shall document the critical elements of this phase clearly and as concisely as practicable to serve downstream project purposes. See the INDOT "Engineering Assessment Manual" (Sept., 2018) for additional information.

The report is expected to define essential engineering elements of the proposal, addressing the applicable following items: proposal's construction limits and lengths; traffic data (typically supplied by INDOT) and traffic capacity (level-of-service, operational) analyses utilizing the Highway Capacity Manual, with emphasis on the proposed recommendation; crash data (supplied by INDOT) and analysis; applicable engineering standards and guidelines, notably design classifications and related controlling criteria; typical and special cross-sections; proposed horizontal and vertical alignments, where appropriate to convey the proposal; proposal's plan view superimposed over aerial photographic base maps, and, in select cases, over topographic mapping or other underlying image (aerial images will normally be supplied by INDOT); where relevant, the access control plan (i.e., location of interchanges, collector-distributors, grade-separations, crossroad extensions and rerouting, local service roads, route transfers); interchange and intersection configurations if applicable; multimodal elements (e.g., grade separations for railroads and pedestrian/bicyclist paths); preliminary hydraulic data and recommendations; traffic signal, sign, and lighting elements; construction, right-of-way, and design engineering cost estimates, and other features of engineering economic analysis; right-of-way limits and impacts (width, area, type, relocations, parcels, etc.); survey requirements (coverage) for subsequent design activities; construction phasing scheme if necessary; provisional strategy for maintenance of traffic during construction; compatibility with other state and local transportation projects and long-range plans; social, economic, and environmental issues apparent at the engineering assessment phase; and all other relevant civil/transportation engineering issues.

The CONSULTANT shall assess hydraulic issues on applicable projects and make recommendations. The INDOT Hydraulics Section shall approve the recommendations.

The CONSULTANT shall conduct this task of defining essential project intent by appropriate consultation with relevant parties or stakeholders within INDOT, and in some cases outside the agency (e.g., FHWA, MPO), including but not limited to INDOT environmental and engineering staff in district and central offices.

INDOT's project manager (PM) will instruct the CONSULTANT regarding any specific expectations relative to this task, including timelines. At any point during the process the CONSULTANT may confer with the PM or designee to determine if the task is proceeding in an acceptable direction or to discuss data, analysis, alternatives, funding, etc. When requested or as noted in schedule in this contract, interim and draft final reports shall be submitted to the PM for review. Others may be invited to review the document.

An information meeting or hearing may be required. If so, the CONSULTANT may be responsible for providing the project presentation, preparing displays, if requested, and addressing questions.

Deliverables:

The draft report prepared by the CONSULTANT shall be submitted directly to the INDOT project manager for review. The final report will be transmitted to the INDOT project manager for approval by the project's assigned due date. The INDOT approved report along with the appropriate number of copies (including an electronic version) will be transmitted for distribution to the INDOT project manager.

Task 2 Environmental Document Preparation

The CONSULTANT shall perform Environmental Services as directed by INDOT. The work may be reviewed by one or some combination of the following: the District, the Environmental Services Division and FHWA. The work will be accomplished following all of the relevant local, state, and federal laws and regulations; FHWA and INDOT guidance documents; and all other pertinent and applicable federal and state requirements.

The CONSULTANT shall develop the environmental analyses by coordinating with personnel responsible for the development of the project scope, as well as the INDOT project manager and the Office of Environmental

Services Division.

If requested by the INDOT project manager, the CONSULTANT shall attend the initial field meeting to identify potentially sensitive environmental considerations as well as any other field meetings that are necessary to conclude their work.

The CONSULTANT shall be responsible for activities required to successfully complete the environmental documentation required by the NEPA and other pertinent and applicable laws and regulations. If the scope of a project changes following approval of the environmental document, the CONSULTANT may be asked to assess whether the document is still valid, and prepare additional environmental documentation if needed.

The CONSULTANT shall be responsible for notifying landowners and obtaining access as per State laws.

The CONSULTANT shall provide all necessary specialized studies required to complete the environmental document. This may include, but is not limited to, red flag investigations, historic properties and archaeological investigations, air quality modeling, traffic noise modeling and barrier feasibility analysis, wetland delineations, stream quality analysis, endangered species studies, Section 106 documentation, Section 4(f) documentation, hazardous materials investigations, environmental justice investigations, and cumulative impact studies.

The CONSULTANT shall be responsible for scheduling Section 106 consulting party meetings, CAC meetings, coordination meetings, and resource agency coordination meetings, as needed. The CONSULTANT will work with the District and/or Central Office staff to address INDOT's public involvement policy.

The CONSULTANT shall act as INDOT's representative at public information meetings and public hearings. INDOT, or the CONSULTANT in coordination with INDOT, will schedule and conduct public information meetings/hearings. The CONSULTANT shall be responsible for attending and participating in the presentation of information and production of displays/materials needed for INDOT's public information meetings/hearings.

The CONSULTANT will provide other services as directed by INDOT to complete the work.

Deliverables:

The environmental document and/or other studies will be transmitted to INDOT electronically for review/approval. The CONSULTANT shall provide copies of all hard-copy and electronic correspondence related to the project if specifically requested to do so by INDOT. Otherwise, the CONSULTANT shall maintain a full record of such correspondence for subsequent review by INDOT at their discretion.

Task 3 Topographic Survey Data Collection

When directed, the CONSULTANT shall survey the project location. The CONSULTANT shall obtain deeds of record, subdivision plats, survey plats, section corner location information, highway plans, and section or auditor plats for all properties within the project limits. The CONSULTANT's survey shall be in accordance with I.C. 25-21.5; 865 I.A.C. 1-12; and the INDOT Design Manual (IDM) which is available online on the INDOT website, and which is incorporated by reference. If there is any conflict between I.C. 25-21.5, 865 I.A.C. 1-12, or the INDOT Design Manual, the order of precedence shall be:

1. I.C. 25-21.5
2. 865 I.A.C. 1-12
3. INDOT Design Manual

Deliverables:

The CONSULTANT shall provide INDOT with all survey information relative to the project, as specified in the IDM. This includes: a certified survey field book, recorded Location Control Route Survey plat (if required), and all required electronic survey files as defined in the IDM. Deeds of Record, subdivision plats, survey plats, section corner location information and section or auditor plats for all properties within the project limits shall be submitted with Grade Review Plans or other early stage of plan development.

The signature, seal, date and registration number of the land surveyor, registered in the State of Indiana, who

was in responsible charge of the survey, shall be affixed to the Survey Book submitted to INDOT, along with current contact information of the surveyor.

Electronic survey data submittals shall be in a format that is compatible with software requirements as per the IDM. The INDOT CAD Support Team has developed standard resource files such as design templates (seed files) and survey-data processing (.xin) files. The most current INDOT seed.dgn and survey.xin files made available through the CAD Support Team shall be used.

Task 4 Geotechnical Services (services to be provided under a future amendment)

The CONSULTANT shall perform Geotechnical Services as defined in the scope of work and any addenda to that report when directed.

The work shall be performed in accordance with the requirements set out in the most current Geotechnical Design Manual.

After the assignment of the project, the CONSULTANT shall submit the scope of the geotechnical investigations to the Office of Geotechnical Services for their review and approval. No work shall proceed before obtaining the approval.

Prior to entering upon private property for performing the work, the CONSULTANT shall follow the "Instruction for Entering upon Private Property" as established by Legislative Acts of 1963. A copy of these instructions is on file with INDOT and is incorporated by reference. The CONSULTANT shall obtain a permit from the INDOT District for maintenance of traffic before drilling operations can proceed.

The CONSULTANT may be required to do all work per project or only a portion thereof, as determined by the INDOT Office of Geotechnical Services. All proposed services may not be required.

