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City Council

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John Dippel
Steve Hoover
Robert L. Horkay
Robert J. Smith
Cindy L. Spoljaric
Rob Stokes

Clerk Treasurer
Cindy J. Gossard

Parks and Recreation

(317) 804-3184 admin office
(317) 804-3190 fax

2728 East 171st Street
Westfield, IN 46074
westfield.in.gov

TO: Westfield Board of Works and Safety

From: Melody Jones

CC: Todd Burtron

Date: May 21, 2013

RE: Monon Trail Phase 6 & 7: DES #0900029 TE Project

Board of Works and Safety

Westfield Parks and Recreation Department is requesting the approval to contract with DLZ to perform the services for Phase 6 and 7 of the Monon Trail north of State Road 32 as described in Appendix A of the attached LPA – Consulting Contract, previously approved by INDOT.

The entire Monon project north of State Road 32 is partially funded with three separate Transportation Enhancement Grants from INDOT. Using the three grants we will divided the project into three areas: 1) Preliminary Engineering, Design and Right of Way Engineering; 2) Right of Way Services, Land Acquisition Documentation for phase 6 and 7; ROW acquisition in phase 7; and 3) the last phase, Construction Engineering and Construction.

The contract before you today is for Preliminary Engineering and Right of Way Engineering. Going through the INDOT grant process is very time sensitive. We received this first grant in 2009. It has taken this long to get to this point. In order to be able to meet the Cities goal of letting the project in 2014 we must move ahead this month. If not we will miss the project window until next year.

The TE Grant is an 80/20 match. The total contracted amount for this phase is not to exceed, \$805,915. The Cities portion of the contract is 20% or \$161,000. Funding for this project is coming from the Cumulative Capital Development Fund.

In addition to the three TE Grants we will be applying for a Bi-Centennial Grant for land acquisition in the DNR's August grant cycle. If we are awarded the grant it is a 50/50 match with the total award of \$600,000.

The Westfield Parks and Recreation Department requests approval and plans to issue a Notice to Proceed upon the Board of Works and Safety's approval today.

Parks and Recreation

(317) 804-3150 office
(317) 804-3190 fax

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Westfield, IN 46074
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LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of **May**_____, **2013** ("Effective Date") by and between **City of Westfield**, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and **DLZ Indiana, LLC** ("the CONSULTANT"), limited liability company organized under the laws of the State of **Indiana**.

Des. No.: **0900029**

Project Description: **Monon Trail – From SR 32 to 216th Street – Preliminary Engineering and Right of Way Engineering.**

RECITALS

WHEREAS, the LPA has entered into an agreement to utilize federal monies with the Indiana Department of Transportation ("INDOT") for a transportation or transportation enhancement project ("the Project"), which Project Coordination Contract is herein attached as Attachment 1 and incorporated as reference; and

WHEREAS, the LPA wishes to hire the CONSULTANT to provide services toward the Project completion more fully described in Appendix "A" attached hereto ("Services");

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:

The "Recitals" above are hereby made an integral part and specifically incorporated into this Contract.

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

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

SECTION III TERM. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be **April 2016**. A schedule for completion of the Services and deliverables is set forth in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION IV COMPENSATION. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "D" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed **\$850,894.00**.

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 the LPA, and shall deliver the work to the LPA in accordance with the schedule contained in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION VI GENERAL PROVISIONS

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 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 inspection or audit by the LPA, INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by the LPA, INDOT, and/or FHWA. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the CONSULTANT may release or make available to the agency any working papers from an audit performed by the LPA, INDOT and/or FHWA of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, 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 the LPA'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 the LPA, provided that the CONSULTANT gives written notice (including evidence of such assignment) to the LPA 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 must first be approved and receive written authorization from the LPA. Any substitution or termination of a Disadvantaged Business Enterprise ("DBE") SUB-CONSULTANT must first be approved and receive written authorization from the LPA and INDOT's Economic Opportunity Division Director.
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 48 CFR part 31 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 the LPA 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.
 - 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 the LPA. 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 the LPA and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.
- B. The CONSULTANT represents to the LPA that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to the

LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:

- i. 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 the LPA of any such actions. During the term of such actions, CONSULTANT agrees that the LPA may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
 - ii. 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.
 - iii. 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 the LPA.
 - iv. 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.
 - v. 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 the LPA 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.
 - vi. Debarment and Suspension of any SUB-CONSULTANTS. The CONSULTANT's SUB-CONSULTANTS 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 or costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the LPA and INDOT if any SUB-CONSULTANT becomes debarred or suspended, and shall, at the LPA's request, take all steps required by the LPA to terminate its contractual relationship with the SUB-CONSULTANT for work to be performed under this Contract.
- C. Violations. In addition to any other remedies at law or in equity, upon CONSULTANT'S violation of any of Section 7(A) through 7(B), the LPA 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.
 - D. Disputes. If a dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the LPA, and the LPA 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 LPA. A determination by the LPA under this Section 7.D shall be final and binding on the parties and not subject to administrative review. Any payments the LPA 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 the LPA's reasonable satisfaction, as determined at the discretion of the LPA and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The LPA will not pay for work not performed to the LPA'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 LPA 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 the LPA's prior written consent.
 - B. The parties acknowledge that the Services to be performed by the CONSULTANT for the LPA under this Contract may require or allow access to data, materials, and information containing Social Security numbers and maintained by the LPA 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 LPA 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. **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 the LPA 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 the LPA 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, the LPA at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must

notify the LPA in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

11. 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 submitted with its Letter of Interest, or with approved amendments. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and receive prior approval by the LPA and INDOT's Economic Opportunity Division Director. After this Contract is completed and if a DBE SUB-CONSULTANT has performed services thereon, the CONSULTANT must complete, and return, a Disadvantaged Business Enterprise Utilization Affidavit ("DBE-3 Form") to INDOT's Economic Opportunity Division Director. The DBE-3 Form requires certification by the CONSULTANT AND DBE SUB-CONSULTANT that the committed contract amounts have been paid and received.

12. Non-Discrimination.

- A. Pursuant to I.C. 22-9-1-10, the Civil Rights Act of 1964, and the Americans with Disabilities Act, the CONSULTANT shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
- B. The CONSULTANT understands that the LPA 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 Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

- C. The CONSULTANT shall not discriminate in its selection and retention of contractors, including without limitation, those services retained for, or incidental to, construction, planning, research, engineering, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisitions of right-of-way.
- D. The CONSULTANT shall not modify the Project in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability).
- E. The CONSULTANT shall not modify the Project in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability.)
- F. The CONSULTANT shall neither allow discrimination by contractors in their selection and retention of subcontractors, lessors and/or material suppliers, nor allow discrimination by their subcontractors in their selection of subcontractors, lessors or material suppliers, who participate in construction, right-of-way clearance and related projects.
- G. The CONSULTANT shall take appropriate actions to correct any deficiency determined by itself and/or the Federal Highway Administration ("FHWA") within a reasonable time period, not to exceed ninety (90) days, in order to implement Title VI compliance in accordance with INDOT's assurances and guidelines.
- H. During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:
 - (1) Compliance with Regulations: The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, 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.

- (2) **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin 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 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 SUBCONSULTANTS, 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 SUBCONSULTANT 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, or national origin.
- (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, records, accounts, other sources of information, and its facilities as may be determined by the LPA or INDOT 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 to furnish this information the CONSULTANT shall so certify to the LPA, or INDOT 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 LPA shall impose such contract sanctions as it or INDOT may determine to be appropriate, including, but not limited to:
 - (a) withholding of 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 paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any SUBCONSULTANT procurement as the LPA or INDOT may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a SUBCONSULTANT or supplier as a result of such direction, the CONSULTANT may request the LPA to enter into such litigation to protect the interests of the LPA, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

13. Disputes.

- A. Should any disputes arise with respect to this Contract, the CONSULTANT and the LPA agree to act promptly and in good faith to resolve such disputes in accordance with this Section 12. 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 the LPA or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.
- 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 to initiate negotiations to resolve the dispute. The LPA may withhold payments on disputed items pending resolution of the dispute.

14. 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 LPA 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 LPA.
- B. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:
 - 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 13.B.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 LPA within ten (10) days after receiving notice from an employee under subdivision 13.B.iii(2) above, or otherwise receiving actual notice of such conviction;
- v. Within thirty (30) days after receiving notice under subdivision 13.B.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 13.B.i. through 13.B.v. above.

15. 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 subcontractors, 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 LPA 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 LPA.

16. 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.

17. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.
18. **Liability.** If the CONSULTANT or any of its SUB-CONSULTANTS fail to comply with any federal requirement which results in the LPA's repayment of federal funds to INDOT the CONSULTANT shall be responsible to the LPA, for repayment of such costs to the extent such costs are caused by the CONSULTANT and/or its SUB-CONSULTANTS.
19. **Indemnification.** The CONSULTANT agrees to indemnify the LPA, its 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. The LPA shall not provide such indemnification to the CONSULTANT.
20. **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 or employees of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.
21. **Insurance - Liability for Damages.**
 - A. 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 the LPA. Acceptance of the Services by the LPA 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 the LPA 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 the LPA, or to notify the LPA 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 the LPA 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.

- C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred by the LPA as a result of any negligent act, error or omission of the CONSULTANT, and for the LPA's losses or costs to repair or remedy construction. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction.
- D. The CONSULTANT shall be required to maintain in full force and effect, insurance as described below from the date of the first authorization to proceed until the LPA's acceptance of the work product. The CONSULTANT shall list both the LPA and INDOT as insureds on any policies. 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 LPA, 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 17 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 the LPA 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 the LPA to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For the LPA Prequalification **Work Types** 1.1, 12.2-12.6 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 LPA.
3. The CONSULTANT shall name the LPA as an additional insured.

III. Automobile Liability

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 the LPA.
3. The CONSULTANT shall name the LPA 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:
 - a. United States Longshoremen & Harbor workers
 - b. Maritime Coverage - Jones Act
3. The policy shall provide thirty (30) days notice of cancellation to the LPA.
4. The CONSULTANT or SUB-CONSULTANT shall name the LPA 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 the LPA.
 3. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.
22. **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.
23. **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:

Notices to the LPA shall be sent to:

City of Westfield
Attention: Melody Jones, CPRP, CPSI
2728 E 171st Street
Westfield, IN 46074

Notices to the CONSULTANT shall be sent to:

DLZ Indiana, LLC
Attention: James M. Crandall, P.E. and
157 East Maryland Street
Indianapolis, IN 46204

DLZ Corporation
Attention: Legal Department
6121 Huntley Road
Columbus, OH 43229

- 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.
24. **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 and attachments, (2) RFP document, (3) the CONSULTANT's response to the RFP document, and (4) attachments prepared by the CONSULTANT. All of the foregoing are incorporated fully by reference.
25. **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 the LPA and all such materials (“Work Product”) will be the property of the LPA. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by the LPA. Use of these materials, other than related to contract performance by the CONSULTANT, without the LPA’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 the LPA 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”. The LPA acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.

