

AN ORDINANCE approving PROFESSIONAL ENGINEERING SERVICES AGREEMENT - BLUFFTON ROAD BRIDGE PROJECT - RESOLUTION #0371X - (NOT TO EXCEED \$598,100.00) between USI CONSULTANTS, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

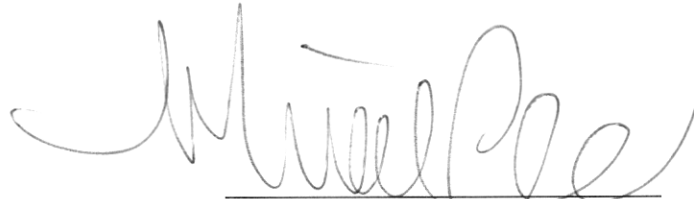
NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the PROFESSIONAL ENGINEERING SERVICES AGREEMENT - BLUFFTON ROAD BRIDGE PROJECT - RESOLUTION #0371X - by and between USI CONSULTANTS, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for Professional Engineering Services for the superstructure replacement of the Bluffton Road Bridge over the St. Mary's River. Services to include survey, bridge superstructure design, utility coordination, geotechnical, right-of-way plan development, environmental documentation and permitting. This is a Federal project with the Indiana Department of Transportation that has cost sharing of 80/20 with the City of Fort Wayne;

involving a total cost of NOT TO EXCEED FIVE HUNDRED NINETY-EIGHT THOUSAND ONE HUNDRED AND 00/100 DOLLARS (\$598,100.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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2 **SECTION 2.** That this Ordinance shall be in full force and effect from
3 and after its passage and any and all necessary approval by the Mayor.

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8 Council Member

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10 APPROVED AS TO FORM AND LEGALITY

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12 _____
13 Carol Helton, City Attorney

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DIGEST SHEET

Department: Transportation Engineering

Resolution Number: #0371X

Title of Ordinance: Bluffton Road Bridge Project Professional Services Agreement

Amount of Contract:

\$598,100.00 Not to Exceed (NTE) Professional Services Agreement with USI Consultants

Description of Project (Be Specific):

Professional Engineering Services for the superstructure replacement of the Bluffton Road Bridge over the St. Mary's River. These services include survey, bridge superstructure design, utility coordination, geotechnical, right-of-way plan development, environmental documentation and permitting.

This is a federal project with the Indiana Department of Transportation that has cost sharing of 80/20 with the City of Fort Wayne. The project is planned to be constructed in 2024 or 2025.

What Are The Implications If Not Approved:

Bluffton Road Bridge over the St. Mary's River will continue to deteriorate in condition, limit use of bridge due to loading restrictions and potentially may require closure if not fixed.

If Prior Approval Is Being Requested, Justify:

N/A

Additional Comments:

The request for proposals was advertised to all interested consultants through INDOT's website and 2 proposals were received. The proposals were reviewed and scored using INDOT guidelines for Federal Projects and USI Consultants was selected as the most responsive firm. The contract, including the set rates for each service, has been reviewed and approved by both the Board of Public Works and INDOT.

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LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of 9-15, 2020 ("Effective Date") by and between City of Fort Wayne, Indiana, Board of Public Works, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and USI Consultants, Inc. ("the CONSULTANT"), [a corporation/limited liability company organized under the laws of the State of Indiana].

Des. No.: 1902834

Project Description: City of Fort Wayne Bridge #358: Bluffton Road over Saint Mary's River – PE, RWE

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 **December 31, 2024**. 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 **\$ 598,100.00**.

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 SUB-CONSULTANTS, 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, LOCAL PUBLIC AGENCY, 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 INDOI 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 13. 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 14.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 14.B.iii(2) above, or otherwise receiving actual notice of such conviction;
- v. Within thirty (30) days after receiving notice under subdivision 14.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 14.B.i. through 14.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, and their agents, officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by, the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract, provided that if the CONSULTANT is a "contractor" within the meaning of I.C. 8-3-2-12.5, this indemnity obligation shall be limited by and interpreted in accordance with I.C. 8-23-2-12-5. 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 19 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 INDOT 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 FORT WAYNE, INDIANA
Division of Public Works, City Engineering
Attn: Patrick W. Zaharako, PE, MBA, City Engineer
Citizens Square Building
200 E Berry St, Suite 210
Fort Wayne, IN 46802
(e) Patrick.Zaharako@cityoffortwayne.org

Notices to the CONSULTANT shall be sent to:

USI CONSULTANTS, INC.
Attn: Mr. Philip D. Beer II, PE, PS, Vice President
8415 E. 56th Street
Indianapolis, IN 46216
(e) pbeer@usiconsultants.com

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

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:
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 affected 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 13). 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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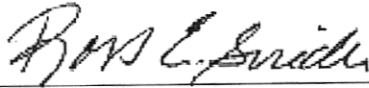
Non-Collusion.