The CONSULTANT shall obtain and preserve samples of the subsoil as required, perform the necessary laboratory tests, perform the required geotechnical engineering analyses and prepare and furnish the necessary reports covering the information obtained. If the CONSULTANT is requested to perform the laboratory test on the soil samples and rock cores, these samples shall be delivered to its laboratory no later than the end of each workweek. If the samples are to be tested by INDOT they shall be delivered to:

Indiana Department of Transportation
Office of Geotechnical Services
120 S. Shortridge Road
Indianapolis, Indiana 46219

no later than the following Monday of each workweek. Each soil sample and rock core shall be clearly marked as to project number, contract number, structure number, road number, station, offset, boring number, sample number, core number, blow count depth, etc. INDOT shall determine who will do the laboratory testing and engineering during the drilling operations.

Upon completion of the laboratory testing all soil samples and rock cores shall become the property of INDOT and shall be disposed of as directed by INDOT.

Deliverables:

The draft Geotechnical Report prepared by the CONSULTANT shall be submitted directly to the INDOT Manager of Geotechnical Services for review. The format for the reports and drawings/logs should be a Windows based version and compatible with INDOT's existing programs and should be as specified in the

Geotechnical Design Manual with the addition that all borings shall have northern and eastern coordinates in a global system and the name of the system utilized. Scanning should be kept to a minimum unless absolutely necessary such as hand calculations, and drawings, etc.

A .pdf copy of the final approved Geotechnical Report shall be furnished to INDOT in .gINT format. The review process shall follow utilization of SharePoint and ERMS formats.

After the report is accepted, and the design has been completed, the CONSULTANT shall review and sign the Foundation Review form, Final Check Prints form to verify the compliance with the geotechnical recommendations. The cost of this review shall be included in the cost of the report.

Task 5 Road Design and Plan Development (up to Preliminary Field Check only)

The CONSULTANT shall prepare preliminary plans, an economic analysis with proposed economic alternatives and preliminary estimates of cost, which shall be in accordance with the accepted standards for such work and in accordance with the Indiana Manual on Uniform Traffic control Devices (IMUTCD), Standard Specifications, Standard Drawings, Recurring Special Provisions and Plan Details, Special Provision Technical Advisories, Design Memorandums and the Indiana Design Manual (IDM). Such preliminary plans and economic analyses shall be developed to the point required to fulfill the requirements for a Design Public Hearing, and no further work shall be done on the plans, unless and until specifically directed by INDOT.

The CONSULTANT shall prepare Design Exceptions as described in the IDM when reduced project elements are appropriate. Design Exceptions shall be supported by Performance Based Practical Design (PBSD) documentation when requested.

The CONSULTANT shall prepare Unique Special Provisions as described in IDM Chapter 14 & 19.

Following approval of the hearing plans, approval of the Environmental Document, and completion of the Public Hearing requirements, the CONSULTANT shall develop the final design including contract plans, special provisions for the specifications and final cost estimates for the construction of the project. The cost estimate and unit prices for construction shall be prepared according to INDOT's current practices and shall include all items of work required for the complete construction of the work, including temporary work.

The CONSULTANT shall provide project coordination necessary to develop final plans, including but not limited to:

1. Assist the appropriate INDOT District and/or Transportation Management Team to develop a Traffic Control Plan, including special elements identified in the Engineering Assessment report.
2. Supply necessary plans and design information to INDOT'S railroad unit concerning bridge structures over or under railroads; at-grade highway-railway crossings within the limits of the project; surface, underground or overhead encroachment of railroad rights-of-way and preemption of traffic signals.
3. Prepare local agreements for sewers, sidewalks, and maintenance of traffic, etc.
4. Coordinate the design with adjacent projects for construction compatibility and continuity.
5. Coordinate with INDOT's real estate personnel to respond to questions, meet with property owners, when requested to do so, and submit right-of-way revisions to the real estate personnel in a timely manner.

The CONSULTANT shall arrange and attend such conferences with officials of INDOT and other interested agencies, as required. The CONSULTANT shall prepare presentation materials for hearings and/or meetings and shall prepare and distribute minutes. Meetings shall include, but shall not be limited to:

1. Field Checks – The CONSULTANT shall arrange and attend the preliminary field check and final field check, if necessary. The CONSULTANT shall prepare the field check notification letter and

distribute it along with plans.

2. Railroad Meeting – On projects that involve bridge structures over or under a railroad, the CONSULTANT shall arrange and attend a meeting with INDOT's Railroad Unit prior to the Stage 1 submittal.
3. Fish and Wildlife Meeting – On projects involving bridge structures over waterways and/or wetland replacement, the CONSULTANT shall submit the draft Fish & Wildlife Review form to the project manager prior to the preliminary field check. If requested, a meeting will be held with the District Environmental Scoping Section and/or INDOT's Office of Environmental Services. The final form shall be distributed by the CONSULTANT.

The CONSULTANT shall prepare and submit pavement design requests to INDOT with necessary supporting information.

On projects involving roadways running parallel to streams, the CONSULTANT shall make a study of the possible flood hazards that may be encountered on the project in accordance with 23 CFR 650, Subpart A, entitled "Location and Hydraulic Design of Encroachment of Flood Plains".

The CONSULTANT shall perform hydraulic calculations in accordance with the Indiana Design Manual. Calculations for structures greater than 36" in diameter shall be submitted to INDOT's Hydraulics Unit for review.

The CONSULTANT shall perform pH testing a minimum of two times throughout the life of the project design at existing pipe structure locations. When the difference between the first two readings is greater than 0.5, a third test will be required. The result of one of the pH tests may be available in the Geotechnical Report. The value of the pH shall be determined to the nearest 0.5 point. The lower pH value will determine the types of pipe allowed. It is preferable to perform the pH testing at three different times of the year.

On projects with existing underdrains that are not being replaced, the CONSULTANT shall locate existing underdrain outlets by field investigation, show the outlets on the plans, and design corrective measures necessary to provide a properly functioning underdrain system.

The CONSULTANT shall identify the permits required and supply permit application forms with documentation necessary to obtain the permits. The CONSULTANT shall prepare the construction plans so that the plans are in compliance with the required permits. The CONSULTANT shall track the status of permits and permit expiration dates to determine if valid permits will be available for the current project construction schedule.

The responsible registered professional engineer shall affix his/her seal to all plans, specifications and reports.

The CONSULTANT shall review the contract bid package and identify necessary corrections to the Contract Administration Division.

Deliverables:

The CONSULTANT shall submit deliverables to INDOT in accordance with the Indiana Design Manual and Appendix C - Schedule.

Task 6 Right of Way Plan Development (services to be provided under a future amendment)

1. Right of Way Engineering

The CONSULTANT shall be responsible for activities necessary to certify that the right-of-way has been acquired and the project is clear for construction letting.

The CONSULTANT shall prepare final right-of-way plans, title research, legal descriptions, route survey plats or right-of-way parcel plats, acquisition instruments and other materials to be used in the acquisition of right-of-way in accordance with the Right-of-Way Engineering Procedure Manual, hereinafter called the MANUAL and

865 I.A.C. 1-12.

The CONSULTANT shall compare and study the title information and survey data furnished with it. The CONSULTANT shall write the legal description of every right-of-way parcel in conformity with the MANUAL. Documents, plats and plans prepared by the CONSULTANT are to be checked by the CONSULTANT prior to submittal to INDOT. Documents and plats requiring a seal under this Contract may not be reviewed by INDOT for content.

If the plans, aerial mosaics, title information and surveys are furnished to the CONSULTANT, there is no expressed or implied guarantee that conditions so indicated are entirely representative of those actually existing, or that unforeseen developments will not occur. The CONSULTANT is required to examine carefully all such data and satisfy itself as to the actual conditions. In case of any obvious discrepancy between the information furnished by INDOT and the actual conditions of the locality, or in case of errors or omissions in said information supplied by INDOT, the CONSULTANT shall make such corrections or additions on the plans, plats, strips, maps, or mosaics as necessary for the proper carrying out of its services. The CONSULTANT is assumed to have made itself familiar with the plans, aerial mosaics, and surveys, and it shall not plead that INDOT or the CONSULTANT, if any, who prepared those materials should assume responsibility for adding the information thereto as required by this Contract and by the MANUAL. It shall be the CONSULTANT'S duty to immediately inform INDOT, in writing, of any such defect, error or omission which cannot be resolved without additional title search or field survey, or which cannot be made without altering the design extent or character of the right-of-way limits as shown by INDOT before proceeding on this portion of the work.