26. **Payments.** All payments shall be made in arrears and in conformance with the LPA’s fiscal policies and procedures.
27. **Penalties, Interest and Attorney's Fees.** The LPA 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.
28. **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.
29. **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.
30. **Status of Claims.** The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed

under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:

City of Westfield
Attention: Melody Jones, CPRP, CPSI
2728 E 171st Street
Westfield, IN 46074

31. **Sub-consultant Acknowledgement.** The CONSULTANT agrees and represents and warrants to the LPA, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, 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 the LPA for approval prior to performance of the Services by any SUB-CONSULTANT.
32. **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.
33. **Taxes.** The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.
34. **Termination for Convenience.**
 - A. The LPA may terminate, in whole or in part, whenever, for any reason, when the LPA 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. The LPA will not be liable for Services performed after the effective date of termination.
 - B. If the LPA terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, then and 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 the LPA. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to the LPA any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.
35. **Termination for Default.**
 - A. With the provision of twenty (20) days written notice to the CONSULTANT, the LPA 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
- (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 the LPA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the LPA considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the LPA for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.
- C. The LPA shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and the LPA 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). The LPA may withhold from the agreed upon price for Services any sum the LPA determine necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. **Default by the LPA.** If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA 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, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA 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 LPA.
36. **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 the LPA'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 LPA in accordance with applicable law for all damages to the LPA caused by the CONSULTANT's negligent performance of any of the Services furnished under this Contract.

37. **Work Standards/Conflicts of Interest.** The CONSULTANT shall understand and utilize all relevant INDOT standards including, but not limited to, the most current version of the Indiana Department of Transportation Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in Appendix "A" or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.
38. **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.
39. **No Investment in Iran.** As required by IC 5-22-16.5, the CONSULTANT certifies that the CONSULTANT is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.
40. **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.

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Non-Collusion.

The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, the CONSULTANT and the LPA have, through duly authorized representatives, entered into this Contract. The parties having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

CONSULTANT
DLZ Indiana, LLC

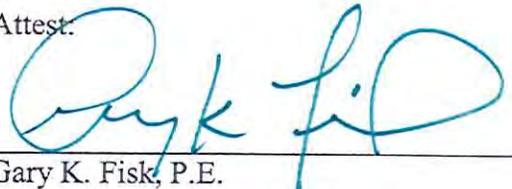
LOCAL PUBLIC AGENCY
City of Westfield
Board of Public Works and Safety



Brian L. Glaze, P.E.
President

J. Andrew Cook
Mayor

Attest:



Gary K. Fisk, P.E.
Vice President

Randy Graham
Member

Kate Snedeker
Member

Non-Collusion.

The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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CONSULTANT
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LOCAL PUBLIC AGENCY
City of Westfield
Board of Public Works and Safety



Brian L. Glaze, P.E.
President

J. Andrew Cook
Mayor

Attest:



Gary K. Fisk, P.E.
Vice President

Randy Graham
Member

Kate Snedeker
Member

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 and Federal Highway Administration.

The CONSULTANT shall be responsible for performing the following activities:

I - BASIC SERVICES BY CONSULTANT

- A. The CONSULTANT shall provide Project Management services including the following:
1. The CONSULTANT shall manage the activities described in Appendix "A" (Scope of Work) among the project team members. The CONSULTANT's project manager (PM) will be in charge of overall project management in addition to being the LPA's direct link to the design team for issues concerning administration and technical execution. The PM will be responsible for coordinating the activities of all SUBCONSULTANTS and acting as liaison between professional and any outside agencies and/or groups. The PM will also be responsible for maintaining schedule and budget.
 2. The CONSULTANT shall coordinate and attend meetings with the LPA no less than every other month to facilitate the management of the project design elements. Meetings will be held to discuss technical issues requiring action by the LPA and other third parties. Meetings will be held with the LPA on an as-needed basis to facilitate the acquisition of the necessary project Right of Way parcels. The CONSULTANT will prepare minutes of all such meetings and distribute them to all participants. The CONSULTANT shall coordinate and prepare quarterly INDOT forms for review by the LPA prior to submittal to INDOT. This scope of work includes a maximum of twelve (12) meetings.
 3. The CONSULTANT will conduct an initial kickoff meeting with the LPA, and INDOT Greenfield District to obtain the necessary available information to provide an accurate and technically proficient design and construction project. Items to be discussed would include the following:
 - a. Prioritized list of project objectives.
 - b. Existing project topographic, Right of Way, utility and environmental documentation.
 - c. Project completion dates, significant milestones, etc.
 - d. Methods for reporting to the LPA, such as daily, weekly, and monthly progress reports.
 - e. Obtain available project data (design and environmental reports, construction and as-built plans, bid proposal, geotechnical data, available survey, and Right of Way information).
 - f. Identify a stakeholder group to be used throughout project development to keep interested parties abreast of project execution and gather input.
 - g. The CONSULTANT will prepare minutes and distribute them to all participants.

B. The CONSULTANT will provide aerial photogrammetry and supplemental ground (field) survey required for preparation of design plans in conformance with the requirements of the Indiana Department of Transportation Design Manual, Chapter 106, Aerial Ground Survey, a copy of which is on file with the CONSULTANT and same is incorporated herein by reference and is made a part hereof. Necessary field survey to include:

1. Complete topographic data along Wheeler Road from SR 32 to 181st Street, then east along 181st Street from Wheeler Road to the abandoned CSX – Monon railbed, then north along the aforementioned railbed to 216th Street, as shown in **Exhibit 1** (approximately 4.75 miles). The survey width will be 66 feet in width beginning from SR 32 to Blackburn Road, from Blackburn Road to 216th Street the width increases to 100 feet. In addition, the survey will include a site that is 1,400 feet long by 250 feet wide, south of Monon Trail Elementary School.
2. Establish and reference random survey alignment control monuments at intervals consistent with the requirements of Title 865 I.A.C. 1-12 (Rule 12). Control monuments will be tied directly to the survey alignment by station and offset. Horizontal control will be established using Global Positioning Systems (GPS) or conventional optical traversing methods. Horizontal control values will be based upon the Indiana State Plane Coordinate system, East Zone, North American Datum 1983 (NAD1983). Reference ties to horizontal control points will be provided.
3. Establish and reference temporary benchmarks at each end of the project and at approximately 1,000-foot intervals along the alignment, for a total of up to twenty six (26) temporary benchmarks. Vertical control elevation values will be based upon North American Vertical Datum 1988.
4. Establish property ownership and apparent property lines (APL) for Right of Way.
5. The collection of existing above ground utility locations as well as subsurface utility installations marked on the ground by utility owners. Drainage/sewer structures found within the survey limits will be located, detailed, and connected to key offsite structures if they exist.
6. Provide sufficient control for the contractor to re-establish the construction centerline.
7. A Location Control Route Survey will be performed for the entire length of the project in accordance with IAC 865 – Rule 12 “Competent Practice for Land Surveyors”. The Location Control Route Survey will be used to provide a basis for the acquisition of Right of Way as necessary for the project. The Location Control Route Survey will be recorded in the Office of the Recorder of Hamilton County, Indiana.

C. The Project design will consist of two phases, which will include the following:

1. Phase Six will include a multi-purpose trail and a cycle track, which will start at the intersection of SR 32 (Main Street) and Wheeler Road; then proceeding north along the west side of Wheeler Road to 181st Street (approximately 0.5 miles each). The proposed multi-purpose trail and cycle track will connect to proposed multi-purpose trail and cycle track segments that will be constructed as part of INDOT Contract # IR-32205, Des. No. 0900265, and continues in a northeasterly direction to Blackburn Road, the design of the multi-purpose trail and cycle track along this segment is NOT part of these scope of services, and if required will be considered additional services. In addition, a spur of the multi-purpose trail will continue east along the north side of 181st Street to the abandoned CSX-Monon Corridor (approximately 0.26 mile). At the intersection of Blackburn Road

and proposed Wheeler Drive Extension, the multi-purpose trail and cycle track continues north along the abandoned CSX – Monon railbed to the south property line of the Monon Trail Elementary School (approximately 0.8 miles each, total Phase Six is approximately 1.6 miles for the multi-purpose trail and 1.3 miles for the cycle track, for a total of 2.9 miles).

2. Phase Seven will include a multi-purpose trail which will begin at the end of Phase Six and continue northerly along the abandoned CSX – Monon railbed to 216th Street, for an approximate total of 2.7 miles.
3. The multi-purpose trail typical section (see **Exhibit 2**) for both phases shall consist of two (2), six (6)-foot wide asphalt lanes except along north side 181st Street, where there will be two (2) eight (8)-foot wide asphalt lanes. The cycle track typical section shall consist of two (2), five (5)-foot wide asphalt lanes. The multi-purpose trail will include two (2)-foot wide aggregate shoulders on both sides from 186th Street to 216th Street. All other locations and cycle track will include two (2) foot wide earthen shoulders. The design of all trails and tracks will propagate existing drainage patterns. The proposed cycle track will provide at least a minimum (10)-foot grassed buffer zone to separate the cycle track and curbed roadways, and twenty (20)-foot grassed buffer zone to separate the cycle track and uncurbed roadways, otherwise a Level 2 Design Exception will be required. All facilities will have eight (8) to 10 (ten) feet of vegetative buffer between each other and a minimum of three (3) feet from the Right of Way.
4. Phase Seven will include a trailhead located along the south property line of the Monon Trail Elementary School, and a rest node in Hortonville, as shown in **Exhibit 1**. The trailhead will have the following facilities:
 - a. Access Road, approximately 1,400 feet in length
 - b. Aggregate Parking Lot, with 6-10 parking stalls
 - c. Building on a slab foundation that will be used for rest rooms with an outside drinking fountain and water spigot to be useable year round
 - d. Exterior design of building will generally be in the architectural character of the surrounding buildings or features
 - e. The size of the building will be determined during the schematic design phase, but will be approximately three water closets (or urinals) per side with similar number of lavatories
 - f. Utility services for water, sanitary, and electric from Tomlinson Road to the Trailhead, approximately 1,400 feet each
 - g. Benches
 - h. Trash Receptacles
 - i. Way Finding Signing
5. Five Regulated Drains cross or are directly adjacent to the proposed corridor, the following improvements are anticipated:
 - Phase Six:
 - a. Cool Creek Drain – 8' x 6.5' Box Culvert (No Improvements Anticipated)
48" RCP (Culvert Extension)
 - Phase Seven:
 - b. Issac Jones Drain – 36" RCP (Culvert Extension)
 - c. Hinshaw And Keys Drain – 15" Cast Iron & 10" VCP (Culvert Extension)
 - d. Henry Plew (adjacent) – Open Ditch (Relocation)

