

**STATE OF INDIANA'S
STANDARD CONTRACT FOR A CONSULTANT FOR A PUBLIC WORKS PROJECT
Contract # _____**

THIS PUBLIC WORKS CONSULTANT CONTRACT (“Contract”), entered into by and between the Indiana Department of Administration’s Public Works Division (“State”) and **XXXXXXXXXX** (“Consultant”), is executed pursuant to the terms and conditions set forth herein and is governed by Indiana Code 4-13.6, *et seq.* In consideration of those mutual undertakings and covenants, the parties agree as follows:

WHEREAS, the State intends to undertake a public works project to be entitled:

Public Works Project Number **XXXXXX**, hereinafter referred to as “Project”

DESCRIPTION: _____

For and on behalf of: **[INSTITUTION/DEPARTMENT]** (“Using Agency”)

Located on a site designated as **[FACILITY]**

NOW, THEREFORE, the State and the Consultant, pursuant to the following terms and conditions, and in consideration for those mutual undertakings and covenants, agree as follows:

- 1. Duties of Consultant.** Consultant shall provide consulting services for the Project. Specific duties are fully described in the Consultant’s Proposal, which is attached hereto as **Exhibit A** and fully incorporated herein.
- 2. Term.** The term of this Contract is **_____** days commencing on the date of the last state signatory to this Contract.
- 3. Consideration.** All payments provided herein are subject to appropriations made and funds allocated as provided by laws of the State of Indiana. The State shall pay the Consultant for the services rendered under this Contract in current funds not to exceed **\$XX,XXX.XX**.
- 4. Accounting Records.** Records of the Consultant’s direct personnel, consultant, and reimbursable expense pertaining to this Contract and records of accounts between the State and the Consultant shall be kept in accordance with generally accepted accounting principles. Consultant shall make such materials available at its offices at all reasonable times during the contract term and for three (3) years from the date of final payment under this Contract, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.
- 5. Consultant Recognition.** Whenever renderings, photographs of renderings, photographs of models, or photographs of the services rendered under this Contract are released by the State for publicity, proper credit for design shall be given the Consultant, provided, the giving of such credit is without cost to the State.
- 6. Certification Board Prequalification; Licensure.** The Consultant certifies that it has been pre-qualified by the State of Indiana’s Public Works Division Certification Board to perform the work and furnish the services required by this Project. The Consultant further certifies that all information and documentation submitted by it in its Application for Prequalification Certification, the Consultant’s Proposal and submitted in response to the Project, is true, accurate and complete as of the date of this Contract’s effectiveness. The Consultant shall immediately notify the State of any material change to such information. The Consultant shall immediately notify the State if, during the course of

performance of this Contract, it or any of its principals are proposed for debarment or ineligibility, or become debarred or declared ineligible, from entering into contracts with the federal government or any department, agency or political subdivision of the State.

The Consultant and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Consultant pursuant to this Contract. The State shall not be required to pay the Consultant for any services performed when the Consultant, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification or accreditation, the Consultant shall notify the State immediately and the State, at its option, may immediately terminate this Contract. If this Contract was awarded, in part, due to the involvement of a professional licensed by the Indiana Professional Licensing Agency, the licensed professional shall be listed in **Section 33, Key Persons**, of this Contract. The Consultant shall immediately notify the State if the licensed professional is no longer employed or associated with the Consultant for purposes of this Contract.

7. Conflict of Interest.

The Consultant shall avoid all known conflicts of interest with the Consultant's employer or the State and shall promptly inform the State of any known or potential business association, interest, financial or other, or circumstances which could influence its judgment or quality of services under this Contract.

Additionally, if the Consultant is a "consultant" within the meaning of IC 5-16-11-2, the Consultant shall comply with IC 5-16-11. et. seq.

8. Access to Records. The Consultant and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

9. Assignment; Successors.

A. The Consultant binds its successors and assignees to all the terms and conditions of this Contract. The Consultant may assign its right to receive payments to such third parties as the Consultant may desire without the prior written consent of the State, provided that the Consultant gives written notice (including evidence of such assignment) to the State 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. The Consultant shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Consultant shall provide prompt written notice to the State of any change in the Consultant's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

10. Assignment of Antitrust Claims. As part of the consideration for the award of this Contract, 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.

11. Audits. 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.

The State considers the Consultant to be a “Contractor” under 2 C.F.R. 200.331 for purposes of this Contract. However, if it is determined that the Consultant is a “subrecipient” and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Consultant shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

12. Authority to Bind Consultant. 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 approvals to make this Contract fully binding upon the Consultant when his/her signature is affixed, and accepted by the State.