The CONSULTANT may, with prior written approval of INDOT, undertake additional title research in order to resolve errors or omissions in provided abstracting, as may be deemed necessary by INDOT for the purpose of completing the work included in this Contract.

The CONSULTANT may, with the prior written approval of INDOT, undertake field surveys for the purpose of checking title of plan data and/or for the acquisition of vital locative and boundary information which is not contained in existing records, as may be considered necessary to complete the work included in this Contract.

The CONSULTANT may, when requested in writing from INDOT, undertake additional field work, such as right-of-way staking or general layout, as specifically instructed by INDOT. Each right-of-way (parcel) plat and each sheet of legal description and access control clause issued by the CONSULTANT shall be dated and shall bear the signature and seal of the Registered Land Surveyor (Indiana) by whom the same is prepared, or under whose personal supervision the same is prepared by his/ her regularly employed subordinates, and for which he/she takes full responsibility. The CONSULTANT shall bear the responsibility of recording the plats which it prepares.

Taking possession and use by INDOT of completed portions of the work, at any time, shall not be deemed as acceptance of the work so taken or used.

The CONSULTANT shall provide to INDOT, on appropriate electronic media, a copy of prepared legal descriptions, computer generated land plats and calculated coordinate points that relate to the work.

The CONSULTANT agrees to attend such conferences with the officials of INDOT and other interested agencies, as may be required, in connection with the work. The CONSULTANT will make its services available.

to INDOT during the land appraising and acquisition for the interpretation of its work where disagreement may arise. The CONSULTANT will be available during appraising and acquisition in the event unforeseen or unusual conditions arise.

The CONSULTANT shall review the construction plans to verify that the right-of-way lines shown match those shown on the final right-of-way plans prior to submitting final construction plans.

Deliverables:

The CONSULTANT shall furnish the Right-of-Way Plans in accordance with Chapter 85 of the Indiana Design Manual. The CONSULTANT will submit each parcel file to INDOT upon completion of the described services.

2. Title Research Services

A. PREPARATION OF TITLE AND ENCUMBRANCE REPORTS – PERMANENT RIGHT-OF-WAY

1. COVER SHEET

- a. The TITLE AND ENCUMBRANCE REPORT cover sheet shall follow the format shown below.
- b. The cover sheet of each Title and Encumbrance Report shall be identified with the Project Number, County, Political Township, R/W Code Number, Parcel Number, Road Number, Des. Number and the name of the presumptive fee owner as shown on the right-of-way plans.
- c. A brief legal description shall be provided, including the quarter section or subdivision lot number, section number, township and range numbers (including direction), the acreage (unless in subdivision), and the assessed values of the land and improvements.
- d. The record owner(s), as of the certification date, shall be identified as shown in the instrument vesting title in them. The address of the record owner(s) and recording information shall also be provided.
- e. Active mortgages shall be shown on the cover sheet. If multiple mortgages are active, a note may be used to direct the reader's attention to the chain of title.
- f. Judgments, easements and tax information shall be identified by the applicable entry numbers from the chain of title. The status of the taxes shall be noted on the cover sheet.
- g. The cover sheet shall include the certification statement shown below. The CONSULTANT performing the search shall sign and date the cover sheet.

TITLE AND ENCUMBRANCE REPORT

Indiana Department of Transportation Real Estate Division

RW Code: **Parcel:** **County:** **Pol. Twp.:**

Project: **Road:** **Des. No.**

Name on Plans:

Assessed Values

| Description or Addition | Sec. | Twp. | Rge. | Acreege | Land | Improve. | Key Number |
|-------------------------|------|------|------|---------|------|----------|------------|
|-------------------------|------|------|------|---------|------|----------|------------|

LAST OWNER OF RECORD

Name: Address:

Title Acquired By:

MORTGAGE RECORD

Mortgage Record: **Page:** **Amount:** **Dated:**

Mortgagor:

Mortgagee:

Judgments:

Easements:

Taxes:

Taxes are current.

CERTIFICATE

I certify that I have searched the records of the above named county for the required period of time and that all recorded transactions which affect the ownership of the caption real estate during that period are set forth in the attached chain of title. I further certify that the information summarized above represents the current status of the fee ownership and encumbrances against the caption real estate.

DATED: _____

SIGNED: _____

CONSULTANT

2. CAPTION

- a. Page 2 shall begin with the identification of the property covered by the Title and Encumbrance Report, hereinafter referred to as the caption. The caption shall be identified by the instrument number of the instrument conveying title to the current fee owner. Sell-offs shall be identified in the same manner. See Section A.4 for more information pertaining to the caption.

3. CONTIGUOUS PROPERTY

- a. A statement regarding contiguous property shall follow the caption identification. See Section A.5 for more information pertaining to contiguous property.

4. CHAIN OF TITLE

- a. The chain of title shall be presented as entries which address conveyances and encumbrances that affect the caption property. The entries shall be listed chronologically, by date, from the oldest to the newest.
- b. The chain of title shall begin with the first conveyance of the caption property which falls at least twenty years prior to the day of the search and provides an adequate legal description. Each instrument which conveys or encumbers the caption, or a portion thereof, shall be listed as an entry in the chain of title. A copy of each instrument shall be attached to the Title and Encumbrance Report and labeled as to its respective entry number and the recorded book and page (or instrument) number.
- c. Each entry in the chain of title which conveys the caption, or a portion thereof, shall include the following information: grantor, grantee, type of conveyance or legal action, and recording information.
- d. Sell-offs from the caption shall be identified as such and accepted. A copy of the conveyance from the owner of the caption shall be attached. In additions, instruments referred to in the caption description, or required to define the caption description, shall be copied and attached.
- e. If the real estate described in the caption is part of a subdivision, one legible copy of the subdivision plat shall be furnished, including the complete metes and bounds description, dedication, approvals and certificates, etc. One legible copy of the subdivision plats for other subdivisions named in the instruments which convey the caption, or a portion thereof, shall also be furnished.
- f. In the event that the last conveying instrument contains an incomplete or faulty legal description, the CONSULTANT shall make a note to that effect.
- g. When it is necessary to use the legal descriptions from two or more conveying instruments to formulate the caption, each legal description shall be given a tract number for reference purposes.
- h. Easements shall be fully described as to grantor, grantee, and complete recording information. A copy of the instrument shall be attached. Blanket easements which affect the entire caption may be described with a statement to that effect.
- i. Leases, liens, mortgages, assignments of rent, etc. shall be identified and described by the same method used for easements. In addition, subsequent assignments shall be shown.
- j. The tax statement shall be the last entry and include the following information: the name under which the real estate is assessed, the political township, the "Key" number (with each tract identified, if applicable), the amount and current status of the taxes.
- k. Defects in the chain of title shall be accompanied by the title researcher's note explaining the defect.

5. CONTIGUOUS PROPERTY

- a. A search for contiguous property is required for the Department's Engineering and Condemnation procedures.
- b. Contiguous property is property that is owned by the same entity as the caption and 1) has "unity for use" with the caption property, 2) is conveyed in the caption instrument or instruments, or 3) is adjacent to the caption property.

- c. Property conveyed in the caption conveyance must be accounted for. It is either contiguous property (requiring a statement to that effect); has been sold off (requiring a copy of the instrument of conveyance); or is beyond a one mile radius of the caption property (requiring a statement to that effect).
- d. Property that is known to have "unity of use" with the caption property shall be shown as contiguous property.
- e. Property that is indicated on the plans supplied by the Department as being owned by the same entity as owns the caption property should be accounted for as contiguous. A statement indicating that contiguous property instruments are attached will suffice.
- f. A statement indicating that no contiguous property was found is required when none of the above conditions have been met.
- g. No liability shall be incurred by the CONSULTANT regarding contiguous property.

6. AUDITOR/ASSESSOR PLATS

- a. The CONSULTANT shall provide one copy of the Auditor's or Assessor's plat(s), which covers the project area, and one copy of any applicable subdivision plat(s).