- e. Henry Plew (cross) – 48” Cast Iron (Culvert Extension)
 - 6. The trail facilities will utilize or rehabilitate existing side ditches at locations with downward side slopes and create side ditches at locations with upward side slopes, as necessary, to perpetuate existing drainage patterns. The installation of culverts, yard inlets, or a french drain system may be required to facilitate drainage under the trail / track. Any existing culverts less than 36” in diameter will be extended, as required, for the construction of the trail / track. Design, permitting, or hydraulic analysis of any new culverts or extensions greater than 36” in diameter, design of offsite drainage, or stormwater basins are not part of basic services and will be considered additional services except as noted above.
 - 7. Ornamental pedestrian trail lighting will be installed along the multi-purpose trail corridor from 181st Street to 191st Street and along 181st, for approximately 4,300 feet.
 - 8. At 181st Street and 191st Street, a pedestrian actuated traffic signals will be installed.
 - 9. The design speed of the multi-purpose trail and cycle track will be 20 mph.
 - 10. ADA accessible curb ramps will be designed at all public street crossings and ADA compliant drive approaches will be designed at all private entrances.
 - 11. Maintenance of Traffic plans shall be provided, with the intent to minimize interruption to vehicular traffic on all roadways that the trail / track will cross or parallel.
 - 12. A Level 2 design exception is anticipated to be prepared for the separation distance between the multi-purpose trail and all roadways, and for embankment slope and vertical distance.
 - 13. Two (2) four inch conduits, will parallel the multi-purpose trail along the entire route. As directed by the LPA, hand holes will be installed at intervals not exceeding 1,000 feet.
 - 14. The trail / track design will provide connections to Grand Park and Monon Elementary School up to the Right of Way of the original Railroad Corridor width (100 feet wide).
- D. The CONSULTANT shall prepare a Design Summary Report or an Abbreviated Engineering Assessment. The report shall be developed in accordance with the Indiana Department of Transportation Design Manual – Chapter 7 Environmental Procedures / Design Summary. Copies of these documents are on file with the Indiana Department of Transportation and are incorporated herein by reference and made a part hereof.
- The Design Summary Report will describe the project, the existing conditions, the planned improvements, an engineer’s statement of probable project costs for the planned improvements and the different considerations utilized in developing the design of the project. The statement of probable project costs shall include separate amounts for land acquisition.
- E. The CONSULTANT shall perform the following services to complete an Additional Information Document (AI) to the Categorical Exclusion (CE) approved by INDOT in 2011 for Des. No. 0301159, to satisfy State and Federal environmental documentation requirements for trail / track construction described above. The environmental services shall include the appropriate level of Section 106 consultation and documentation for a determination that the previous Finding of No Historic Properties Affected remains applicable. The environmental compliance services shall consist of the following work elements:

1. Collect and review background information about the project including, but not limited to, maps, aerial photographs, studies, reports, and other applicable data that may be available.
 2. Prepare a Red Flag Investigation document.
 3. Perform field reconnaissance to update information on existing social, economic, and environmental resources and issues including, but not limited to, travel patterns, relocations, floodplains, wildlife and habitats, historical resources, hazardous substances, and land use.
 4. Conduct Wetland/Waters delineation and prepare a Waters of the US Report.
 5. Prepare updated resource information about the project and project area including supporting maps and photographs (aerial and ground).
 6. Perform Early Coordination with appropriate natural resource and regulatory agencies.
 7. Prepare Section 106 consultation documentation for determination of the APE (Area of Potential Effects), an update regarding the identification of properties listed in or eligible for listing in the National Register of Historic Places, and a recommendation that the previous Finding remains valid. Subconsultant historical and archaeological survey services are required.
 8. Attendance/participation at a public informational meeting.
 9. Perform environmental studies to assess and document the project's potential for impacts upon social, economic and environmental resources including consideration of all comments received from agencies during early coordination.
 10. Prepare a Draft AI, using the appropriate current INDOT document template, for LPA review/comment. Revise the Draft AI, as necessary, and submit to INDOT for review and comment. Revise the Draft AI based upon comments received, and submit to INDOT for approval.
 11. Prepare and distribute the required copies of the final AI and Section 106 documents.
- F. The CONSULTANT shall prepare and design trail / track regulatory signing and pavement marking plans.
- G. The CONSULTANT shall implement the INDOT Utility Coordination Process for this project. This work shall be in accordance with *"Title 105 of the Indiana Administrative Code Article 13"*, Indiana Department of Transportation Design Manual – Chapter 104 Utility Relocation, and will include: notifying all affected utilities in the project corridor, coordination and meetings with affected utilities, reviewing relocation plans, and preparation of utility status reports.
- H. The CONSULTANT shall perform all phases of the work described in this Agreement necessary to accomplish the complete design of the project. The project will be designed in English units and shall be in accordance with the following documents (or as modified by any supplemental specifications and special provisions) in effect at the time the plans or reports are submitted:
- Design Manuals – Part I, II, III, and V, Indiana Department of Transportation
 - Guide for the Development of Bicycle Facilities, American Association of State Highway and Transportation Officials
 - Road and Bridge Memoranda, Indiana Department of Transportation
 - Standard Specifications and Drawings, Indiana Department of Transportation
 - Americans with Disabilities Act for Accessible Design
 - Manual on Uniform Traffic Control Devices for Streets and Highways, Federal Highway Administration
 - Right of Way Engineering Manual, Indiana Department of Transportation

- Roadway Lighting Guide, American Association of State Highway and Transportation Officials
- I. The CONSULTANT shall prepare all plans and submissions in accordance with the Indiana Department of Transportation Design Manual – Chapter 104 Plans Development, and the INDOT LPA Process Guidance Document for local federal aid projects, dated April 18, 2012, generally as described below:

Phase Six: (SR 32 to Monon Trail Elementary School)

1. The CONSULTANT shall prepare Stage 1 Plans for LPA and INDOT review.
2. Upon receipt of review comments from the LPA and INDOT, the CONSULTANT shall schedule the Preliminary Field Check meeting.
3. Upon issuing the minutes from the Preliminary Field Check Meeting, the CONSULTANT shall prepare Stage 2 Plans for LPA and INDOT review.
4. Upon receipt of the review comments from the LPA and INDOT, the CONSULTANT shall prepare Stage 3 plans for INDOT and LPA review.
5. Upon receipt of the review comments from INDOT and the LPA, the CONSULTANT shall prepare Final Tracings.

Phase Seven: (Monon Trail Elementary School to 216th Street)

6. The CONSULTANT shall prepare Stage 1 Plans for LPA and INDOT review.
7. Upon receipt of review comments from the LPA and INDOT, the CONSULTANT shall schedule the Preliminary Field Check meeting.
8. Upon issuing the minutes from the Preliminary Field Check Meeting, the CONSULTANT shall prepare Stage 2 Plans for LPA and INDOT review.
9. Upon receipt of the review comments from the LPA and INDOT, the CONSULTANT shall prepare Stage 3 plans for INDOT and LPA review.
10. Upon receipt of the review comments from INDOT and the LPA, the CONSULTANT shall prepare Final Tracings.

- J. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, LPA's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports, or documents, or are due to any other causes beyond CONSULTANT's control, shall require a change in work as provided by Section VI - General Provisions, Item 6 titled "Changes in Work".

- K. Upon completion and final approval of the work by the LPA and INDOT, the CONSULTANT shall deliver to the LPA the following, which shall become the property of the LPA:

1. One (1) - Copy of final approved tracings of the contract plans drawn to a suitable scale on standard 36" x 24" sheets.
2. One (1) - Set (copy) of all electronic survey field notes (Transit & Level Notes), section plats, and subdivision plats for all surveys the CONSULTANT has performed on the project. The field notes will be provided to the LPA via a computer diskette and a hard copy of electronic field survey data in ASCII format and an AUTO-CAD drawing of the topographic survey. A copy of any other supporting conventional survey data will also be provided in approved Engineer Field Book(s).
3. One (1) - Set of Special Provisions for the Specifications.
4. One (1) - Copy of the statement of probable construction cost.
5. One (1) - Copy of all design computations, indexed, paged and bound.

- L. All activities and items associated with Right of Way Acquisition and Construction Engineering Services, including but not limited to, appraising, review appraising, Right of Way acquisition coordination and management services, construction inspection and/or observation are not included in the current scope of work or fee. These items will be added at a later date through separate agreements approved by the LPA and CONSULTANT.

II – AS REQUESTED SERVICES BY CONSULTANT

- M. The CONSULTANT shall prepare and submit the application and back-up documentation for the following permits, as required:

1. Rule 5 – Stormwater Pollution Prevention Plan (SWPPP)
 - a. Prepare a Notice of Intent Letter, Proof of Publication
 - b. Prepare a Project Location Map
 - c. Prepare a Plan and Profile Sheets and Erosion Control Plan to show existing vegetation, drainage patterns, adjacent land use, stormwater discharge locations, ultimate receiving waters, the proposed stormwater system, construction details of outlet protection below the stormwater outlets and watercourses on and adjacent to the project site.
 - d. The erosion control plan will show the location, dimensions and construction details for the initial perimeter protection. The plan shall also show the location, dimensions and construction details of all Temporary Erosion Control Measures.
 - e. Provide a plan showing the location, dimensions, and construction details of all Permanent Erosion Control Measures.
 - f. Provide the specifications and details for proposed storm inlet protection, stable construction entrances and erosion and sediment control on individual lots, as required.
 - g. Provide maps showing the Floodplains, Floodways, and Floodway Fringes.
 - h. Determine soil types within the project area.
 - i. Provide a schedule when disturbed areas will be stabilized and specifications for permanent seeding.
 - j. Delineate the disturbed and preserved areas and proposed locations of soil stockpiles and borrow areas.
 - k. Complete permit application form.
 - l. Revise plans, exhibits, and permits based upon the review comments from the regulatory agency that within the scope of work described in this appendix. The CONSULTANT shall monitor the approval process and provide any additional information that may be required to secure permit(s).
2. Hamilton County Drainage Board Permit (permission to enter into, modify, or realign a legal drain – 5 locations)
3. Indiana Department of Environmental Management (IDEM) 401 “Water Quality Certification” (WQC)
4. Army Corps of Engineers (ACOE) Section 404 – Regional General Permit (RGP)
5. Indiana Department of Homeland Security – Construction Design Release
6. Indiana Department of Environmental Management – Sanitary Sewer Extension
7. Indiana Department of Environmental Management – Watermain Extension

The CONSULTANT shall monitor the approval process in order to secure permit(s).

- N. The CONSULTANT shall make or cause to be made, a complete geotechnical investigation in accordance with *INDOT's Geotechnical Manual, 2010 edition* of which a copy is on file with the Indiana Department of Transportation and same is incorporated herein by reference and is made a part hereof. Soil borings will be performed for four (4) mast arm pole foundations, four (4) for the section of the trail along Wheeler Road, and four (4) are to be completed for any culvert extensions required. The pavement section for the trail along the abandoned railroad corridor will be designed in accordance with INDOT Standard Drawing for Non-Motorized Vehicle Use Facility, as such it is not anticipated that soil borings will be required. If required, will be considered as additional services .
1. Prior to making the borings, the CONSULTANT shall submit boring specifications and boring locations and sketches for approval by the LPA. Borings shall extend sufficiently in depth to obtain characteristic data for the proper design of the trail / track and anticipated construction traffic. The CONSULTANT shall backfill bore hole or cause to be backfilled in accordance with Aquifer Protection Guidelines, dated October 30, 1996. A copy of the document is on file with the Indiana Department of Transportation, Division of Materials and Tests, Geotechnical Section.
 2. The CONSULTANT will provide equipment, labor, and associated materials to drill and sample fourteen (14) soil borings, four (4) to a depth of twenty (25) feet each and ten (10) to a depth of ten (10) feet each.
 3. All borings will be continuously sampled with 2.0-foot long split barrel samplers.
 4. A field soils engineer will monitor drilling activities, maintain daily field notes, log the soil boring, as well as classify and prepare soil samples for laboratory analysis. The field CONSULTANT will perform penetrometer and Rimac unconfined compressive strength test on cohesive soil samples and will also measure groundwater levels in boreholes.
 5. The CONSULTANT will submit the boring locations and depths to INDOT for approval prior to the commencement of exploration program.
 6. Split spoon samples will be obtained according to the Standard Specification AASHTO T-206-03 "Penetration Test and Split-Barrel Sampling of Soils." As needed, Shelby tubes will be obtained for the consolidation testing and resilient modulus determination according to the Standard Specification AASHTO T-207-03 "Thin-Walled Tube Sampling of Soils." Bulk samples will be obtained for CBR testing.
 7. The soils-testing program will include natural moisture content, Atterberg limits, particle size analysis, organic content (if needed), pH determination, unconfined compressive strength, hydraulic conductivity, one dimension consolidation, and a CBR value for the resilient modulus determination.
 8. The geotechnical report will include a detailed description of the project, field and laboratory testing procedures, a characterization of the soil and groundwater conditions, and recommendations for the design and improvements of the project. The report will also contain a site location map, a summary of laboratory test results, and recommendations for preliminary pavement design, subgrade treatment, underdrain and storm sewer design considerations. The boring locations and soil profiles will be presented on the Plan and Profile Drawings. One original and five copies of the report will be provided.
 9. INDOT will review and approve the geotechnical report.