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

14. Compliance with Laws.

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

B. The Consultant and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* 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 Consultant 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.

C. The Consultant certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Consultant agrees that any payments 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 is current in its payments and has submitted proof of such payment to the State.

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

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

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

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

H. As required by IC § 5-22-3-7:

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

(A) the Consultant, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) the Consultant will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

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

(A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

15. Condition of Payment. All services provided by the Consultant under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

16. Confidentiality of State Information. The Consultant understands and agrees that data, materials, and information disclosed to the Consultant may contain confidential and protected information. 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 or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Consultant for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State 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 the State 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 Consultant, 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.

17. Continuity of Services.

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

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Consultant shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Consultant shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Consultant shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Consultant also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Consultant shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Consultant shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

18. Debarment and Suspension.

A. The Consultant certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Consultant.

B. The Consultant certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Consultant shall immediately notify the State if any subcontractor 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 subcontractor for work to be performed under this Contract.

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

20. Disputes.

A. Should any disputes arise with respect to this Contract, the Consultant and the State agree to act immediately to resolve such disputes. 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 incurred by the State or the Consultant as a result of such failure to proceed shall be borne by the Consultant, and the Consultant shall make no claim against the State for such costs.

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

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

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

F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

21. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Consultant hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Consultant will give written notice to the State within ten (10) days after receiving actual notice that the Consultant, or an employee of the Consultant in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification

may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Consultant certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Consultant's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the 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;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Consultant of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

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

- A. 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.
- B. 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.
- C. The Consultant shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Consultant that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor 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 subcontractor.

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.

23. Employment Option. If the State 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-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

24. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

25. Funding Cancellation. As required by Financial Management Circular 3.3 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

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

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

28. Indemnification. The Consultant agrees to indemnify and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Consultant and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Consultant.

29. Independent Contractor; Workers' Compensation Insurance. The Consultant is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Consultant shall provide all necessary unemployment and workers' compensation insurance for the Consultant's employees, and the Consultant shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

30. Indiana Veteran Owned Small Business Enterprise Compliance. Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's Division of Supplier Diversity and may require an amendment. It is the State's expectation that

the Consultant will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: **[Add additional IVOSBs using the same format.]**

IVOSB	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to IndianaVeteransPreference@idoa.IN.gov, or mailed to IDOA, 402 W. Washington Street, Room W-462, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to IndianaVeteransPreference@idoa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Consultant shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Consultant shall notify subcontractors that they must confirm payments received from the Consultant in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/idoa/mwbe/payaudit.htm. The Consultant may also be required to report IVOSB certified subcontractor payments directly to the Division of Supplier Diversity, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Consultant's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

31. Information Technology Enterprise Architecture Requirements. If this Contract involves information technology-related products or services, the Consultant agrees that all such products or services are compatible with any of the technology standards found at <https://www.in.gov/iot/2394.htm> that are applicable, including the assistive technology standard. State may terminate this Contract for default if the terms of this paragraph are breached.

32. Insurance.

A. The Consultant and their subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Consultant for any and all claims of any nature which may in any manner arise out of or result from Consultant's performance under this Contract. The required limits of liability can be obtained with a combination of primary and excess liability policies.

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$500,000 per person and \$2,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Automobile liability for owned, non-owned and hired autos with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.

3. Professional Liability, also known as Errors and Omissions Insurance, for those Consultant required to hold a professional license by the Indiana Professional Licensing Agency with limits not less than \$XXX,XXX per cause of action and \$X,XXX,XXX aggregate. This is coverage available to pay for liability arising out of the performance of professional or business-related duties, with coverage tailored to the needs of the specific profession. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract

4. The Consultant shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

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

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

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

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

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

5. The Consultant waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Consultant shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

33. Key Person(s).

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

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

Nothing in sections A and B, above shall be construed to prevent the Consultant from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Consultant shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are: [INSERT "N/A" OR KEY PERSON WITH NAME AND LICENSE NUMBER pursuant to Section 6 above]

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

35. Minority and Women’s Business Enterprises Compliance. Award of this Contract was based, in part, on the Minority and/or Women’s Business Enterprise (“MBE” and/or “WBE”) participation plan as detailed in the Minority and Women’s Business Enterprises Subcontractor Commitment Form, commonly referred to as “Attachment A” in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by the Division of Supplier Diversity and may require an amendment. It is the State’s expectation that the Consultant will meet the subcontractor commitments during the Contract term.