7. GENERAL

- a. Each Title and Encumbrance Report and the attachments thereto shall be submitted in DUPLICATE.
- b. If there are any questions concerning the information required, or any problems that need to be discussed, please feel free to contact the appropriate District Real Estate Manager.
- c. The CONSULTANT agrees to testify in court in behalf of the State on title work prepared under this contract should he/she be required to do so by the Department. In consideration for actions taken by the CONSULTANT, the Department will agree in writing to fees for testimony prior to the date the CONSULTANT must testify.
- d. The CONSULTANT agrees to follow accepted principles and techniques as shown and necessary interpretation of these furnished by the Department. A parcel that does not meet such requirements shall be further documented without additional compensation to the CONSULTANT.

B. PREPARATION OF TITLE AND ENCUMBRANCE REPORTS – TEMPORARY RIGHT-OF-WAY

1. COVER SHEET

- a. The cover sheet shall follow the format as found in the certification statement shown above with the words "TEMPORARY R/W" added to the title.
- b. The cover sheet of each Temporary R/W Title and Encumbrance Report shall be identified with the Project Number, County, Political Township, R/W Code Number, Parcel Number, Road Number, and Des. Number and the name of presumptive fee owner as shown on the right-of-way plans.
- c. A brief legal description shall be provided, including the quarter section or subdivision lot number, section number, township and range numbers (including direction), the acreage (unless in subdivision) and the assessed values of the land and improvements.
- d. The record owner(s), as of the certification date, shall be identified exactly as shown in the instrument vesting title in them. The address of the record owner(s) and complete recording information shall also be provided.
- e. No mortgage search is required for temporary R/W.
- f. No judgment or easement searches are required for temporary R/W.
- g. The status of the taxes shall be noted on the cover sheet.
- h. The cover sheet shall include a certification statement which indicated that the search was abbreviated for temporary R/W purposes only. The CONSULTANT performing the search shall sign and date the cover sheet.

2. CAPTION

- a. Page 2 shall begin with the identification of the property covered by the Title and Encumbrance Report, hereinafter referred to as the caption. The caption shall be

identified with instrument number of the instrument conveying title to the current fee owner. Sell-offs shall be identified in the same manner. See Section A.4 for more information pertaining to the caption.

3. CONTIGUOUS PROPERTY

- a. A statement regarding contiguous property shall follow the caption identification. See Section A.5 for more information pertaining to contiguous property.

4. TAXES

- a. The "key" number and current status of the taxes shall be noted. Any delinquent taxes shall be identified.

5. GENERAL

- a. The CONSULTANT shall furnish a copy of the deed(s) which conveyed the caption to the current fee owner and any sell-offs.
b. Each Title and Encumbrances Report and the attachments thereto shall be submitted in DUPLICATE.

C. SUPPLEMENTAL TITLE AND ENCUMBRANCE REPORTS (UPDATES)

1. When requested, the CONSULTANT shall provide title work from the date of the original Title and Encumbrance Report to the present date. The CONSULTANT shall provide the following, in duplicate:
a. A cover sheet which identifies changes and the associated recording documents. In addition, the CONSULTANT shall note the current status of the taxes.
b. Copies of documents recorded since the date of the original Title and Encumbrance Report which affect the caption property.

3. Right of Way Staking

R/W Staking will be performed by the CONSULTANT if needed.

Task 7 Real Estate Services (services to be provided under a future amendment)

A. R/W Management

Each company performing any of the tasks set forth in this Section A (RW Management), whether it is the CONSULTANT or any of its sub-consultants, shall be currently prequalified by INDOT's Prequalification Division in Work Type 12.1 (Project Management for Right of Way Acquisition Services) referenced in INDOT's Consultant Prequalification Manual.

The CONSULTANT shall be responsible for administration, scheduling and coordinating the activities necessary to certify that the right-of-way has been acquired and the project is clear for construction letting, including meetings, conferences and communications with Property Owners, Attorneys, Engineers, Valuation Services providers, Buyers and INDOT.

The CONSULTANT shall be responsible for providing a project timeline to the INDOT Real Estate Division Support Supervisor. The timeline will indicate the critical path for the completion of all parcels. As the RW Manager, the CONSULTANT will be expected to monitor progress and maintain assigned schedules, to update the timeline regularly, and to notify the INDOT Real Estate Division Support Supervisor if the project is at risk of being certified with exceptions.

The CONSULTANT shall be responsible for promptly entering information into INDOT's Land Records System (LRS) from time to time for each parcel or project assigned as soon as practicable, and for ensuring

that each of its sub-consultants also do so. The CONSULTANT shall also be responsible for all assignments, data entry, and the performance of all services provided hereunder by any sub-consultant.

The CONSULTANT shall be responsible for ensuring that all land acquisition activities undertaken by it or by any of its sub-consultants comply in all material respects with federal and state law, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (collectively, the "Act"), and the regulations at Title 49 CFR Part 24 and all attachments and amendments thereto (collectively, the "Title 49 Regulations").

The CONSULTANT shall be responsible for following the terms of INDOT's current funding authorization procedures, including but not limited to specifically confirming in writing with INDOT's Real Estate Division that federal RW funding has been approved and authorized before proceeding with the land acquisition process.

These right-of-way services include all reasonable services required to secure the parcels based on the approved engineering design or recommendation to INDOT that a parcel be condemned.

The CONSULTANT will provide, or will direct a Valuation Services provider to provide each parcel owner with a copy of the brochure published by the U.S. Department of Transportation, Federal Highway Administration, which is entitled "Acquisition: Acquiring Real Property for Federal and Federal-Aid Programs and Projects" (the "Acquisition Brochure"). The Acquisition Brochure will be first provided to the parcel owner in accordance with the procedures set forth in the "INDOT Real Estate Division Manual" (the "RED Manual"), and in any event, prior to any valuation services being provided for such parcel. The CONSULTANT will also direct the Buyer to bring a copy of the Acquisition Brochure to the Buyer's initial meeting with the parcel owner, and the Buyer should offer to provide this copy to the parcel owner.

All questions and documentation involving any sub-consultant relating to the land acquisition process hereunder shall be submitted to the CONSULTANT for review and handling. No sub-consultant should submit questions or send information or documentation directly to INDOT. The CONSULTANT shall resolve routine inquiries of its sub-consultants before involving INDOT, and shall investigate and have proposed solutions to any questions or concerns that the CONSULTANT submits to INDOT.

If requested by INDOT, the CONSULTANT shall complete ancillary services that are not unduly burdensome and which are reasonably necessary to the completion of the land acquisition process, even if not specifically detailed in this Appendix "A," without charging INDOT any additional fee.

The CONSULTANT will submit all proposed fees to INDOT for approval prior to contracting for or performing the services. If CONSULTANT wants to increase or revise any fee after it has been approved, the CONSULTANT will submit all such proposed revised or increased fees to INDOT for approval prior to contracting for or performing the services.

All sub-consultants must be prequalified by INDOT in the appropriate work type before working on the project.

The CONSULTANT will submit each parcel file to INDOT upon completion of the described services in the form and manner directed by INDOT.

B. Early Assessment of the Real Estate Cost Estimate

Each company performing any of the tasks set forth in this Section B (Early Assessment of the Real Estate Cost Estimate), whether it is the CONSULTANT or any of its sub-consultants, shall be currently prequalified by INDOT's Prequalification Division in Work Types 12.4 (Appraisal) or 12.5 (Appraisal Review) referenced in INDOT's Consultant Prequalification Manual.

The CONSULTANT shall provide an Early Assessment of the Real Estate Cost Estimate only if requested to do so by INDOT. If requested, the Early Assessment of the Real Estate Cost Estimate includes all

processes, procedures and observations to complete a Real Estate Cost Estimate assignment, including completion of the INDOT Real Estate Cost Estimate Spreadsheet. The Real Estate Cost Estimate includes, but is not limited to, the research, analysis and reporting of the real estate costs, including land costs, land improvement costs, temporary right-of-way costs, damages, special benefits, cost to cures and improvements acquired, and a breakdown of the Valuation Services report types. The Real Estate Cost Estimate will include the costs of relocation and condemnation. The Real Estate Cost Estimate will be based upon the market data in the project location. Copies of the supporting market data used in the cost analysis will accompany the spreadsheet. The CONSULTANT will be responsible for completing all data entry into INDOT's Land Records System ("LRS") associated with the Real Estate Cost Estimate assignment. The CONSULTANT shall not be entitled for any payment of the Early Assessment of the Real Estate Cost Estimate, unless this is provided to INDOT prior to completion of the Valuation Services.