- O. The CONSULTANT shall prepare drainage plans based on the assumption for the draining and direct discharge of rainfall to existing drainage features in the immediate and adjoining vicinity of the project.
- P. The CONSULTANT shall prepare plans and specifications for four (4) culvert extensions, up to 48" in diameter. The CONSULTANT shall perform hydraulic analysis in accordance with INDOT Design Standards.
- Q. The CONSULTANT shall prepare plans and specifications for two (2) pedestrian signals for at-grade crossings at 181st Street & Monon Trail and 191st Street & Monon Trail. The pedestrian signal mast arm, pole and foundation style and type will be determined by the LPA, and will require a proprietary material justification request to be prepared and submitted by the CONSULTANT. The pedestrian signal will be designed in accordance with the 2011 Indiana Manual on Uniform Traffic Control Devices (IMUTCD) and Guide for the development of bicycle facilities, AASHTO 2012 edition.
- R. The CONSULTANT shall prepare, location plans, details and specifications for wayfinding signing along the trail route, which may include trail way finding, mile markers, directional and informational signing. The graphics, text wording, shape of each sign is to be determined and supplied by the LPA. Estimated quantities are as follows:

	<u>Description</u>	<u>Quantity</u>
1.	Mile markers	12 Each
2.	Way Finding Signs	16 Each
3.	Informational Signs	12 Each
4.	Directional Signs	16 Each

- S. The CONSULTANT shall prepare details and specifications for amenities along the trail route, which may include benches, bike racks, and trash receptacles. The model and type of each amenity to be determined by the LPA, and will require a proprietary material justification request to be prepared and submitted by the CONSULTANT.
- T. The CONSULTANT will design and prepare ornamental pedestrian trail lighting plans along the trail. Lighting will be used to illuminate the trail between and at the intersections of 186th Street and 191st Street and along 181st Street, an approximate length of 4,300 feet. The fixture type to be determined by the LPA, and will require a proprietary material justification request to be prepared and submitted by the CONSULTANT.
- U. The CONSULTANT shall provide Right of Way engineering in accordance with the procedures and standards as indicated in the Indiana Department of Transportation (INDOT) Division of Land Acquisition Right of Way Engineering Procedures Manual including but not limited to the following:
 - 1. Prepare and provide the final Right of Way plans (Phase Six - based on 17 tax key parcels and Phase Seven – based on 46 tax key parcels). This work include:
 - a. Review of the Title & Encumbrance Report
 - b. Verify Existing Right of Way
 - c. Calculation and placement of existing parcel lines and encumbrances from title reports
 - d. Calculations to determine stations, offsets and placement on plans
 - e. Changes in Right of Way based on parcel lines
 - 2. Title Research
 - a. Provide a documented preliminary title search covering an interval of time including one valid transfer of fee title beyond a twenty-year period from the date

- of the search.
 - b. Each title search shall be updated at the time of the Right of Way acquisition, as required.
 - 3. Provide acquisition descriptions and transfer documents for each parcel. The descriptions shall be certified by an Indiana registered land surveyor.
 - 4. Provide individual plats for each fee parcel.
 - a. Each plat shall be certified by an Indiana registered land surveyor and include the following:
 - i. Total area before taking
 - ii. Area of existing Right of Way; and
 - iii. Area of all residue
 - iv. No plat will be prepared for temporary parcels
 - 5. Provide separate folders for each parcel containing information obtained from items 1 through 4 listed above and provide the appropriate transfer document for each permanent and temporary parcel.
 - 6. Provide in the field a stake-out (one time) locating the new Right of Way line (including temporary and permanent Right of Way) for the partial takings included in all parcels. The stake-out shall be made using wooden hubs located at changes in bearing and other points necessary to show the location of the proposed Right of Way takings.
- V. The CONSULTANT shall provide an Appraisal Problem Analysis prepared by a review appraiser as approved by INDOT as follows:
 - 1. Examine the R/W plans and determine the extent of the taking.
 - 2. Perform an on-site inspection of each parcel requiring R/W acquisition.
 - 3. Determine the type of appraisal needed for each parcel according to FHWA Regulations (49 CFR Part 24, dated March 2, 1989).
 - 4. Complete an Appraisal Problem Analysis form for each parcel to be acquired.
 - 5. Prepare a summary sheet setting out:
 - a. Parcel Number
 - b. Name of Owner
 - c. Size of Property
 - d. Amount of R/W to be acquired
 - e. Types of R/W to be acquired
 - f. Recommended Appraisal form
 - 6. Transmit two copies of the completed report to the appropriate LPA official for submission to INDOT for review.
- W. The CONSULTANT shall provide Bidding and Construction Phase Services to the LPA for Phases 6 and 7 which shall include:
 - 1. Review the final construction documents distributed by INDOT for bidding purposes for conformance with the CONSULTANT's final tracing submittal.
 - a. Following approval of the tracings and the bidding process administered by the Indiana Department of Transportation, the CONSULTANT will be responsible for attending the Pre-Construction Meeting.
 - b. The CONSULTANT shall provide design support to the Resident Project Engineer, prior to the bid letting, as required and as directed by the LPA.

- c. Revisions to INDOT. Issue revisions to INDOT as appropriate to interpret, clarify or expand the Bidding Documents that are not directly related to an error or omission from the CONSULTANT.
2. The CONSULTANT will provide design support to the LPA's Resident Project Engineer, as required and as directed by the LPA. The CONSULTANT will meet at the project site with the LPA or their Resident Project Engineer, as required and as directed by the LPA, to assist in any matter that may arise during the construction of the project related to the design.
3. The CONSULTANT shall review or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the LPA, Contractor or separate contractors, while allowing sufficient time in the CONSULTANT's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract. The CONSULTANT's review shall not constitute approval of safety precautions or, of any construction means, methods, techniques, sequences, or procedures. The CONSULTANT's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
4. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

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APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

- A. LPA shall do the following in a timely manner so as not to delay the services of the CONSULTANT:
1. Provide an Employee in Responsible Charge (ERC) to act as LPA's representative with respect to the services to be rendered under this Agreement. Such person shall transmit instructions, receive information, interpret and define LPA's policies and decisions with respect to the CONSULTANT's services for the Project.
 2. Provide all criteria and full information as to LPA's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
 3. Furnish all City specifications and standard drawings applicable to the project and all criteria for design and details including, but not limited to, signage, highways, structures, grades, curves, sight distances, clear zones, clearances, and design loadings.
 4. Assist the CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the Project including, but not limited to, the following:
 - a. Previous reports and any other data relative to design or construction of the project.
 - b. Available data from the transportation planning process.
 - c. Utility plans available to the LPA.
 5. Furnish to CONSULTANT, as required for performance of CONSULTANT's Basic Services (except to the extent provided otherwise in Appendix 'A') the following:
 - a. Data prepared by or services of others and appropriate professional interpretations of such.
 - b. All written views pertinent to the location and environmental studies that are received by the LPA.
 6. Assist the CONSULTANT and/or Subcontractors in arranging access to enter upon public and private property as required to perform services under this Agreement.
 7. Authorize and execute applications for necessary permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
 8. Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by CONSULTANT, obtain advice of attorney, insurance counselor and other consultants as LPA deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.
 9. Furnish all legal services as may be required for the development of the project.
 10. Provide written approval of completed work phases as described in Appendix 'A' of this Agreement. Accomplish reviews and provide written approvals in a timely manner.
 11. Furnish, or direct CONSULTANT to provide, As Required Services as described in Appendix 'A' of this Agreement or other services required.

12. Furnish templates, model numbers, specifications, and/or drawings and provide direction on the benches, bike racks, trash receptacles, mile markers and lighting.
13. Furnish templates, specifications, and/or drawings and provide direction on the way finding, directional and informational signing.
14. Furnish templates, specifications, and/or drawings and provide direction on the pedestrian signal pole and mast arm.
15. Furnish an approved INDOT and FHWA Environmental Document (NEPA) for Des. No. 0301159 to complete an Additional Information Document (AI).

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APPENDIX "C"

SCHEDULE

All work by the CONSULTANT under this Agreement shall be completed and delivered to the LPA in accordance with the project schedule, attached as **Exhibit 3** and as outlined below: (does not include Right of Way acquisition activities) after the notification to proceed from the LPA and INDOT, exclusive of LPA's and INDOT's review times.

A. PHASE SIX: (SR 32 to Monon Trail Elementary School)

1. Field Survey
 - a. Field Books for Preliminary Review within 30 calendar days after receipt of the notice to proceed with the design.
 - b. Final within 26 calendar days after receipt from the LPA of comments from the preliminary review.
 - c. Record the Location Route Survey Plat within 26 calendar days after receipt of the notice to proceed with the design.
2. Design Summary Report
 - a. Preliminary Draft at the time of submission of Preliminary Field Check Meeting.
 - b. Draft at Stage 2 submittal.
 - c. Final at Stage 3 submittal.
3. Additional Information Document (AI) within 296 calendar days after receipt of the notice to proceed with the design.
4. Trail Design and Plans
 - a. Stage 1 Plans within 90 calendar days after receipt of LPA approval of the Field Survey.
 - b. Preliminary Field Check Meeting within 45 calendar days after receipt of review comments from the LPA and INDOT on Stage 1 plans.
 - c. Stage 2 Plans within 150 calendar days after holding the Preliminary Field Check Meeting.
 - d. Stage 3 Plans within 150 calendar days after receipt of review comments from the LPA and INDOT on Stage 2 Plans.
 - e. Final Tracings with Statement of Probable Construction Cost and Special Provisions within 15 calendar days after receipt of review comments from the LPA and INDOT on Stage 3 plans.
5. The approximate Letting date for Phase Six of this project is April 2015 based on a notice to proceed of June 3, 2013.

B. PHASE SEVEN: (Monon Trail Elementary School to 216th Street, including the trailhead)

1. Field Survey
 - a. Field Books for Preliminary Review within 60 calendar days after receipt of the notice to proceed with the design.
 - b. Final within 45 calendar days after receipt from the LPA of comments from the preliminary review.