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. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Contract, the Party attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

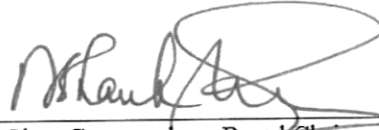
In Witness Whereof, the CONSULTANT and the LPA have, through duly authorized representatives, entered into this Contract. The parties having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

CONSULTANT

LOCAL PUBLIC AGENCY
CITY OF FORT WAYNE
BOARD OF PUBLIC WORKS



Ross E. Snider, PE
President

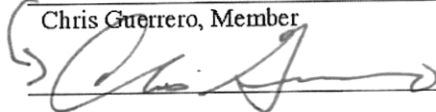


Shan Gunawardena, Board Chair

ABSENT

Kumar Menon, Member

Chris Guerrero, Member



Attest:



Philip D. Beer II, PE, PS, FACEC
Executive Vice President

Attest:



Michelle Fulk-Vondran, Clerk

9-15-20

Date:

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:

- Task 1 Topographic Survey Data Collection
- Task 2 Bridge Design and Plan Development
- Task 3 Utility Coordination Services
- Task 4 Geotechnical Services
- Task 5 Environmental Permitting
- Task 6 Environmental Document Preparation
- Task 7 Special Investigations
- Task 8 Right-of-Way Plan Development
- Task 9 Construction Phase Services

Task 1 Topographic Survey Data Collection

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

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

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

The signature, seal, date and registration number of the land surveyor, registered in the State of Indiana, who was in responsible charge of the survey, shall be affixed to the Survey Book submitted to INDOT, along with current contact information of the surveyor.

Task 2 Bridge Design and Plan Development

The CONSULTANT shall prepare the plans and preliminary opinions of probable cost, which shall be in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: the Indiana Manual on Uniform Traffic Control Devices (IMUTCD), Standard Specifications, Standard Drawings, Recurring Special Provisions and Plan Details, Special Provision Technical Advisories, Design Memorandums, and the Indiana Design Manual (IDM).

The CONSULTANT shall prepare the Hydraulic Scour Analysis Submittal in accordance with IDM Sections 14-2.05 and 412-2.0. If required per INDOT Design Memo 18-12, the analysis will be submitted to INDOT for review. The analysis will determine if the installation of scour countermeasures will become a necessary project scope item.

The CONSULTANT shall prepare for and organize the Initial Field Check in accordance with the requirements of IDM Sections 14-2.05(01) and 412-2.02(02). The Initial Field Check will, desirably, be held at the project site and will review all important existing conditions to be considered in the design.

Following the Initial Field Check, the CONSULTANT shall prepare the Bridge Scoping Report as required per IDM Sections 14-2.05(01) and 412-2.02(02). The Bridge Scoping Report shall include the minimum requirements as shown on the INDOT sample report and will make recommendations for all important project scope items. In order to make the recommendation for replacement superstructure type, an analysis of the proposed superstructure replacement options, an economic cost comparison of the alternative viable replacement superstructure types, and an analysis of the existing bridge substructure units shall be performed. In accordance with IDM Section 412-2.02(01), all Level One controlling geometric design criterion will be investigated as part of the Bridge Scoping Report. Any apparent or possible design exceptions shall be identified at this time. A preliminary opinion of total probable construction cost shall also be included in the Bridge Scoping Report submission. Quality Assurance reviews shall be completed by the CONSULTANT on all Design Computations and Level One Checklist items. No further work shall be performed until the Bridge Scoping Report is fully approved, unless and until specifically directed by the LPA.