C. Appraisal and Other Valuation Services

Each company providing valuation services for waiver valuations as set forth in this Section C (Valuation Services), whether it is the CONSULTANT or any of its sub-consultants, shall be currently prequalified by INDOT's Prequalification Division in Work Types 12.3 (Value Analysis), 12.4 (Appraisal), or 12.5 (Appraisal Review) referenced in INDOT's Consultant Prequalification Manual. Each company performing any of the other tasks set forth in this Section C, whether it is the CONSULTANT or any of its sub-consultants, shall be currently prequalified by INDOT's Prequalification Division in Work Types 12.4 (Appraisal) or 12.5 (Appraisal Review) in such Manual.

The CONSULTANT will provide valuation services for waiver valuations and appraisals (both, "Valuation Reports") in accordance with the RED Manual. All parcels will require the preparation of an Appraisal Problem Analysis ("APA") prior to the preparation of the Valuation Reports, and after the completion of the Valuation Reports, each of the Valuation Reports shall undergo an appraisal review process, or in the case of waiver valuations, an approval process by a Review Appraiser (both, the "Appraisal Review"). The CONSULTANT will undertake all correspondence, complete all forms, and retain copies of all documentation that is needed to demonstrate that the valuation process was completed in accordance with the RED Manual, state law, and federal law.

All APAs require INDOT's approval prior to the assignment of a Valuation Services provider. After completion of the Valuation Reports, to obtain INDOT's approval of the Valuation Reports and the just compensation to be paid to property owner(s), the CONSULTANT shall furnish to INDOT on regular paper signed copies of: the Valuation Reports; the APA and Appraisal Review, where applicable; the "Statement of the Basis for Just Compensation" in the form prescribed by INDOT; and any other documents requested relating to the valuation process (together, the "Valuation Documents"). In addition, an electronic copy of the signed Valuation Documents shall be provided in portable document format (PDF). If the PDFs are too large to email to INDOT, the CONSULTANT shall at its own cost provide the PDFs through a secure file sharing service.

Valuation Reports and Appraisal Reviews will conform to statutory and judicial determinations regarding non-compensable items as set forth and discussed in the "Appraising Procedures" section of the RED Manual or conferences between the parties. INDOT may reject any Valuation Report or Appraisal Review that fails to comply with the Uniform Standards of Professional Appraisal Practice, the RED Manual, state law, or federal law. Requested revisions to Valuation Documents will be completed in a timely manner. The CONSULTANT shall treat all Valuation Reports and Appraisal Reviews as confidential, except where exceptions apply as detailed in the RED Manual, and the CONSULTANT will ensure that green paper is used for any copies of Valuation Reports and Appraisal Reviews provided to a property owner.

The CONSULTANT shall be responsible for prompt input of all required parcel data and related project information into LRS. The CONSULTANT agrees to update Valuation Documents at the request of INDOT, and if necessary, will arrange for its appraisers to testify on behalf of INDOT on any parcels should he/she be required to do so by INDOT.

D. Negotiation/Buying

Each company performing any of the tasks set forth in this Section D (Negotiation/Buying), whether it is the CONSULTANT or any of its sub-consultants, shall be currently prequalified by INDOT's Prequalification Division in Work Type 12.6 (Negotiation) referenced in INDOT's Consultant Prequalification Manual.

The CONSULTANT will be assigned parcels of real estate to acquire on an as-needed basis. The CONSULTANT shall make every reasonable effort to acquire assigned parcels expeditiously.

The CONSULTANT shall make a prompt offer to acquire each parcel for the full offer amount, which has been established and approved by INDOT as just compensation for the acquisition. The offer shall be made in a Uniform Land and Easement Acquisition Offer letter, which shall be given to each parcel owner in person or sent by certified mail with return receipt requested. The CONSULTANT shall also provide the parcel owner a copy of the Valuation Report (the Valuation Report copy furnished to the owner shall be on light green paper), together with the "Statement of the Basis for Just Compensation" that explains the offer amount that has been established. In accomplishing the above, the CONSULTANT shall do the following:

1. Make all reasonable efforts to personally contact each owner or the owner's designated representative, explain the acquisition, and offer in writing the approved amount in the "Statement of the Basis of Just Compensation." When all efforts to make personal contact have failed or in the event the property owner resides out of state, the owner may be contacted by certified mail or other means appropriate to the situation and approved by INDOT.
2. No later than the first contact where the offer is discussed, the CONSULTANT shall give the owner the Acquisition Brochure.

The owner of improvements located on lands being acquired for right-of-way should be offered the option of retaining those improvements. A retention value shall be determined by the CONSULTANT and approved by INDOT for all retained improvements.

A revised offer and summary "Statement of the Basis of Just Compensation" shall be provided to the owner if:

1. The extent of the taking is revised, or
2. The approved estimated amount of just compensation is revised by the Review Appraiser.

The CONSULTANT shall maintain adequate records to document all owner contact for each parcel containing but not limited to:

1. The date and place of contact,
2. The parties of interest contacted,
3. The offer made,
4. Any counter offer or reasons the offer was not accepted, and
5. The signature of the CONSULTANT, dated, and initialed by the person contacted for in-person contacts.

The property owner must be given a copy of the report on each in-person contact.

The CONSULTANT further agrees that the parcel(s) shall be sufficiently documented with respect to Negotiation/Buying to meet the minimum standards set out in the Title 49 Regulations. The Title 49 Regulations are incorporated into this Agreement by reference and made a part hereto. The CONSULTANT further agrees to follow accepted principles and techniques in the purchase of real estate. All services provided hereunder by the CONSULTANT or any of its sub-consultants shall be in accordance with State Law, the RED Manual, this "Appendix A", and any interpretation of the foregoing furnished by INDOT. Any parcel that does not meet such requirements shall be further documented without additional compensation to the CONSULTANT.

When attempts to buy are successful, a signed statement is to be prepared by the CONSULTANT to the effect that:

1. The written agreement embodies all considerations agreed to by the property owner;
2. The CONSULTANT has no direct or indirect, present or contemplated future personal interest in the property, or in any monetary benefit from the acquisition of the property; and
3. The written agreement was reached without coercion of any type.

When attempts to buy are unsuccessful, the CONSULTANT shall record his recommendation for action and submit it to INDOT:

1. The recommendation shall consider administrative settlement, include the amount of settlement and reasons for a settlement, and
2. Otherwise, a condemnation report shall be filled out and submitted with the completed file.

The CONSULTANT shall provide an updated title and encumbrance report upon submission of any secured or condemned parcel.

The CONSULTANT shall provide all needed corrections and resubmit the parcel for further review in a timely manner. If multiple corrections and resubmissions are needed because of mistakes or improper delivery of any services hereunder, INDOT may determine, in its sole discretion, that the CONSULTANT shall not be entitled to any compensation hereunder for any such corrections and resubmissions.

E. Negotiation/Buying Review

Each company performing any of the tasks set forth in this Section E (Negotiation/Buying Review), whether it is the CONSULTANT or any of its sub-consultants, shall be currently prequalified by INDOT's Prequalification Division in Work Type 12.6 (Negotiation) referenced in INDOT's Consultant Prequalification Manual.

The ACQUISITION REVIEW CONSULTANT will be assigned parcels of real estate to review on an as-needed basis. The ACQUISITION REVIEW CONSULTANT shall make every reasonable effort to review assigned parcels expeditiously.