2. Design Summary Report
 - a. Preliminary Draft at the time of submission of Preliminary Field Check Meeting.
 - b. Draft at Stage 2 submittal.
 - c. Final at Stage 3 submittal.
3. Trail Design and Plans
 - a. Stage 1 Plans within 90 calendar days after receipt of LPA approval of the Field Survey.
 - b. Preliminary Field Check Meeting within 60 calendar days after receipt of review comments from the LPA and INDOT on Stage 1 plans.
 - c. Stage 2 Plans within 150 calendar days after holding the Preliminary Field Check Meeting.
 - d. Stage 3 Plans within 171 calendar days after receipt of review comments from the LPA and INDOT on Stage 2 Plans.
 - e. Final Tracings with Statement of Probable Construction Cost and Special Provisions within 45 calendar days after receipt of review comments from the LPA and INDOT on Stage 3 plans.
4. The approximate Letting date for Phase Seven of this project is October, 2015 based on a notice to proceed of June 3, 2013.

C. The schedules for both Phase Six and Seven outlined above are contingent upon the following assumptions:

1. No Parcel Relocations required
2. No unusual discrepancies in Title of Parcels
3. Phase Six Right of Way width will be 66' or as directed by the LPA at the time Notice to Proceed is issued.
4. Expedited Reviews and approvals by the LPA, and INDOT (Phase Six only).
5. Environmental (NEPA) requirements are limited to preparation of an AI Document, including the existing Section 106 finding of "no historic properties affected" remains valid.
6. Public Involvement will be limited to Public Information Meeting only.

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APPENDIX "D"

A. Amount of Payment

1. The CONSULTANT shall receive as payment for the work performed under this Agreement a **Total Fee Not to Exceed of \$850,894.00**, unless a modification of agreement for the amended dollar amount is approved in writing by the LPA.
2. The CONSULTANT will be paid for the work performed under Appendix "A" of this Agreement on a Lump Sum basis in accordance with the following schedule except as noted in the items

	Description	Amount
BASIC DESIGN ENGINEERING SERVICES		
A	Project Management (Phase 6)	\$7,000.00
B	Aerial Photogrammetry & Supplement Ground Topo Survey w/ Location Control Route Survey (Phase 6 & 7)	\$113,180.00
C	Trail/Track Design and Plans (Phase 6)	\$132,400.00
D	Design Summary Report (Phase 6)	\$4,400.00
E	Additional Information Document/Section 106/Water Report Wetland Delineation	\$42,000.00
F	Utility Coordination (Phase 6)	\$5,600.00
G	Reimbursable (Permit Fees, Publications costs, Mileage, Lodging, Per Diem)	\$5,000.00
BASIC DESIGN ENGINEERING SERVICES SUBTOTAL		\$309,580.00
AS REQUESTED, DESIGN ENGINEERING SERVICES		
H	Project Management (Phase 7)	\$9,500.00
I	Trail Design and Plans (Phase 7)	\$104,300.00
J	Trailhead and Rest Node	\$76,800.00
K	Level 2 Design Exception (3 @ \$2,500 EA)	\$7,500.00
L	Design Summary Report (Phase 7)	\$5,000.00
M	Utility Coordination (Phase 7)	\$7,500.00
N	Pedestrian Signal Design (2 signals @ \$5,050 EA)	\$10,100.00
O	Geotechnical Investigation and Signal Borings	\$12,000.00
P	Rule 5 Erosion Control Report, Plans, NOI Letter (Phase 6)	\$6,700.00
Q	Rule 5 Erosion Control Report, Plans, NOI Letter (Phase 7)	\$6,700.00
R	Hamilton County Drainage Board Permit (1 Locations) (Phase 6)	\$2,100.00
S	Hamilton County Drainage Board Permit (3 Locations) (Phase 7)	\$6,100.00
T	IDEM: 401 - "Water Quality Certification" (Phase 6)	\$2,300.00
U	IDEM: 401 - "Water Quality Certification" (Phase 7)	\$6,700.00
V	ACOE: 404 - Regional General Permit (RGP) (Phase 6)	\$1,800.00
W	ACOE: 404 - Regional General Permit (RGP) (Phase 7)	\$5,200.00
X	Trail Lighting Design and Plans (Phase 6)	\$14,100.00

	Description	Amount
Y	Culvert Hydraulics (4 @ \$4,000 EA)	\$16,100.00
Z	Amenities(Benches, Trash Receptacles, Bike Racks, Mile Markers, Way Finding and Information Sign Details) (Phase 6)	\$12,500.00
AA	Amenities(Benches, Trash Receptacles, Bike Racks, Mile Markers, Way Finding and Information Sign Details) (Phase 7)	\$12,500.00
AB	Proprietary Material Justification Submittal (5 @ \$2,500 EA)	\$12,500.00
AS REQUESTED, DESIGN ENGINEERING SERVICES SUBTOTAL		\$338,600.00
RIGHT OF WAY ENGINEERING		
AC	Title Encumbrance Report (63 @ \$288.00 EA)	\$18,144.00
AD	Title update (63 @ \$100.00 EA)	\$6,300.00
AE	Final Right of Way Plans, (Based on 17 Parcels @ \$750.00 EA) (Phase 6)	\$12,750.00
AF	Final Right of Way Plans, (Based on 46 Parcels @ \$750.00 EA) (Phase 7)	\$34,500.00
AG	Legal Descriptions (63 @ \$600.00 EA)	\$37,800.00
AH	Parcel Plats (63 @ \$600.00 EA)	\$37,800.00
AI	Transfer Documents (23 @ \$100.00 EA)	\$6,300.00
AJ	R/W Stake Out (Hourly Rate)	\$5,800.00
AK	Appraisal Problem Analysis (63 @ \$240.00 EA)	\$15,120.00
RIGHT OF WAY ENGINEERING SERVICES SUBTOTAL		\$174,514.00
CONSTRUCTION PHASE DESIGNER SERVICES FOR PHASES 6 & 7		
AL	Preconstruction Conference (2 @ \$1,600 EA)	\$3,200.00
AM	Bid and Construction Phase Services and Shop Drawing Review. (Hourly Rate)	\$25,000.00
	Total	\$850,894.00

Toll telephone calls, printing, mailing, FAX costs required for the permits enumerated hereinabove will not be reimbursable expenses and the costs thereof are included in the itemized costs as shown herein in Appendix "D", Section A.2.

The cost of subconsultants, publications, mileage, lodging, per diem, permit application, and/or regulatory fees will be paid for by the LPA as a reimbursable fee at actual cost incurred by the CONSULTANT multiplied by a factor of 1.2, but not exceed the final amount shown in the table above.

The CONSULTANT shall not be paid for any services performed by the LPA or not required to develop this project.

For those services performed by the ENGINEER which are included in the itemized costs, as shown herein in Appendix "D", Section 2 as an "Hourly Rate", the CONSULTANT will be paid on the basis of an Hourly Rate in accordance with the Rate Schedule attached as Exhibit 4. The basis for payment includes the direct salary and wages of each employee, PLUS a provisional overhead rate of 158.83%, PLUS a 10.4% profit, PLUS the cost of money at 1.7%, PLUS direct non-salary costs as approved by the

LPA. Profit will only be applied to direct salary and wages plus applicable overhead. The provisional overhead rate will include the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, sick leave, vacation holiday pay and other group benefits.

3. The CONSULTANT shall receive as payment from the LPA for the Additional Services rendered under this Agreement as follows:
 - a. For Additional Services of CONSULTANT's principals and employees engaged on the project, except services to appear as a consultant or witness, on the basis of actual hours of work performed by essential personnel exclusively on this Agreement at the direct salary and wages of each employee, PLUS a provisional overhead rate of 158.83%, PLUS a 10.4% profit, PLUS the cost of money at 1.7%, PLUS direct non-salary costs as approved by the LPA. Profit will only be applied to direct salary and wages plus applicable overhead. The provisional overhead rate will include the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, sick leave, vacation holiday pay and other group benefits.
 - b. For services and Reimbursable expenses of independent professional associates and consultants employed by CONSULTANT to render Additional Services, the amount billed to CONSULTANT therefore times a factor of 1.20.
 - c. For services rendered by CONSULTANT's principals and employees to appear as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding, except for time spent in preparing to appear in any such litigation, arbitration or proceeding, at the rate of \$2,500.00 per principal or employee per day or any portion thereof.
 - d. The hourly rates, mean salaries and wages (basic and incentive) paid to all CONSULTANT's personnel engaged directly on the project, including, but not limited to, engineers, architects, surveyors, planners, designers, draftsmen, specification writers, estimators, other technical and business personnel, and include the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, sick leave, vacation and holiday pay, other group benefits, overhead expenses and profit.
 - e. Reimbursable Expenses mean the actual expenses incurred by CONSULTANT or CONSULTANT's independent professional associates or consultants, directly or indirectly in connection with the project, such as expenses for: transportation and subsistence incidental thereto; obtaining bids for proposals from Contractor(s); overnight mail; reproduction of reports, drawings, specifications, bidding documents, and similar project related items in addition to those required under Appendix A; and, if authorized in advance by the LPA, overtime work requiring higher than regular rates.
4. The CONSULTANT, with written approval from the LPA's ERC, may complete revisions and/or additional items relating to Right of Way Engineering, Section U of Appendix "A" at the established unit prices herein utilizing funds designated as "contingency" shown in the table under Section 2 of Appendix "D", up to the amount shown in Section 1 of Appendix "D".

B. Method of Payment for Design Services

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the LPA. The invoice voucher shall represent the value, to the LPA, of the partially completed work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each pay item in Section A.2 of this Appendix, percentage completed and prior payments.
2. The LPA, for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay to the CONSULTANT for rendering such services the fees established above in the following manner:
 - a. The amount invoiced based upon percent complete or the contract unit price, except that:
 - i. The maximum payment for pathway plans shall be in accordance with the following schedule:

a)	Stage 1 Plans	30%
b)	Preliminary Field Check Meeting	45%
c)	Stage 2 Plans	70%
d)	Design Approval	75%
e)	Stage 3 Plans	95%
e)	Tracings	100%
 - ii. Utility coordination will be invoiced 75% after the Preliminary Field Check Meeting has been held. The remaining balance will be invoiced upon review of Utility Relocation Plans.
 - iii. The maximum payment for the geotechnical investigation shall be in accordance with the following schedule:

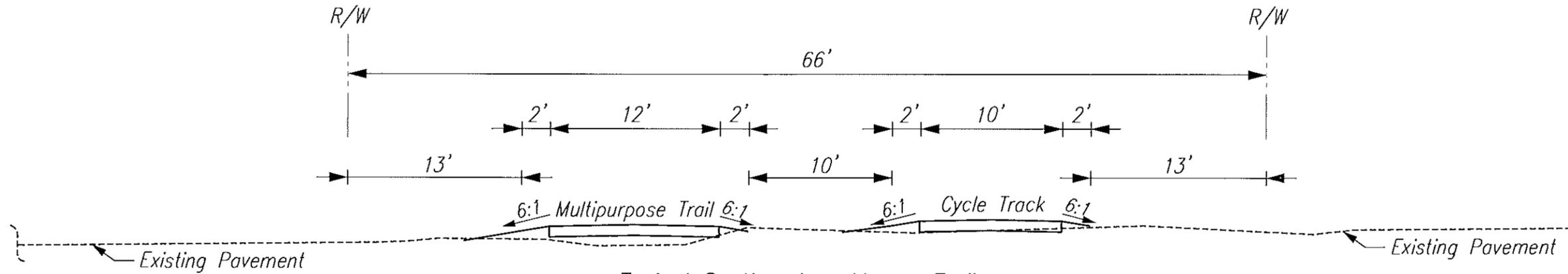
a)	Field Investigation (borings)	80%
b)	Final Report	20%
 - iv. Payment for any item not otherwise set out herein shall be made based upon percentage of completion.
3. The LPA for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay the CONSULTANT for rendering such services the fee established above upon completion of the work there under and acceptance thereof by the LPA.
4. If design changes are required during construction due to design errors in the final plans or specifications, the CONSULTANT will make such necessary design changes without additional cost to the LPA. However, if design changes are required during construction which are occasioned by changed conditions or conditions which could not have been reasonably foreseen by the CONSULTANT prior to construction, the CONSULTANT will be paid for such modifications at the direct salary and wages of each employee, PLUS a provisional overhead rate of 158.83%, PLUS a 10.4% profit, PLUS the cost of money at 1.7%, PLUS direct non-salary costs as approved by the LPA. Profit will only be applied to direct salary and wages plus applicable overhead. The provisional overhead rate will include the cost of customary and statutory benefits including, but not limited to,

social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, sick leave, vacation holiday pay and other group benefits.