Following approval of the Bridge Scoping Report, the CONSULTANT shall complete the design and plan development necessary to prepare the Preliminary Plans submission in accordance with IDM Sections 14-

2.05(03) and 412-2.02(02). Plans should be approximately 60% complete at this stage. Plans shall be in accordance with all Level One controlling design criterion, unless approved via a Level One Design Exception for each substandard design feature. Plans shall be drawn to a suitable scale and in compliance with IDM Section 14-3.05. As part of the Preliminary Plans Submittal, the CONSULTANT shall design and detail a preliminary phased construction scheme for the LPA's approval. Quality Assurance reviews shall be completed by the CONSULTANT on all plan sheets, design information, Level One Checklists, and Design Computations.

Upon approval of the Preliminary Plans, the CONSULTANT shall develop Public Hearing Plans, if necessary. The CONSULTANT shall publicly advertise for the opportunity to hold a public hearing. If a hearing is requested and deemed necessary by INDOT, it shall be in accordance with IDM Chapter 8.

Following approval of the Preliminary Plans, the CONSULTANT shall prepare the Final Plans, which shall be approximately 90% complete. The plans for this submittal shall be finalized and include all roadway, traffic, and bridge details in accordance with Section 14-2.05(04) of the IDM. The CONSULTANT shall complete the Environmental Consultation Form and Quality Assurance reviews on all plan sheets, design information, Level One Checklists, and Design Computations.

After approval of the Final Plans, and if requested by the INDOT Project Manager, the CONSULTANT shall arrange and facilitate a Final Field Check in accordance with IDM Section 14-2.05(05). A Constructability Review shall be performed by the CONSULTANT as part of the Final Field Check.

Following approval of the Final Plans and after the Final Field Check, if required, the CONSULTANT shall prepare the Final Tracings for submittal to the LPA. Upon approval of the Final Tracings by the LPA, the CONSULTANT shall submit the Final Tracings and all project documentation per IDM Sections 14-1.02(04) and 14-2.05(06) to INDOT for final approval prior to the Ready for Contracts date. All submissions shall be made electronically via the INDOT ERMS. The INDOT Project Manager shall be notified upon submission to INDOT.

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

1. Field Checks – The CONSULTANT shall arrange and attend the initial field check and final field check, if necessary. The CONSULTANT shall prepare the field check notification letter and distribute it along with plans.

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

1. One set of final approved Tracings of the contract plans drawn to a suitable scale on standard 36" x 24" sheets in electronic PDF format.
2. One set of approved Tracings of the contract plans (hard copy) for the LPA's records, if requested.
3. One set of Special Provisions for the Specifications.
4. One copy of the CONSULTANT opinion of probable construction cost.
5. One copy of all Design Computations, indexed, paged, and bound.

Additional general data shall be issued per the requirements of the IDM at the mutual agreement of the CONSULTANT and the LPA. The CONSULTANT does not authorize or assume liability for any re-use of the documents or digital materials described in this section for any purpose other than this project and the specific use intended, unless adapted by and approved by the CONSULTANT.

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

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

Throughout the duration of the project, the CONSULTANT shall continue to periodically inspect and monitor the progression of the cracks within the existing superstructure, in cooperation with the LPA. The CONSULTANT shall perform an analysis of the acquired inspection data and make recommendations to the LPA regarding changes to the load posting limit and continued use of the existing facility.

Deliverables: The CONSULTANT shall submit deliverables to INDOT in accordance with the IDM and Appendix C – Schedule.

Exclusion: The fees assume that steel I-beams will not be utilized as the replacement superstructure type. If the use of steel I-beams is the most economical viable superstructure, and selected for use, the CONSULTANT may submit a Supplemental Agreement for review and approval by the LOCAL PUBLIC AGENCY.

Exclusion: The fees assume that the existing substructure foundations will be structurally adequate to support the replacement superstructure and will be stable during construction. If alterations to the existing foundations are required, the CONSULTANT will submit a Supplemental Agreement for review and approval by the LOCAL PUBLIC AGENCY prior to execution of the design and plan development work.

PUBLIC HEARING

If a public hearing is requested, one Public Hearing shall be advertised by the CONSULTANT. The CONSULTANT shall schedule, mail notices to adjacent property owners, install roadside signs, publish notices in the local paper, develop display materials, conduct the hearing, record the hearing and prepare a written report addressing issues that arise in the public hearing. The CONSULTANT shall meet the requirements necessary to obtain hearing certification from INDOT before completing the Final Plans.