The ACQUISITION REVIEW CONSULTANT shall examine each parcel to ensure State and Federal guidelines were followed as they pertain to each project and parcel(s), the ACQUISITION REVIEW CONSULTANT must be able to understand the parcel, the project, the taking, the impact of the taking on the residue and the acquisition process which has been established and approved by INDOT. In accomplishing the above, the ACQUISITION REVIEW CONSULTANT shall do the following:

The ACQUISITION REVIEW CONSULTANT will insure and certify in LRS that Federal Highway guidelines and procedures were followed during the acquisition process.

The ACQUISITION REVIEW CONSULTANT is responsible for identification of errors and omissions within the parcel documentation and must act promptly to correct the issues and ultimately submit the parcel for error free to legal review.

The ACQUISITION REVIEW CONSULTANT shall work with the Acquisition Agent to resolve all errors to bring the parcel compliant and ready for DAG legal. Parcels are to be reviewed and submitted in a timely manner. All parcels shall be reviewed and submitted within (3) three business days of receipt of parcel from the buying consultant.

If parcel is found noncompliant after ACQUISITION REVIEW CONSULTANT has delivered to INDOT it will be the ACQUISITION REVIEW CONSULTANT's responsibility to make every effort to obtain required

information or documentation to complete legal requirements. Parcels must be compliant before ACQUISITION REVIEW CONSULTANT invoices will be approved for payment.

The ACQUISITION REVIEW CONSULTANT will be responsible for receipt of parcels from acquisition agents and the delivery or mailing of parcels to INDOT for processing. All administrative costs incurred by the ACQUISITION REVIEW CONSULTANT (postage, mailing envelopes, labels etc.) are the responsibility of the ACQUISITION REVIEW CONSULTANT and cannot be added to the flat fee per parcel.

The ACQUISITION REVIEW CONSULTANT shall maintain detailed LRS records to include a report for each parcel until the parcel has cleared executive for payment processing.

F. Relocation

Each company performing any of the tasks set forth in this Section F (Relocation), whether it is the CONSULTANT or any of its sub-consultants, shall be currently prequalified by INDOT's Prequalification Division in Work Type 12.8 (Relocation) referenced in INDOT's Consultant Prequalification Manual.

The CONSULTANT shall make every reasonable effort to expeditiously complete relocation activities for assigned parcel(s).

The CONSULTANT shall make prompt contact with the relocate to explain all relocation entitlements for which the relocate is eligible. In accomplishing the above, the CONSULTANT shall do the following:

1. Make all reasonable efforts to personally contact each owner or their designated representative and explain all relocation entitlements. When all efforts to make personal contact have failed, or in the event the property owner resides out of state, the owner may be contacted by certified mail or other means appropriate to the situation and approved by INDOT.
2. The CONSULTANT shall give the owner the brochure published by the U.S. Department of Transportation, Federal Highway Administration, which is entitled "Relocation: Your Rights and Benefits as a Displaced Person Under the Federal Relocation Assistance Program" (the "Relocation Brochure"). The Relocation Brochure will be first provided to the parcel owner not later than the first contact when the relocation entitlements are discussed.

The CONSULTANT shall maintain adequate records for each parcel containing, but not limited to:

1. The date, time and place of each contact,
2. The parties of interest contacted,
3. A detailed list of the relocation entitlements explained, and
4. The signature of the CONSULTANT and the person contacted on all applicable relocation forms. If the person contacted refuses to sign, this must be noted on all applicable forms.

The CONSULTANT further agrees that the parcel(s) shall be sufficiently documented to meet the minimum standards set out in the Title 49 Regulations. The CONSULTANT further agrees to follow accepted principles and techniques of the Relocation process in accordance with State Law, the RED Manual, this "Appendix "A", and any interpretation of the foregoing furnished by INDOT. Any parcel that does not meet such requirements shall be further documented without additional compensation to the CONSULTANT.

The CONSULTANT will undertake all correspondence, complete all forms, and retain copies of all documentation that is needed to demonstrate that the relocation process was completed in accordance with the RED Manual, state law, and federal law.

G. Relocation Review

Each company performing any of the tasks set forth in this Section G (Relocation Review), whether it is the CONSULTANT or any of its sub-consultants, shall be currently prequalified by INDOT's Prequalification Division in Work Type 12.8 (Relocation) referenced in INDOT's Consultant Prequalification Manual.

The Relocation Reviewer will be offered Relocation Review Services Assignments on an as-needed basis. Upon acceptance of an assignment the Review consultant shall make every reasonable effort to complete relocation activities for assigned parcel(s) expeditiously.

The Relocation Reviewer will be responsible for contacting the assigned relocation agent to discuss the best method of receiving all required relocation review work.

The Relocation Reviewer will be responsible for the review and certification of all relocation claims and records for the duration of the Relocation process for each relocation parcel assigned to the reviewer, to include but not limited to the following list:

1. Onsite Appraisal meeting and Initial Relocation Meeting,
2. Issuance of the 90 Day Notice packet assembly,
3. All relocation claim vouchers,
4. Ensure LRS is current and accurate to include remark entry every 7-10 days,
5. Sign and submit assembly Compliance Certification for steps a, b and c,
6. Enter a remark in LRS when the Compliance Certification has been submitted to INDOT

The Relocation Reviewer will be responsible for ensuring that the parcel(s) are sufficiently documented to meet the minimum standards set out in the Title 49 Regulations. The Relocation Reviewer further agrees to follow accepted principles and the "Relocation Policy and Procedures Manual," and any further necessary interpretation of these furnished by INDOT.

The Relocation Reviewer shall be responsible to confirm that the assigned Relocation Agent has completed all required parcel data and related information into INDOT's Land Records System (LRS) for each parcel or project assigned. The Relocation Reviewer will also be responsible for entering information into INDOT's Land Records System (LRS) for each parcel or project assigned.

H. General

If the action or inaction of the CONSULTANT or of any of its sub-consultants fails to comply with the terms of this "Appendix A" or the remainder of this Contract, and such failure results in additional costs or expense incurred by INDOT (whether or not due to the diminution or loss of federal government funding for the project), then such action or inaction shall be deemed a breach of this Contract by the CONSULTANT and INDOT reserves its right to seek contribution from the CONSULTANT for an amount up to the amount of such additional costs and expense. INDOT will consider, but not be bound by, the CONSULTANT's explanation for why its contribution may not be appropriate.

Task 8 Utility Coordination Services

The CONSULTANT shall perform utility coordination in accordance with the following:

1. Utility coordination activities, as presented during Utility Coordinator Certification Training
2. 105 IAC 13 Utility Facility Relocations on Construction Contracts
3. Indiana Design Manual (IDM) Chapter 104 Utility Coordination
4. INDOT Accommodation Policy
5. FHWA Program Guide: Utility Relocation and Accommodation on Federal Aid Highway Projects

The CONSULTANT shall have an INDOT certified Utility Coordinator as part of the project team.

The CONSULTANT shall have an INDOT certified Utility Coordinator perform the following utility coordination tasks covered in IDM Chapter 104:

1. Present project reports necessary for project delivery such as status reports and risk reports.
2. Recommend work plans for approval including, narrative portion, relocation drawing, cost estimates and proof of property interests.
3. Recommend work plan addendums for approval.
4. Lead or facilitate meetings involving utility specific activities such as 'kick-off' meetings, conflict resolution meetings and reimbursement eligibility meetings.
5. Facilitate the discussion of cost estimates, reimbursement, reimbursable status or agreements with utility companies and INDOT.
6. Review and recommend approval of utility consultants and utility contractors.
7. Review and sign all required letters to utility companies.
8. Prepare and sign all required contract letting documents.
9. Conduct post letting utility coordination services.

At the start of a project, the CONSULTANT shall develop and thereafter maintain a schedule of activities to deliver the project. The schedule shall include pre-letting and post-letting utility coordination activities, including but not limited to the following items:

1. Obtain from the INDOT Project Manager:
 - A. The target date for the roadway to be open to traffic
 - B. The target date for utility relocations to be complete.
2. Send out the initial notice.
3. Meet face to face with utility companies to determine:
 - A. What are the utility right of way needs,
 - B. What is the basis for reimbursement for the utility facilities, if any,
 - C. What is the estimate of cost to relocate the utility facilities,
 - D. What is the utility schedule to relocate, if such is necessary
 - E. Where would the utility companies relocate their facilities, if such is necessary,
 - F. How can the highway project be designed to potentially avoid the utilities
 - G. Do the utility companies have elevations for their facilities and is Subsurface-Utility Engineering (SUE) needed.
4. Send out the request for verification.
5. Send out the request for conflict analysis.
6. Send out the request for work plans.
7. Deliver the utility certificate and utility special provision to the INDOT Oversight Agent and INDOT Project Manager for approval, and.
8. Date each utility is anticipated to be out of conflict with the highway project.