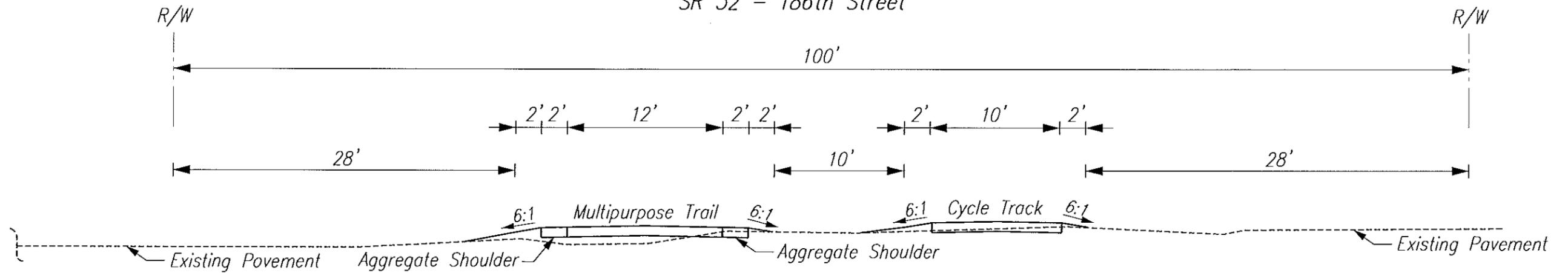
5. If the LPA fails to make any payment due to the CONSULTANT for services and expenses within forty-five (45) days after receipt of CONSULTANT's correct and accurate statement therefore, the amounts due to the CONSULTANT shall be increased at the rate of 1% per month from said forty fifth day, and in addition, CONSULTANT may, after giving seven (7) days' written notice to LPA, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses and changes.
6. In the event of a substantial change in scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with Section VI, Paragraph 6 title "Changes in Work" of this Agreement.
7. The CONSULTANT shall not commence any additional work or change the scope of the work as described in Appendix 'A' until authorized in writing by the LPA through an amendment or modification of this agreement.

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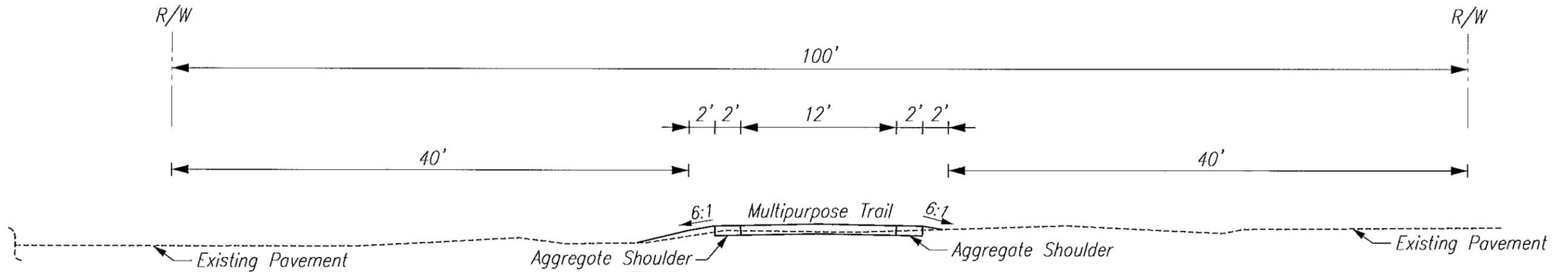
EXHIBIT 2



Typical Section A - Monon Trail
SR 32 - 186th Street



Typical Section B - Monon Trail
186th - 191st Street



Typical Section C - Monon Trail
191st - 216th Street

Date: Apr 26, 2013, 2:51 pm User: G. entabli File: \\P:\mason\17178\17178.dwg Plot: 17178.dwg Plotter: HP DesignJet 5000 Plot Style: dlz.ctb Model: Tab: vers-24x30



NOT FOR CONSTRUCTION
DLZ INDIANA, LLC

RECOMMENDED FOR APPROVAL	DESIGN ENGINEER	DATE
DESIGNED: AIM	DRAWN: AIM	
CHECKED: JAS	CHECKED: JAS	

**CITY OF WESTFIELD
MONON TRAIL**

**EXHIBIT 2
TYPICAL SECTION**

HORIZONTAL SCALE	ROAD FILE
NTS	
VERTICAL SCALE	DESIGNATION
NTS	0900029
SURVEY BOOK	SHEETS
ELECTRONIC	
CONTRACT	PROJECT
	0900029

EXHIBIT #5

ConsName	Worktype	WorktypeDesc	
ASC Group Inc	5.10	Historical Architectural Investigations	Section 106 Certification
ASC Group Inc	5.9	Archaeological Investigations	Section 106 Certification
Courtland Title & Escrow, Inc.	12.2	Title Research	Prepare Title Encumbrance Reports and Provide Title Updates
Courtland Title & Escrow, Inc.	12.7	Closing	Assist in Closing, if needed
First Appraisal Group Inc	12.3	Value Analysis	Appraisal Problem Analysis
First Appraisal Group Inc	12.5	Appraisal Review	Reviewing the Appraisals
RWS South, Inc.	12.4	Appraisal	Preparing Appraisal
Shrewsberry & Associates LLC	13.1	Construction Inspection	Construction Observations Services
USI Consultants Inc	12.1	Project Management for Acquisition Services	Right of Way Management of (Appraiser, Review Appraiser, and Buyer)
USI Consultants Inc	12.6	Negotiation	Buying
USI Consultants Inc	6.1	Topographic Survey Data Collection	Survey
USI Consultants Inc	8.1	Non-Complex Roadway Design	Trail Design
Accu-Air Surveys			Aerial Survey

Local Public Agency - Subconsultant Acknowledgment

RECITALS

WHEREAS, the undersigned subconsultant ("Subconsultant") desires to provide goods and/or services in connection with that certain consulting contract by and between DLZ, Indiana, LLC and the City of Westfield Local Public Agency (LPA); DES number 0900029, Project Description: **Monon Trail from SR 32 to 216th Street** ("Contract"), and

WHEREAS, the LPA 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 the LPA agree as follows:

1. Without limiting any rights or remedies based in agency, law, equity or otherwise that the LPA may have with respect to the Subconsultant under the Contract, the Subconsultant specifically agrees that Paragraphs #16 (Governing Laws); #18 (Indemnification) and #20 (Insurance – Liability for Damages) of the Contract shall apply to Subconsultant as though Subconsultant had been a party to and duly executed the Contract.

2. The LPA and Subconsultant agree that execution of this Acknowledgement is an inducement for INDOT to permit Subconsultant to perform services under the Contract and the LPA is entitled to and does, in fact, rely upon the terms and conditions contained herein.

For Subconsultant:

RWS South, Inc.

Gina M. Hansen
Gina M. Hansen, President

2/28/2012
Date

For LPA:

City of Westfield

Melody Jones, CPRP, CPSI, Director of Parks and Recreation

Date

Local Public Agency - Subconsultant Acknowledgment

RECITALS

WHEREAS, the undersigned subconsultant ("Subconsultant") desires to provide goods and/or services in connection with that certain consulting contract by and between DLZ, Indiana, LLC and the City of Westfield Local Public Agency (LPA); DES number 0900029, Project Description: **Monon Trail from SR 32 to 216th Street** ("Contract"), and

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

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1. Without limiting any rights or remedies based in agency, law, equity or otherwise that the LPA may have with respect to the Subconsultant under the Contract, the Subconsultant specifically agrees that Paragraphs #16 (Governing Laws); #18 (Indemnification) and #20 (Insurance – Liability for Damages) of the Contract shall apply to Subconsultant as though Subconsultant had been a party to and duly executed the Contract.

2. The LPA and Subconsultant agree that execution of this Acknowledgement is an inducement for INDOT to permit Subconsultant to perform services under the Contract and the LPA is entitled to and does, in fact, rely upon the terms and conditions contained herein.

For Subconsultant:

USI Consultants, Inc.

Ross E. Snider

Ross Snider, President

2/28/12

Date

For LPA:

City of Westfield

Melody Jones, CPRP, CPSI, Director of Parks and Recreation

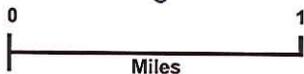
Date

EXHIBIT #1



Hamilton County Monon Trail (Des. No. 0900029)

Printed: Feb 01, 2012



The information on this web site is provided and hosted by Hamilton County, Indiana. Continued use of this web site is conditional upon your explicit acceptance of the terms and conditions set forth in this disclaimer document. The data provided herein may be inaccurate and/or out of date. Any person or entity who relies on this data for any purpose whatsoever does so solely at their own risk. Neither Hamilton County Indiana nor its employees or officers warrant the accuracy, reliability, or timeliness of any of the data provided herein. This data is provided "as is" without warranty of any kind. Hamilton County may elect to discontinue this service without notice at any point in the future.