ADDITIONAL MEETINGS

The CONSULTANT shall attend up to three additional meetings when they are requested by the LPA. The CONSULTANT shall schedule, prepare an agenda, and prepare and distribute meeting minutes to all attendees. The CONSULTANT shall attend more than three additional meetings when they are requested by the LPA, subject to approval of a supplemental agreement.

Task 3 Utility Coordination Services

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

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

The CONSULTANT shall have an INDOT certified Utility Coordinator as part of the project team. The CONSULTANT shall have an INDOT certified Utility Coordinator perform the following utility coordination tasks covered in IDM Chapter 104:

1. Present project reports necessary for project delivery such as status reports and risk reports.
2. Recommend work plans for approval including, narrative portion, relocation drawing, cost estimates and proof of property interests.
3. Recommend work plan addendums for approval.
4. Lead or facilitate meetings involving utility specific activities such as 'kick-off' meetings, conflict resolution meetings and reimbursement eligibility meetings.
5. Facilitate the discussion of cost estimates, reimbursement, reimbursable status or agreements with utility companies and LPA.
6. Review and recommend approval of utility consultants and utility contractors.

7. Review and sign all required letters to utility companies.
8. Prepare and sign all required contract letting documents.
9. Conduct post letting utility coordination services.

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

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

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

Prior to Stage 2 plans, the CONSULTANT shall report in writing to the LPA which utilities may be relocated and the reason they may be relocated.

1. The CONSULTANT shall conduct office reviews, field reviews, meetings and communications as needed for utility coordination services.
2. The CONSULTANT shall prepare notices, letters, drawings and agreements for utility coordination services.
3. The CONSULTANT shall provide legal notice before entering private property.
4. The CONSULTANT shall perform constructability reviews of the project and utility relocation work in accordance with the Constructability Manual, <http://www.in.gov/indot/2697.htm>
5. The CONSULTANT shall review eligibility for reimbursement.
6. The CONSULTANT shall determine if utility field check(s), utility coordination meeting(s), and utility conflict resolutions meeting(s) are needed, then schedule and conduct such when needed.
7. The CONSULTANT shall review plan sheets, cross sections, relocation work plans and schedules to determine that identified utility facility conflicts are being addressed by the utility company.
8. Before Stage 3 design is complete, the CONSULTANT shall deliver to the LPA and INDOT Project Manager a revised estimate of the reimbursable utility relocation costs.
9. Before the Letting date, the CONSULTANT shall deliver to the LPA a work plan for each utility within the area of the project. A work plan includes narrative, drawing, cost estimate and easement documents as applicable. The work plans shall be delivered whether or not utility facility relocations are required.

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

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

Exclusion: Subsurface utility engineering (SUE) is included in this agreement under Task 7: Special Investigations. Should it be necessary to obtain additional information on buried facilities, the CONSULTANT shall submit costs from the SUE PROVIDER for review and approval from LOCAL PUBLIC AGENCY, prior to execution of such services.

Exclusion: Reimbursable utility agreement preparation is not included in this agreement. If it becomes necessary, the CONSULTANT shall submit a Supplemental Agreement for review and approval by the LOCAL PUBLIC AGENCY.

Task 4 Geotechnical Services

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

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

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

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

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

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

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

Deliverables: The Geotechnical Report prepared by the CONSULTANT shall be submitted in accordance with the current INDOT LPA Guidance Document for LPA projects and INDOT Design Memo 18-08. The format for the reports and drawings/logs should be a Windows based version and compatible with INDOT's existing programs and should be as specified in the Geotechnical Design Manual with the addition that all borings shall have northern and eastern coordinates in a global system and the name of the system utilized. Scanning should be kept to a minimum unless absolutely necessary such as hand calculations, and drawings, etc.

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

Task 5 Environmental Permitting

The CONSULTANT shall supply permit applications for:

- IDEM 401 Individual Permit/USACE 404 Regional General Permit
- IDNR Construction in a Floodway (Replace-in-Kind)
- FAA Permit
- Other Misc. Permits (i.e. Allen County Drainage Permit, IDEM Rule 5, etc.) (if needed)

The CONSULTANT shall prepare the construction plans in compliance with the required permit conditions. The CONSULTANT shall track the status of permits and permit expiration dates to determine if valid permits will be available for the current project construction schedule.