The following Division of Supplier Diversity certified MBE and/or WBE subcontractors will be participating in this Contract: [Add additional MBEs and WBEs using the same format.]

MBE or WBE	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana’s subcontractor payment auditing system), emailed to MWBECompliance@idoa.IN.gov, or mailed to the Division of Supplier Diversity, 402 W. Washington Street, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to MWBECompliance@idoa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Consultant shall report payments made to Division of Supplier Diversity certified subcontractors under this Contract on a monthly basis using Pay Audit. The Consultant shall notify subcontractors that they must confirm payments received from the Consultant in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/idoa/mwbe/payaudit.htm. The Consultant may also be required to report Division of Supplier Diversity certified subcontractor payments directly to the Division of Supplier Diversity, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Consultant’s failure to comply with the provisions in this clause may be considered a material breach of the Contract.

36. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and

the Americans with Disabilities Act, the 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, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Consultant certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Consultant or any subcontractor.

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

37. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first-class U.S. mail service to the following addresses, unless otherwise specifically advised. Such notice, statement or other communication shall include the Public Works Project Number in the subject line of the E-mail and the body of the notice or other communication.

A. Notices to the State shall be sent to: Public Works Division, Director
Indiana Department of Administration
402 W Washington St Room W467
Indianapolis, IN 46204
E-mail: rgrossman@idoa.IN.gov

B. Notices to the Consultant shall be sent to: [INSERT CONSULTANT NAME]
[INSERT CONSULTANT ADDRESS]
[ADDRESS]
E-mail: _____

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.

38. 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) the Selection Letter issued by the State, (3) attachments prepared by the State; (4) if applicable, the *Public Works Designer Manual*; (5) the Consultant's Proposal; and (6) attachments prepared by the Consultant. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

39. Ownership of Documents and Materials.

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "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 hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Consultant grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of

the Materials.

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

40. Payments.

A. All payments shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC § 4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the 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.

B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

41. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2-3.

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

42. Progress Reports. The Consultant shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

43. Public Record. The Consultant acknowledges that the State will not treat this Contract as containing confidential information, and the State will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

44. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

45. 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.

46. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully

performed according to its terms and conditions and any written amendments or supplements.

47. 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.

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

49. Termination for Default.

- A. With the provision of thirty (30) days' notice to the Consultant, the State may terminate this Contract in whole or in part if the Consultant fails to:
1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 3. Make progress so as to endanger performance of this Contract; or
 4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Consultant will be liable to the State for any excess costs for those supplies or services. However, the Consultant shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Consultant and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

50. Travel. No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the *Indiana Department of Administration's Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Travel Policy* guidelines.

51. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right.

Neither the State’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 the State in accordance with applicable law for all damages to the State caused by the Consultant’s negligent performance of any of the services furnished under this Contract.

52. Work Standards. The Consultant shall execute its responsibilities by following and applying at all times the professional skill, care, and diligence required by this Contract, or, if not set forth herein, ordinarily exercised by competent professionals of good standing in the same discipline, practicing in the same or similar locality, and shall understand and utilize all relevant IDOA Public Works Division standards and technical guidelines including the *Public Works Designer Manual*, where applicable, and other appropriate materials.

If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Consultant shall grant such request.

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 herein. 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://secure.in.gov/apps/idoa/contractsearch/>

IN WITNESS WHEREOF, the Consultant and the State have, through their duly authorized representatives, entered into this Contract for Public Works Project Number **XXXXXX**. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Consultant: XXXXXXXXXXX

**Department of Administration
Public Works Division**

By: _____
Printed Name: _____

By: _____
Robert Grossman, Director

Title: _____

For IDOA Commissioner if less than \$10,000,000

Date: _____

Date: _____

Approved by:
Department of Administration

Approved by:
State Budget Agency *PURSUANT TO IC 4-13-2-14.1*
APPROVAL OF THE BUDGET AGENCY
IS NOT REQUIRED FOR CONTRACTS
UNDER \$100,000.00

By: _____ (for)
Rebecca Holwerda, Commissioner

By: _____ (for)
Zachary Q. Jackson, Director

Date: _____

Date: _____

Approved as to Form and Legality:

*Form approval has been granted by the
Office of the Attorney General pursuant to
IC 4-13-2-14.3(e) on September 5, 2023.
FA 23-35*

This document prepared and reviewed by:

Tammera J. Glickman
Counsel, Indiana Department of Administration

Exhibit A
CONSULTANT'S DUTIES

See Documents to Follow for Exhibit