**EXHIBIT #4
HOURLY BILLING RATES**

CLASSIFICATION	2013 AVERAGE HOURLY LABOR RATE	2013 AVERAGE HOURLY LABOR RATE TIMES OVERHEAD @ 158.83%	2013 AVERAGE HOURLY LABOR RATE + OH	2013 AVERAGE HOURLY LABOR RATE x FIXED RATE @ 10.40%	2013 AVERAGE HOURLY LABOR RATE TIMES COST OF MONEY @ 1.70%	PROPOSED 2013 HOURLY BILLING RATE	PROPOSED* 2014 HOURLY BILLING RATE	PROPOSED* 2015 HOURLY BILLING RATE	PROPOSED* 2016 HOURLY BILLING RATE	PROPOSED* 2017 HOURLY BILLING RATE
Principal**	\$74.64	\$118.55	\$193.19	\$20.09	\$1.27	\$175.60	\$175.60	\$175.60	\$175.60	\$175.60
Division Manager**	\$59.22	\$94.06	\$153.28	\$15.94	\$1.01	\$170.23	\$175.33	\$175.60	\$175.60	\$175.60
Department Manager	\$50.50	\$80.21	\$130.71	\$13.59	\$0.86	\$145.16	\$149.52	\$154.00	\$158.62	\$163.38
Project Manager I	\$39.69	\$63.04	\$102.73	\$10.68	\$0.67	\$114.09	\$117.51	\$121.04	\$124.67	\$128.41
Project Manager II	\$42.07	\$66.82	\$108.89	\$11.32	\$0.72	\$120.93	\$124.56	\$128.29	\$132.14	\$136.11
Project Manager III	\$42.09	\$66.85	\$108.94	\$11.33	\$0.72	\$120.99	\$124.62	\$128.36	\$132.21	\$136.17
Sr. Project Mgr	\$45.55	\$72.35	\$117.90	\$12.28	\$0.77	\$130.93	\$134.86	\$138.91	\$143.07	\$147.37
Civil Engineer IV	\$39.70	\$63.08	\$102.76	\$10.69	\$0.67	\$114.12	\$117.54	\$121.07	\$124.70	\$128.44
Civil Engineer III	\$32.80	\$52.10	\$84.90	\$8.83	\$0.56	\$94.28	\$97.11	\$100.02	\$103.03	\$106.12
Civil Engineer II	\$29.19	\$46.36	\$75.55	\$7.86	\$0.50	\$83.91	\$86.42	\$89.02	\$91.69	\$94.44
Civil Engineer I	\$23.55	\$37.40	\$60.95	\$6.34	\$0.40	\$67.69	\$69.72	\$71.82	\$73.97	\$76.19
Electrical Engineer III	\$41.60	\$66.07	\$107.67	\$11.20	\$0.71	\$119.58	\$123.17	\$126.86	\$130.67	\$134.69
Principle Architect	\$48.42	\$76.91	\$125.33	\$13.03	\$0.82	\$139.18	\$143.36	\$147.66	\$152.09	\$156.65
Architect III	\$27.75	\$44.08	\$71.83	\$7.47	\$0.47	\$79.77	\$82.16	\$84.62	\$87.16	\$89.78
Architect II	\$32.35	\$51.38	\$83.73	\$8.71	\$0.55	\$92.99	\$95.78	\$98.65	\$101.61	\$104.66
Architect I	\$24.00	\$38.12	\$62.12	\$6.46	\$0.41	\$68.99	\$71.06	\$73.19	\$75.38	\$77.65
Rodman-ST	\$23.28	\$36.98	\$60.26	\$6.27	\$0.40	\$66.92	\$68.93	\$70.99	\$73.12	\$75.32
Surveyor V	\$43.70	\$69.41	\$113.11	\$11.76	\$0.74	\$125.61	\$129.38	\$133.26	\$137.26	\$141.38
Party Chief-ST	\$36.85	\$58.53	\$95.38	\$9.92	\$0.63	\$105.92	\$109.10	\$112.38	\$115.75	\$119.22
Instrument Person-ST	\$32.01	\$50.84	\$82.85	\$8.62	\$0.54	\$92.01	\$94.77	\$97.62	\$100.54	\$103.56
Surveyor	\$30.19	\$47.95	\$78.14	\$8.13	\$0.51	\$86.78	\$89.38	\$92.07	\$94.83	\$97.67
Sr. Right of Way Engineer	\$43.85	\$69.65	\$113.50	\$11.80	\$0.75	\$126.05	\$129.83	\$133.72	\$137.73	\$141.87
Environmental Scientist III	\$30.20	\$47.97	\$78.17	\$8.13	\$0.51	\$86.81	\$89.41	\$92.10	\$94.86	\$97.70
Landscape Arch/Planner III	\$25.95	\$41.22	\$67.17	\$6.99	\$0.44	\$74.59	\$76.83	\$79.14	\$81.51	\$83.95
Landscape Arch/Planner I	\$19.25	\$30.57	\$49.82	\$5.18	\$0.33	\$55.33	\$56.99	\$58.70	\$60.46	\$62.28
Mechanical Engineer III	\$37.22	\$59.12	\$98.34	\$10.02	\$0.63	\$106.99	\$110.20	\$113.50	\$116.91	\$120.42
Mechanical Engineer I	\$24.40	\$38.75	\$63.15	\$6.57	\$0.41	\$70.14	\$72.24	\$74.41	\$76.64	\$78.94
Structural Engineer III	\$36.22	\$57.53	\$93.75	\$9.75	\$0.62	\$104.11	\$107.24	\$110.45	\$113.77	\$117.18
Structural Engineer II	\$33.70	\$53.53	\$87.23	\$9.07	\$0.57	\$96.87	\$99.78	\$102.77	\$105.85	\$109.03
Survey/Mapping Assistant	\$24.80	\$39.39	\$64.19	\$6.68	\$0.42	\$71.29	\$73.43	\$75.63	\$77.90	\$80.23
Construction Observer	\$27.10	\$43.04	\$70.14	\$7.29	\$0.46	\$77.90	\$80.24	\$82.64	\$85.12	\$87.68
Construction Observer Mgr	\$31.94	\$50.73	\$82.67	\$8.60	\$0.54	\$91.81	\$94.57	\$97.40	\$100.32	\$103.33
Designer III	\$32.91	\$52.27	\$85.18	\$8.86	\$0.56	\$94.60	\$97.44	\$100.36	\$103.37	\$106.47
Designer II-ST	\$26.83	\$42.61	\$69.44	\$7.22	\$0.46	\$77.12	\$79.44	\$81.82	\$84.27	\$86.80
Designer I-ST	\$23.46	\$37.26	\$60.72	\$6.32	\$0.40	\$67.44	\$69.46	\$71.54	\$73.69	\$75.90
Technician IV-ST	\$19.30	\$30.65	\$49.95	\$5.20	\$0.33	\$55.48	\$57.14	\$58.86	\$60.62	\$62.44
Technician II-ST	\$15.50	\$24.62	\$40.12	\$4.17	\$0.26	\$44.55	\$45.89	\$47.27	\$48.69	\$50.15
Technician I-ST	\$15.19	\$24.13	\$39.32	\$4.09	\$0.26	\$43.66	\$44.97	\$46.32	\$47.71	\$49.14
Office Clerk-ST	\$16.15	\$25.65	\$41.80	\$4.35	\$0.27	\$46.42	\$47.82	\$49.25	\$50.73	\$52.25
Receptionist-ST	\$13.90	\$22.08	\$35.98	\$3.74	\$0.24	\$39.96	\$41.15	\$42.39	\$43.66	\$44.97
Clerical II-ST	\$19.19	\$30.48	\$49.67	\$5.17	\$0.33	\$55.16	\$56.82	\$58.52	\$60.28	\$62.08
Clerical I-ST	\$13.30	\$21.12	\$34.42	\$3.58	\$0.23	\$38.23	\$39.38	\$40.56	\$41.78	\$43.03
Office Svcs Coordinator	\$22.63	\$35.94	\$58.57	\$6.09	\$0.38	\$65.05	\$67.00	\$69.01	\$71.08	\$73.21

*assumes a 3.0% increase from previous year unless max. rate exceeded

** \$61.09/HR @ Max rate

Local Public Agency - Subconsultant Acknowledgment

RECITALS

WHEREAS, the undersigned subconsultant ("Subconsultant") desires to provide goods and/or services in connection with that certain consulting contract by and between DLZ, Indiana, LLC and the City of Westfield Local Public Agency (LPA); DES number 0900029, Project Description: **Monon Trail from SR 32 to 216th Street** ("Contract"), and

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

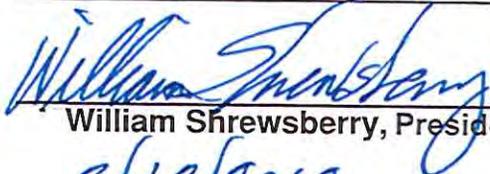
THEREFORE, in consideration of the mutual covenants contained herein, the Subconsultant for itself and on behalf of its successors and assigns (if any) and the LPA agree as follows:

1. Without limiting any rights or remedies based in agency, law, equity or otherwise that the LPA may have with respect to the Subconsultant under the Contract, the Subconsultant specifically agrees that Paragraphs #16 (Governing Laws); #18 (Indemnification) and #20 (Insurance – Liability for Damages) of the Contract shall apply to Subconsultant as though Subconsultant had been a party to and duly executed the Contract.

2. The LPA and Subconsultant agree that execution of this Acknowledgement is an inducement for INDOT to permit Subconsultant to perform services under the Contract and the LPA is entitled to and does, in fact, rely upon the terms and conditions contained herein.

For Subconsultant:

Shrewsberry & Associates, LLC



William Shrewsberry, President

Date

3/13/2012

For LPA:

City of Westfield

Melody Jones, CPRP, CPSI, Director of Parks and Recreation

Date

Local Public Agency - Subconsultant Acknowledgment

RECITALS

WHEREAS, the undersigned subconsultant ("Subconsultant") desires to provide goods and/or services in connection with that certain consulting contract by and between DLZ, Indiana, LLC and the City of Westfield Local Public Agency (LPA); DES number 0900029, Project Description: Monon Trail from SR 32 to 216th Street ("Contract"), and

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

1. Without limiting any rights or remedies based in agency, law, equity or otherwise that the LPA may have with respect to the Subconsultant under the Contract, the Subconsultant specifically agrees that Paragraphs #16 (Governing Laws); #18 (Indemnification) and #20 (Insurance – Liability for Damages) of the Contract shall apply to Subconsultant as though Subconsultant had been a party to and duly executed the Contract.

2. The LPA and Subconsultant agree that execution of this Acknowledgement is an inducement for INDOT to permit Subconsultant to perform services under the Contract and the LPA is entitled to and does, in fact, rely upon the terms and conditions contained herein.

For Subconsultant:

Courtland Title & Escrow, Inc.

B. Craney
B. Craney, President

February 29, 2012
Date

For LPA:

City of Westfield

Melody Jones, CPRP, CPSI, Director of Parks and Recreation

Date

Attachment #1

Version 9-07-10

INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY PROJECT COORDINATION CONTRACT

EDS #: A249-09-320742

Des. No.: 0900029

This Contract is made and entered into June 20, 2011, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the City of Westfield, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA/MPO & Grant Administration
Attention: LPA/MPO & Grant Administration Director
100 North Senate Avenue, Room N755
Indianapolis, Indiana 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

INDOT Greenfield District
32 South Broadway
Greenfield, Indiana 46140

- C. Notices to the LPA shall be sent to:

Mr. Neil VanTrees
City of Westfield
2706 East 171st Street
Westfield, Indiana 46074

RECITALS

WHEREAS, LPA has applied to INDOT, and INDOT has approved the LPA's application to receive federal funds for the Project described in Attachment A, and

WHEREAS, LPA agrees to pay its share of the Project cost as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation, and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana, and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations, and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all Federal requirements and fiscally manage the Project, and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The "Recitals" and "Notice to Parties" above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I **PROJECT DESCRIPTION.** INDOT and the LPA enter into this Contract to complete the project described in Attachment A (the "Project"), herein attached to and made an integral part of this Contract.

SECTION II **LPA RESPONSIBILITIES.** The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA's Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

SECTION III **INDOT RESPONSIBILITIES.** INDOT will provide the information and services as set out in Attachment C (INDOT's Rights and Duties), herein attached to and made an integral part of this Contract.

SECTION IV **PROJECT FUNDS.** INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is attached to and made an integral part of this Contract.