Exclusion: Mitigation design, implementation, or acquisition for mitigation (i.e. as require by permits, Section 6(f), or Section 106 MOA) are not included in this agreement. If they become necessary, the CONSULTANT shall submit a Supplemental Agreement for review and approval by the LOCAL PUBLIC AGENCY.

Task 6 Environmental Document Preparation

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

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

The CONSULTANT shall attend the initial field check meeting to identify potentially sensitive environmental considerations as well as up to one additional field meeting that is necessary to conclude their work.

The CONSULTANT shall be responsible for activities required to successfully complete the environmental documentation required by the NEPA and other pertinent and applicable laws and regulations. If the scope of a project changes following approval of the environmental document, the CONSULTANT may be asked to assess whether the document is still valid. Alterations to the approved environmental document required due to a project scope change will be completed by the CONSULTANT following execution of a supplemental agreement.

The CONSULTANT shall be responsible for notifying landowner's and obtaining access as per State laws in order to perform the field work necessary for the environmental document.

The CONSULTANT shall provide all necessary specialized studies required to complete the environmental document, subject to the exclusions below. This may include, but is not limited to, red flag investigations, historic properties and archaeological investigations, air quality modeling, traffic noise modeling and barrier feasibility analysis, wetland delineations, stream quality analysis, endangered species studies, Section 106 documentation, Section 4(f) documentation, section 6(f) documentation, hazardous materials investigations, environmental justice investigations, and cumulative impact studies.

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

Exclusion: *If it is determined that a an additional Archaeological Investigation over and above a Phase 1a Field Reconnaissance Survey is required (See Task 7 Special Investigation), or if the Categorical Exclusion document level increases due to additional environmental impacts, CONSULTANT shall submit a Supplemental Agreement for review and approval from LOCAL PUBLIC AGENCY prior to execution of such services.*

Exclusion: *The application of an alternative analysis, and coordination with local Parks Departments or FHWA consultation on impacts that exceed the temporary use of 4(f) properties are excluded. If either becomes necessary, the CONSULTANT shall submit a Supplemental Agreement for review and approval by the LOCAL PUBLIC AGENCY.*

Exclusion: *Preparing a Full Section 7 consultation, which is required when endangered species are encountered, is excluded from this agreement. If it becomes necessary, the CONSULTANT shall submit a Supplemental Agreement for review and approval by the LOCAL PUBLIC AGENCY.*

Exclusion: *Completion of air quality modeling, traffic noise modeling, barrier feasibility analysis, stream quality analysis, endangered species studies, Section 6(f) documentation, hazardous materials investigations, environmental justice investigations, and cumulative impact studies are excluded from this agreement. If any become necessary, the CONSULTANT shall submit a Supplemental Agreement for review and approval by the LOCAL PUBLIC AGENCY prior to execution of the work.*

Task 7 Special Investigations

During the course of Design or Right-of-Way acquisitions (if required), certain special investigations may be required. This work is to be completed only with the approval of the LOCAL PUBLIC AGENCY. Billing for this item will be on an hourly or unit, not-to-exceed basis.

Two (2) archaeological sites have been included in the special investigations fee, at a cost of \$1,750.00/site, in the event they are discovered during the archaeological investigation.

Up to \$20,000 of Subsurface Utility Engineering (SUE) has been included in the special investigations fee.

Task 8 Right-of-Way Plan Development (Right-of-Way Engineering)

The following Right-of-Way Engineering services will be provided to secure the permanent and temporary right-of-way needed for this project. A parcel shall be defined as all temporary and permanent right-of-way being acquired from a single existing parcel of land. This means a single parcel could have several legal descriptions based on its configuration. The CONSULTANT shall be available for assistance in interpretation of the Right-of-Way documents.

1. Determine the owners of all properties located adjacent to and in the immediate area of the project alignment, along with the legal descriptions of those properties.
2. Provide legal descriptions for all parcel takings. The descriptions shall be prepared and certified by a registered land surveyor.
3. Provide individual plats for each parcel. Each plat shall include the following:
 - a. Legal descriptions.
 - b. Total area before taking.
 - c. Existing Right-of-Way.
 - d. Area of taking.
 - e. Areas of residue.
 - f. Existing Right-of-Way to be reacquired.