All utility coordination services are under the direction of an INDOT Oversight Agent who coordinates with the INDOT Project Manager.

The CONSULTANT shall design the project to potentially avoid the relocation of utility facilities when feasible and to minimize the financial impact to the project and to the utilities.

Prior to Stage 2 plans, the CONSULTANT shall report in writing to the INDOT Project Manager and the INDOT Oversight Agent which utilities may be relocated and the reason they may be relocated.

The CONSULTANT shall conduct office reviews, field reviews, meetings and communications as needed for utility coordination services.

The CONSULTANT shall prepare notices, letters, drawings and agreements for utility coordination services.

The CONSULTANT shall provide legal notice before entering private property.

The CONSULTANT shall perform constructability reviews of the project and utility relocation work in accordance with the Constructability Manual, <http://www.in.gov/indot/2697.htm>.

The CONSULTANT shall prepare agreements for INDOT's approval for reimbursable utility relocation work and utility relocation work that will be performed by the INDOT highway construction contractor.

The CONSULTANT shall determine if utility field check(s), utility coordination meeting(s), and utility conflict resolutions meeting(s) are needed, then schedule and conduct such when needed.

The CONSULTANT shall review plan sheets, cross sections, relocation work plans and schedules to determine that identified utility facility conflicts are being addressed by the utility company.

The CONSULTANT shall be responsible for input of all required utility data and project information into INDOT's Utility Tracking Application (UTA) based on the current standards set by INDOT's central office.

Before Stage 2 design is complete, the CONSULTANT shall have a face to face meeting with utility companies to discuss the following:

1. What are the utility right of way needs,
2. What is the basis for reimbursement for the utility facilities, if any,
3. What is the estimate of cost to relocate the utility facilities,
4. What is the utility schedule to relocate if such is necessary
5. Where would the utility company relocate their facilities if such is necessary,
6. How can the highway project be designed to potentially avoid their facilities
7. Do the utility companies have elevations for their facilities and is SUE needed.

Before Stage 3 design is complete, the CONSULTANT shall deliver to the INDOT Oversight Agent a revised estimate of the reimbursable utility relocation costs.

Before the Ready for Contracts date, the CONSULTANT shall deliver to the INDOT Oversight Agent a work plan for each utility within the area of the project. A work plan includes narrative, drawing, cost estimate and easement documents as applicable. The work plans shall be delivered whether or not utility facility relocations are required.

The CONSULTANT shall upload the following items for all utilities within the area of the project via the INDOT ERMS Web Portal not later than 90 days prior to the contract letting:

1. Utility relocation work plan
2. Utility coordination certificate
3. Utility special provision

The CONSULTANT shall act as a liaison between utility companies and INDOT, answering questions, interpreting plans, and corresponding with utilities.

The CONSULTANT shall be available during the construction phase of the project and report the status of utility work to the Oversight Agent, Project Engineer and Project Manager bi-weekly, or more frequently, if requested.

Task 9 Construction Phase Services (services to be provided under a future amendment)

Following the award of the construction Contract, the CONSULTANT shall be responsible for attending the pre-construction meeting. During the course of construction, the CONSULTANT shall be available at reasonable

times during normal working hours to respond to reasonable inquiries concerning the accuracy or intent of the CONSULTANT's plans. All such inquiries shall be made only by persons designated by INDOT to interpret the plans and Contract documents for the benefit of the contractors and subcontractors performing the work. The CONSULTANT shall not be required to respond to inquiries by persons other than INDOT's designated representative and shall not be required to engage in exhaustive or extensive analysis or interpretation of the plans.

The CONSULTANT shall review all shop drawings as described in IDM 14-1.02(08). This includes Mechanically Stabilized Earth (MSE) retaining walls, Sound Barrier Systems and Precast Concrete 3-Sided Structures and Box Culverts.

If during the construction phase it is determined that unforeseen or unusual conditions arise, the CONSULTANT shall revise the plans with INDOT approval.

If requested by INDOT, the CONSULTANT shall have the CONSULTANT's project design engineer attend and participate in partnering (1) a workshop with employees of INDOT, contractor, subcontractors, etc. to develop a statement of goals, and (2) follow-up meetings.

Utility Coordination Services During Construction:

All utility coordination services are under the direction of an INDOT Oversight Agent who coordinates with the Project Manager.

The CONSULTANT shall act as a liaison between utility companies and INDOT, answering questions, and interpreting plans.

The CONSULTANT shall be available during the construction phase of the project and be pro-active in facilitating that the utility facility relocations are occurring in accordance with the utility's work plan.

The CONSULTANT shall issue a letter giving the utility notice to proceed with construction activities.

The CONSULTANT shall attend construction progress meetings held by the project engineer as necessary.

The CONSULTANT will prepare a bi-weekly status report indicating the details of utility relocation work and submit these reports to the Oversight Agent, Project Manager and Project Engineer.

The CONSULTANT shall prepare permit addendums for directed changes to utility relocation work plans including cost increases prior to the work being performed.

The CONSULTANT shall send to each utility with relocation work, a letter acknowledging completion of their work, not later than two weeks after the utility relocation work is complete.

The CONSULTANT shall send to each reimbursable utility, a letter requesting a cumulative invoice summary in 90 days, not later than two weeks after the utility relocation work is complete.

[Remainder of Page Intentionally Left Blank]

APPENDIX "B"

Information and Services to be furnished by INDOT, if available:

1. Available data from the transportation planning process
2. Traffic Data
3. Traffic Forecasting
4. Crash Data
5. All written views that are received by INDOT pertinent to the environmental studies.
6. Utility Payments
7. Utility Agreement Approvals
8. Access to INDOT records regarding plans, field notes, project correspondence, and right-of-way grants and deeds located within the project area
9. Existing bridge and/or road plans
10. Criteria for design and details for signs, signals, lighting, highway and structures such as grades, curves, sight distances, clearances, design loading, etc.
11. Standard specifications and standard drawings applicable to the project
12. State of Indiana forms and manuals required for the project
13. Any necessary permit forms and permit processing required by other State and/or Federal agencies (such as US Army Corps of Engineers, US Coast Guard, Indiana Department of Environmental Management and/or Indiana Department of Natural Resources)
14. Relocation and land acquisition costs
15. Legal services necessary for the acquisition of all parcels that must be acquired through eminent domain proceedings
16. Approval or disapproval of proposed administrative settlements and condemnations
17. Recording of all transfer documents
18. Review of appraisals obtained by property owners

APPENDIX "C"

Schedule:

No work under this Contract shall be performed by the CONSULTANT until the CONSULTANT receives a written notice to proceed from INDOT.

All work by the CONSULTANT under this Contract shall be completed and delivered to INDOT for review and approval within the following approximate time periods. Variations from this schedule may be agreed upon by the INDOT project manager and the CONSULTANT.

| | |
|---------------------------------|------------|
| Notice to Proceed | 10/01/2020 |
| Engineering Assessment Report | 11/25/2020 |
| Stage 1 Submission | 6/01/2021 |
| Preliminary Field Check | 9/01/2021 |
| Stage 2 Submission | 4/15/2022 |
| Environmental Document Approval | 4/15/2022 |
| Final Field Check | 10/15/2022 |
| Stage 3 Submission | 4/21/2023 |
| ROW Clear | 4/21/2023 |
| Final Tracings | 6/5/2023 |
| Anticipated Ready for Contracts | July 2023 |

Approved applicable permits, such as IDEM 401 Water Quality Certification, USACE 404 Permit, and Rule 5 with documentation, will be due seven (7) months prior to the scheduled Ready for Contracts date.