SECTION V **TERM AND SCHEDULE.**

- A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract.) between October 1, 2012 and September 30, 2013, INDOT will make the federal funds shown in section I.B of Attachment D available for the Project, provided the Project is eligible.
- B. In the event that federal funds for the Project are not obligated during the time listed in section V.A, but the LPA has the plans, special provisions, and cost estimate for the Project ready such that federal funds can be obligated between October 1, 2013 and September 30, 2015. INDOT will schedule the contract for letting, provided the federal funds shown in section I.B of Attachment D are available.
- C. In the event that federal funds for the Project are not obligated during the period listed in section V.A or section V.B, the LPA may (1) request INDOT's approval to transfer the federal funds to another eligible project or (2) in extenuating circumstances, submit a written request to INDOT at least 90 days before the last date listed in section V.B and request that the dates in sections V.A and V.B be modified; otherwise, the federal funds allocated to the Project will lapse.

- D. If the Program shown on Attachment A is Group I or Group II, Sections V.A, V.B, and V.C do not apply.

SECTION VI GENERAL PROVISIONS

- A. **Access to Records.** The LPA 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 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 inspection or audit by INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
- B. **Audit.** The LPA 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 48 CFR part 31 and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.
- C. **Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 Contract, 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.
 2. 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.
 3. The LPA 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.

D. Compliance with Laws.

1. The LPA 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 there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
4. The LPA 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 Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44-1-3 and under any other applicable State or Federal laws.
5. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this agreement. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.
6. As required by I.C. 5-22-3-7: (1) the LPA and any officials of the LPA certify that (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of (i) I.C. 24-4.7 [Telephone Solicitation Of Consumers], (ii) I.C. 24-5-12 [Telephone Solicitations] , or (iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by Federal law; and (B) the LPA will not violate the terms of I.C. 24-4.7 for the duration of the Contract, even if I.C. 24-4.7 is preempted by Federal law. (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA: (A) except for de minimis and nonsystematic violations, has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by Federal law; and (B) will not violate the terms of I.C. 24-4.7 for the duration of the Contract, even if I.C. 24-4.7 is preempted by Federal law.

- E. **Disadvantaged Business Enterprise Program.** Notice is hereby given to the LPA or a LPA Contractor 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, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA 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.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

F. **Disputes.**

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.
3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
4. The parties agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

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

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

In addition to the provisions of the above paragraphs, if the total Contract amount set forth in this Contract is in excess of \$25,000, LPA 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 IDOA is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000, shall be valid, unless and until this certification has been fully executed by the LPA and made a part of the contract or agreement as part of the contract documents.

The LPA certifies and agrees it shall provide a drug-free workplace by:

1. Publishing and providing to all of its employees a Statement notifying their employees the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LPA's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
2. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties which may be imposed upon an employee for drug abuse violations occurring in the workplace.
3. Notifying all employees in the Statement required by subparagraph (1) above as a condition of continued employment the employee shall (1) abide by the terms of the Statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;
5. Within thirty (30) days after receiving notice under subdivision (3)(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

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program approved for such purposes by a Federal, State or Local health, law enforcement, or other appropriate agency; and

6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.
- H. **Force Majeure.** In the event 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.
- I. **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 continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- J. **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.
- K. **Indemnification.** The LPA agrees to indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, or by whosoever caused, to the person or property of anyone on or off the Project arising out of, or resulting from the work covered by this Contract or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent of negligence of the LPA, including any claims arising out of the Worker's Compensation Act or any other law, ordinance, order or decree. The LPA agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith in the event that the LPA shall default under the provisions of this Section. INDOT shall not provide such indemnification to the LPA.
- L. **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, in any manner, except by written agreement signed by all necessary parties.
- M. **Non-Discrimination.**
1. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the LPA, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

2. The LPA understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the LPA, agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA 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.
3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, 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.
 - b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
 - c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA 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 LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.
 - d. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
- f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA 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 non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA 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 LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- N. Payment. All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the LPA 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 I.C. 4-13-2-20.
- O. 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, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.
- P. Pollution Control Requirements. If this Contract is for \$100,000 or more, the LPA:
 - 1. Stipulates 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;
 - 2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 - 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice 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 List of Violating Facilities.

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- Q. **Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- R. **Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA 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, Indiana 46204-2249

The remainder of this page is intentionally left blank.

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Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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

CITY OF WESTFIELD

J. Andrew Cook Mayor
Print or type name and title
J. Andrew Cook 5-2-11
Signature and date

Print or type name and title

Signature and date

Print or type name and title

Signature and date

Attest

Cathy Bassard
Auditor or Clerk Treasurer

This instrument prepared by:
Brenda E. Fox
February 23, 2011

STATE OF INDIANA Department of Transportation

Recommended for approval by:

Robert D. Cales
Robert D. Cales, Director
Contract Administration Division

Date: 6/17/2011

Executed by:

Michael B. Cline
DC CAPITAL PROGRAM MGMT (FOR)
Michael B. Cline, Commissioner

Date: 6/20/2011

Department of Administration

Robert D. Wynkoop
Robert D. Wynkoop, Commissioner

Date: 6/27/11

State Budget Agency

Adam M. Horst
Adam M. Horst, Director

Date: 7-1-11

Approved as to Form and Legality:

Gregory F. Zoeller (FOR)
Gregory F. Zoeller, Attorney General of Indiana

Date: 07/07/11

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ATTACHMENT A PROJECT DESCRIPTION

Des. No.: 0900029
Program: Transportation Enhancement
Type of Project: Bicycle/Pedestrian Facilities
Location: Monon Greenway from SR 32 to 216th Street

A general description of the Project is as follows:

Bicycle/Pedestrian Facilities along Monon Greenway from SR 32 to 216th St. approximately 4.8 miles.

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See <http://www.in.gov/div/contracts/standards/dm.html>) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/7287.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/3018.htm>).
2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be accordance with INDOT's consultant selection procedure or INDOT's Alternative Architectural and Engineering Firm Selection Process for Local Public Agencies (See <http://www.in.gov/dot/div/legal/rfp/LPASection/information/ConsultantSelection/Consultant%20Selection%20index.htm>).
3. REQUIREMENTS FOR ADDITIONAL CONTRACTS
 - A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:
 1. use the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/div/projects/LPASection/> and is incorporated by reference; or
 2. use a form of agreement that has been reviewed and approved by INDOT.
4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
6. At least sixty (60) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in section 2. Consideration.

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7. If the LPA has failed to meet any of the requirements of sections 1, 2, 4, 5, or 6 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
8. The LPA shall pay the cost of the invoice of the construction, utility, and/or railroad work within thirty (30) calendar days from the date of INDOT's award of the construction contract.
9. The LPA understands time is of the essence regarding the Project timeline and payment of costs by the LPA. Delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the amount billed by INDOT, in accordance with Attachment D, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this contract including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
10. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the project. The LPA, in conjunction with FHWA (if applicable) and INDOT, shall review and approve all change orders, and such approvals shall not be unreasonably withheld.
11. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
 - A. If project inspection will be provided by LPA employees:

The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal-aid shall be submitted to the District office, referenced in 30.B. Notice to Parties, for payment.

or

 - B. If project inspection will be provided by the LPA's consultant:

INDOT must approve, in writing, the consultant personnel prior to their assignment to the project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's construction letting for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal-aid shall be submitted to the District office, referenced on page 1, for payment.

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12. The LPA shall submit reports to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods.
13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2376.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
14. If FHWA or INDOT invokes sanctions per Number 9.2., or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
 - a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.
 - b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:
 1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.
 2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.
 3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
 - c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:
 1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.
 2. INDOT may elect to pay its obligations under the provisions of the construction contract.
 3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

4. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA or INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of federal funds allowed by FHWA.
- d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for federal participation.
- e. If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.
2. INDOT shall complete all railroad coordination for the Project on behalf of the LPA.
3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.
4. If the LPA owes INDOT money which is more than 60 days past due, INDOT will not open the construction bids for the Project.
5. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules (including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11), conduct a scheduled letting.
6. Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.
7. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.
8. If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA share of the construction cost.
9. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.
10. In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.
11. After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's bill, make final payment to INDOT pursuant to Attachment D or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

ATTACHMENT D

PROJECT FUNDS

I. Project Costs.

A. If the Program shown on Attachment A is Group I or Group II, this contract is just for the one (1) phase checked below:

- Preliminary engineering or
- Right-of-way or
- Construction;

otherwise this contract covers all phases.

B. (1) If the Program shown on Attachment A is Group III, Group IV, or Local Bridge, the LPA will not receive federal funds as the work is completed during the preliminary engineering and right-of-way phases; instead the LPA will accrue federal credits equal to 80% of eligible costs but not to exceed 10% of the final cost of the construction phase (construction and construction inspection) of the Project, provided the LPA complies with all federal and state laws, regulations and rules regarding such services, including consultant selection(s) and procurement of right-of-way. Federal funds, made available to the LPA by INDOT, will be used to pay 80% of the eligible Project construction cost. Accrued federal credits may be used to pay up to 10% of the final cost of the construction phase (construction and construction inspection) of the Project. The maximum amount of federal funds, including federal credits, allocated to the Project is \$ _____.

OR

(2) If the Program shown on Attachment A is receiving federal funds for all phases, federal funds made available to the LPA by INDOT, will be used to pay 80% of the eligible Project costs. The maximum amount of federal funds allocated to the Project is \$ 846,000.00.

X

OR

(3) If the Program shown on Attachment A is Transportation Enhancement (with federal credits), the LPA will not receive federal funds as the work is completed during the preliminary engineering and right-of-way phases; instead the LPA will accrue federal credits equal to 80% of eligible costs but not to exceed 20% of the final cost of the construction phase (construction and construction inspection) of the Project, provided the LPA complies with all federal and state laws, regulations, and rules regarding such services, including consultant selection(s) and procurement of right-of-way. Federal funds, made available to the LPA by INDOT, will be used to pay 80% of the eligible Project construction cost. Accrued federal credits may be used to pay up to 20% of the final cost of the construction phase (construction and construction inspection) of the Project. The maximum amount of federal funds, including federal credits, allocated to the Project is \$ _____.

OR

Attachment #1

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- (4) If the Program shown on Attachment A is Safety, Safe Routes to Schools, Forest Highway, National Historic Covered Bridge, Transportation Community System Preservation, or Demonstration, federal funds, made available to the LPA by INDOT, will be used to pay _____% of the eligible Project costs. The maximum amount of federal funds allocated to the Project is \$ _____.
- C. The LPA understands and agrees that federal reimbursement for construction inspection and testing construction materials is limited to:
- (1) 17% of the final construction cost if the final construction cost is less than or equal to \$500,000; or
 - (2) 15% of the final construction cost if the final construction cost is greater than \$500,000.
- D. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the parties have agreed in a document (which specifically references section I.D of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.
- E. Costs will be eligible for FHWA participation provided that the costs:
- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
 - (2) Are verifiable from INDOT's or the LPA's records;
 - (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;
 - (4) Are included in the approved budget, or amendment thereto; and
 - (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.

3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

B. Other Costs:

1. In accordance with I.C. 8-23-2-14, the LPA shall pay INDOT the actual cost, less the amount eligible for Federal-aid reimbursement, for performing laboratory testing of materials. The cost of providing material testing is included in the maximum limitation number shown in section I.C of Attachment D.
2. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.
3. The LPA shall pay INDOT for expenses incurred in supervising the Project out of the maximum limitation shown in section I.C of Attachment D.

III. Repayment Provisions.

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.