- g. Sketch of the parcel, drawn to scale.
4. Provide Legal Instruments required for Transfer of Title and Recording.
5. Provide separate folders for each parcel containing information obtained above to be utilized by appraisers, negotiators and attorneys to provide the required right-of-way services.
6. Provide in the field a stake-out locating the new right-of-way line for the partial takings included in the parcels. The stake-out shall be made using wooden hubs located at appropriate property lines and at other changes in bearing.
7. The CONSULTANT shall provide a Guaranty of Title good for the past twenty (20) years prepared by a professional abstractor and insured for \$10,000.00 for each parcel which has a value in excess of \$10,000.00.
8. Prepare R/W plans to be utilized by appraisers/buyers during acquisition phase.
9. R/W Construction Staking

Task 9 Construction Phase Services

Following the award of the construction Contract, the CONSULTANT shall attend the pre-construction meeting. During the course of construction, the CONSULTANT shall be available at reasonable times during normal working hours to respond to reasonable inquiries concerning the accuracy or intent of the Consultant's plans. All such inquiries shall be made only by persons designated by the LOCAL PUBLIC AGENCY to interpret the plans and Contract Documents for the benefit of the contractors or subcontractors performing the work. The Consultant shall not be required to respond to inquiries by persons other than the LOCAL PUBLIC AGENCY'S designated representative and shall not be required to engage in exhaustive or extensive analysis or interpretation of the plans.

The CONSULTANT shall review all shop drawings on projects involving bridge elements, Mechanically Stabilized Earth retaining walls, culvert structures, traffic control work, signing, lighting, signals, or other items as outlined in Chapter 14 of the Indiana Design Manual.

If during the construction phase it is determined that unforeseen or unusual conditions arise, the CONSULTANTS shall revise the plans with LOCAL PUBLIC AGENCY approval.

Utility Coordination Services During Construction:

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

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

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

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

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

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

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

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

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

1. Criteria for design and details for signs, signals, lighting, highway and structures such as grades, curves, sight distances, clearances, design loading, etc.
2. Standard Specifications and standard drawings applicable to the project
3. Plans of existing bridge within the project limits
4. All written views pertinent to the location and environmental studies that are received by INDOT
5. Available data from the transportation planning process
6. Provide access to enter upon public and private lands as required for the CONSULTANT to perform work under this Contract
7. Existing water quality data

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APPENDIX "C"

SCHEDULE:

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

All work by the CONSULTANT under this Contract shall be completed and delivered to the LPA for review and approval within the approximate time periods shown in the following submission schedule:

The anticipated schedule of work will approximately be as shown below:

Bridge Scoping Report.....	240 Days after receipt of NTP
Preliminary Plans	60 Days after Bridge Scoping Report approval
Final Plans.....	04/21/2023
Final Tracings.....	06/05/2023
Letting Date.....	09/13/2023

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APPENDIX "D"

1. The CONSULTANT shall receive as payment for the work performed under this Agreement the total fee of \$598,100.00 unless a modification of this agreement is approved in writing by the LOCAL PUBLIC AGENCY.
 2. The CONSULTANT shall be paid based on the following schedule. Payment shall be hourly NTE unless otherwise noted. A manhour estimate for each major task is provided, when applicable.
 1. Topographic Survey Data Collection (375 hrs) \$ 49,300.00 Hourly NTE
 2. Bridge Design and Plan Development (1800 hrs)..... \$286,900.00 Hourly NTE
 - a. Public Hearing (if Needed) \$15,000.00 Unit NTE
 - b. Additional Meeting(s) (if Needed)..... \$5,000.00 Unit NTE
 3. Utility Coordination Services (219 hrs)..... \$ 38,500.00 Hourly NTE
 4. Geotechnical Services (Terracon) (170 hrs) \$ 39,800.00 Unit NTE
 - Soil Borings/ Corings / Report
 - Pavement Design
 - Asbestos Investigation
 5. Waters of US Report (incl. Wetland Delineation) (Green3) (46 hrs). \$4,000.00 Hourly NTE
 6. IDEM 401/USACE 404 Regional General Permit (57 hrs) \$7,200.00 Hourly NTE
 7. IDNR CIF (Replacement-in-Kind) (77 hrs)..... \$10,000.00 Hourly NTE
 8. FAA Permit (18 hrs) \$2,500.00 Hourly NTE
 9. Other Misc. Permits (i.e. Allen Co. Drainage Permit, etc.(35 hrs).... \$5,000.00 Hourly NTE
 10. Environmental Document Preparation (Green3) (342 hrs) \$ 32,000.00 Hourly NTE
 - CE Document (CE-4)
 - Full Section 106 Review
 - Phase 1a Archaeology
 11. Environmental Document Review and Management (40 hrs) \$6,300.00 Hourly NTE
 12. Special Investigations (if needed)(215 hrs)..... \$ 30,000.00 Hourly NTE
 13. Right-of-Way Plan Development (101 hrs)
 - c. R/W Verification/Certification \$1,800.00 Hourly NTE
 - d. Title & Encumbrance Reports (6@\$350/each)..... \$ 2,100.00 Unit NTE
 - e. Plats, Descriptions, Transfer Doc (2@\$2,050/each)..... \$ 4,100.00 Unit NTE
 - f. Final R/W Plans \$ 3,700.00 Hourly NTE
 - g. R/W Engineering Management..... \$ 2,100.00 Hourly NTE
 - h. Appraisal Problem Analysis (2@\$250/each)..... \$ 500.00 Unit NTE
 - i. R/W Staking..... \$ 2,300.00 Hourly NTE
 14. Construction Phase Services (302 hrs)..... \$ 50,000.00 Hourly NTE
- TOTAL FEE..... \$ 598,100.00 NTE**