The CONSULTANT will keep the tracings until a time four (4) months prior to the scheduled letting.

Construction Changes

- a. Questions, clarifications, or corrections requested by INDOT construction personnel regarding the interpretation of the CONSULTANT's plans shall be addressed by the CONSULTANT within a reasonable period of time from the CONSULTANT's receipt of INDOT's request.
- b. Modifications to the plans during the construction phase due to unforeseen or unusual conditions shall be made within a reasonable period of time following receipt by the CONSULTANT of INDOT's notice to proceed.

[Remainder of Page Intentionally Left Blank]

APPENDIX "D"

Compensation

1. The CONSULTANT shall receive as payment for the work performed under this Contract the total amount not to exceed \$422,148.00 (Section 2 - \$422,148.00).
2. The CONSULTANT will be paid for the following services described in Appendix "A" on a lump sum basis. Payment will be in accordance with the following fee schedule:

Project Intent Definition

| | |
|------------------------------|--------------|
| Abbreviated Engineers Report | \$ 15,335.00 |
|------------------------------|--------------|

Environmental Services

| | |
|-----------------------------|--------------|
| Environmental Documentation | \$ 35,606.00 |
|-----------------------------|--------------|

Topographic Survey Data Collection

| | |
|----------------------|--------------|
| Topographical Survey | \$138,377.00 |
|----------------------|--------------|

Road Design and Plan Development

| | |
|--------------------|--------------|
| Project Management | \$ 37,320.00 |
|--------------------|--------------|

| | |
|-----------------------|--------------|
| Road Design and Plans | \$144,052.00 |
|-----------------------|--------------|

| | |
|-----------------------|--------------|
| Traffic Signal Design | \$ 25,309.00 |
|-----------------------|--------------|

Utility Coordination Services

| | |
|----------------------|--------------|
| Utility Coordination | \$ 26,149.00 |
|----------------------|--------------|

For each lump sum item, the CONSULTANT will be paid based on the percentage of work performed. The CONSULTANT shall show computation of the completion percentage of each item. If a portion of work is completed for an item then the CONSULTANT shall bill only for that work completed.

3. The CONSULTANT may submit one invoice per calendar month for work covered under this Contract.
4. If a DBE goal is established for this contract, separate DBE costs shall be summarized on each invoice including a cumulative total to show DBE goal attainment.
5. CONSULTANT shall submit an invoice for payment within 120 days after the earlier of (a) the date that CONSULTANT's right to payment for a work item has accrued or (b) the last day of the term of this contract. The date any invoice is due to be presented to INDOT is referred to herein as the "Invoice Due Date". CONSULTANT acknowledges and agrees that INDOT is a recipient of federal funds and INDOT may intend to use federal funds to pay all or a part of the sums owed to CONSULTANT pursuant to this contract. Accordingly, in the event that CONSULTANT'S invoice is not timely delivered and federal funds that were otherwise

RFP: P200309

available to pay CONSULTANT are not available to pay CONSULTANT for any reason, then CONSULTANT agrees that INDOT shall have no obligation to pay sums due by INDOT hereunder to the extent previously available federal funds are not available to pay such sums ("Unavailable Federal Funds"). In the event that the compensation to CONSULTANT is intended by INDOT on the date hereof to be payable solely with state funds, then the amount of Unavailable Federal Funds shall be deemed to be \$0.00.

Additionally, in the event that CONSULTANT does not submit an invoice by the Invoice Date, then CONSULTANT shall additionally pay INDOT an administrative fee equal to 20% of the value of the invoice, less the amount of Unavailable Federal Funds (the "Administrative Fee"). The Administrative Fee is intended to offset certain costs that INDOT incurs as a result of late delivery of an invoice, which costs are difficult and impractical to ascertain.

6. The actual amount payable shall be determined in accordance with a final audit by INDOT's Division of Cost Accounting and Audits.

[Remainder of Page Intentionally Left Blank]

APPENDIX "E"

SUBCONSULTANT ACKNOWLEDGEMENT

RECITALS

WHEREAS, the undersigned subconsultant ("Subconsultant") desires to provide goods and/or services in connection with that certain consulting contract by and between **WSP USA, Inc.** and the Indiana Department of Transportation (INDOT), Contract number **00000000000000000000000046104** ("Contract"), and

WHEREAS, INDOT consents to the services of the Subconsultant according to the laws of the State of Indiana and the terms of this Subconsultant Acknowledgement (Acknowledgement),

THEREFORE, in consideration of the mutual covenants contained herein, the Subconsultant for itself and on behalf of its successors and assigns (if any) and INDOT agree as follows:

1. With respect to any liability and/or indemnification issues, this Acknowledgment is subject to IC 8-23-2-12.5.
2. Without limiting any rights or remedies based in agency, law, equity or otherwise that INDOT may have with respect to the Subconsultant under the Contract, the Subconsultant specifically agrees that Paragraphs #19 (Governing Laws); #23 (Insurance -- Liability for Damages) and #21 (Indemnification) of the Contract shall apply to Subconsultant as though Subconsultant had been a party to and duly executed the Contract.
3. INDOT and Subconsultant agree that execution of this Acknowledgement is an inducement for INDOT to permit Subconsultant to perform services under the Contract and INDOT is entitled to and does, in fact, rely upon the terms and conditions contained herein.

For SUBCONSULTANT:

For INDOT:

Subconsultant Firm Name (Please Print)

Name/Title

Name/Title

Date

Date

APPENDIX "F"

INDIANA DEPARTMENT OF TRANSPORTATION
CONSULTANT CONFLICT OF INTEREST POLICY

The Indiana Department of Transportation (INDOT) Consultant Conflict of Interest Policy (the "Policy") is as follows:

1. Consultants and Subconsultants shall provide independent and uncompromised judgment, counsel, work product and public representation, with respect to every contract with INDOT.
2. Consultants and Subconsultants shall support the policies and practices of the State of Indiana.
3. Any conduct or set of facts that could or does compromise or limit the duties in Paragraphs (1) and (2) above shall be considered a Conflict of Interest ("Conflict").
4. The consultant (and any Subconsultant), not INDOT, shall reasonably and in good faith anticipate, identify, and disclose to INDOT any actual or potential Conflict.
5. In addition to complying with the requirements of this Policy, the consultant or subconsultant shall also comply with any other professional responsibilities, ethics code of conduct or law applicable to the consultant or subconsultant.
6. The consultant shall include a term requiring compliance with this Policy in any agreement or arrangement with any subconsultant in furtherance of any INDOT contract.
7. The Consultant and any Subconsultant shall notify INDOT of any Conflict or potential Conflict according to this Policy in writing (by emailing INDOT at contractsrfp@indot.in.gov), fully explaining the Conflict or potential Conflict and providing any suggestions or protocol to remedy the Conflict prior to (as applicable):
 - a. The completion of any INDOT Consultant selection process;
 - b. Any consultant engaging any Subconsultant on an INDOT contract; or
 - c. The consultant or Subconsultant accepting any work from an entity other than INDOT.
8. INDOT's Consultant Selection Committee will consider the consultant's or Subconsultant's notification of a potential Conflict with consultation from the Project Manager and agency Ethics Officer. The Committee will make a recommendation to the Commissioner on whether to object to the Conflict, waive the potential Conflict or require the Consultant or Subconsultant to remedy the Conflict. The Committee will include an explanation on why a waiver is appropriate for all recommendations to waive a Conflict.
9. After receiving the recommendation of the Committee, INDOT's Commissioner or the Commissioner's designee, in his or her sole discretion and with the exercise of reasonableness and good faith, may object to the Conflict, waive the Conflict, or require the Consultant (or Subconsultant) to remedy the Conflict to INDOT's satisfaction as a

RFP: P200309

condition of INDOT awarding or continuing any contract or awarding any amendment to, extension or supplement of or additional work under any contract.

10. INDOT shall issue its decision with respect to any notification provided under Paragraph (7) above, within 10 (ten) business days of receipt of said notification.

Remainder of this page intentionally left blank.