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Hourly Not-to-Exceed (Hourly NTE)

The CONSULTANT will be paid the following negotiated labor rate multiplier basis for services with hourly NTE fees:

CLASSIFICATION	7/1/2020	7/1/2021	7/1/2022	7/1/2023	7/1/2024	7/1/2025
	thru	thru	thru	thru	thru	thru
	6/30/2021	6/30/2022	6/30/2023	6/30/2024	6/30/2025	6/30/2026
CADD Technician	\$ 79.83	\$ 81.75	\$ 83.71	\$ 85.72	\$ 87.78	\$ 89.89
Clerical	\$ 81.63	\$ 83.59	\$ 85.60	\$ 87.65	\$ 89.75	\$ 91.90
Construction Project Manager I	\$ 89.67	\$ 91.82	\$ 94.02	\$ 96.28	\$ 98.59	\$ 100.96
Construction Project Manager II	\$ 119.39	\$ 122.26	\$ 125.19	\$ 128.19	\$ 131.27	\$ 134.42
Construction Project Manager III	\$ 144.35	\$ 147.81	\$ 151.36	\$ 154.99	\$ 158.71	\$ 162.52
Construction Project Manager IV	\$ 165.28	\$ 169.25	\$ 173.31	\$ 177.47	\$ 181.73	\$ 186.09
Construction Project Manager V - Dept Manager	\$ 193.76	\$ 198.41	\$ 203.17	\$ 208.05	\$ 213.04	\$ 218.15
Designer/Detailer I	\$ 156.49	\$ 160.25	\$ 164.10	\$ 168.04	\$ 172.07	\$ 176.20
Designer/Detailer II	\$ 182.86	\$ 187.25	\$ 191.74	\$ 196.34	\$ 201.05	\$ 205.88
Engineer Intern	\$ 105.06	\$ 107.58	\$ 110.16	\$ 112.80	\$ 115.51	\$ 118.28
Engineer I - Project Engineer/Non-PE PM	\$ 121.35	\$ 124.26	\$ 127.24	\$ 130.29	\$ 133.42	\$ 136.62
Engineer II - Project Manager	\$ 146.46	\$ 149.98	\$ 153.58	\$ 157.27	\$ 161.04	\$ 164.90
Engineer III - Senior Project Engineer	\$ 186.77	\$ 191.25	\$ 195.84	\$ 200.54	\$ 205.35	\$ 210.28
Engineer IV - Senior Project Manager	\$ 210.99	\$ 216.05	\$ 221.24	\$ 226.55	\$ 231.99	\$ 237.56
Engineer V - Department Manager	\$ 240.88	\$ 246.66	\$ 250.41	\$ 250.41	\$ 250.41	\$ 250.41
Engineer VI - Principal Engineer*	\$ 250.41	\$ 250.41	\$ 250.41	\$ 250.41	\$ 250.41	\$ 250.41
Environmental Specialist	\$ 152.97	\$ 156.64	\$ 160.40	\$ 164.25	\$ 168.19	\$ 172.23
Intern	\$ 58.02	\$ 59.41	\$ 60.84	\$ 62.30	\$ 63.80	\$ 65.33
Right of Way I - ROW Technician	\$ 77.36	\$ 79.22	\$ 81.12	\$ 83.07	\$ 85.06	\$ 87.10
Right of Way II - Agent	\$ 118.33	\$ 121.17	\$ 124.08	\$ 127.06	\$ 130.11	\$ 133.23
Right of Way III - ROW Engineer	\$ 146.82	\$ 150.34	\$ 153.95	\$ 157.64	\$ 161.42	\$ 165.29
Surveyor I - Survey Technician I	\$ 64.35	\$ 65.89	\$ 67.47	\$ 69.09	\$ 70.75	\$ 72.45
Surveyor II - Survey Technician II	\$ 81.76	\$ 83.72	\$ 85.73	\$ 87.79	\$ 89.90	\$ 92.06
Surveyor III - Party Chief I	\$ 104.44	\$ 106.95	\$ 109.52	\$ 112.15	\$ 114.84	\$ 117.60
Surveyor IV - Party Chief II	\$ 124.84	\$ 127.84	\$ 130.91	\$ 134.05	\$ 137.27	\$ 140.56
Surveyor V - Project Surveyor	\$ 143.47	\$ 146.91	\$ 150.44	\$ 154.05	\$ 157.75	\$ 161.54
Surveyor VI - Construction Survey Manager	\$ 182.86	\$ 187.25	\$ 191.74	\$ 196.34	\$ 201.05	\$ 205.88
Surveyor VII - Design Survey Manager	\$ 220.66	\$ 225.96	\$ 231.38	\$ 236.93	\$ 242.62	\$ 248.44
Utility Coordinator	\$ 167.91	\$ 171.94	\$ 176.07	\$ 180.30	\$ 184.63	\$ 189.06

Method of Payment

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 LOCAL PUBLIC AGENCY. The invoice voucher shall represent the value, to the LOCAL PUBLIC AGENCY, 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 in a form acceptable to the LOCAL PUBLIC AGENCY.
2. The LOCAL PUBLIC AGENCY 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 thereunder, acceptance thereof by the LOCAL PUBLIC AGENCY and upon the CONSULTANT submitting an invoice and county claim voucher as described above.
3. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with item 6 (changes in work) of the General Provisions, set out in this Agreement.

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CITY OF FORT WAYNE, INDIANA

USI Consultants, Inc.

(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

1. **FINANCIAL INTERESTS;**
2. **POTENTIAL CONFLICTS OF INTEREST;**
3. **CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor

a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5%

(ii) Distributable income share exceeding 5%

(iii) Not Applicable (If N/A, go to Section 2)

Name: Ross E. Snider, PE, President

Name: Philip Beer, II - Vice President
8415 E. 56th Street, Indianapolis, IN

Address: 8415 E. 56th Street, Indianapolis, IN 46216

Address: 46216

Name: Michael J. Obergfell- Vice President

Address: 8415 E. 56th Street, Indianapolis, IN 46216

b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship stock
partnership interest units (LLC)
other (explain) _____

c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent):
ownership interest:

Name: Ross E. Snider, PE, President 33 1/3 %

Name: Philip Beer, II - Vice President 33 1/3 %

Name: Michael J. Obergfell- Vice President 33 1/3 %

Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a. check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
Yes _____ No X

- b. City employment of "Member of Immediate Family" (defined herein as: *Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild*)
Including contractual employment for services in the previous 3 years:
Yes _____ No X

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes _____ No X

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have **current** contracts (including leases) with the City? Yes _____ No X

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

We had a \$60,000 On-Call Surveying and Drafting Services, but it expired on 2/4/2020.

- b. Does Vendor have **pending** contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No X

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes _____ No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

Name / Position / Payment Terms:

Name / Position / Payment Terms:

d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: n/a

Company / Name / Payment Terms: _____

Section 4: CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same


elements as the offense of bid-rigging or bid-rotating

- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

<u>USI Consultants, Inc.</u> (Name of Vendor)	<u>8415 E. 56th Street, Indianapolis, IN 46216</u> Address <u>(317) 544-4996</u> Telephone <u>accounting@usiconsultants.com</u> E-Mail Address
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The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) _ Ross E. Snider, PE Title President
Signature  Date September 28, 2020

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

**REPORT OF COMMITTEE ON PUBLIC WORKS
October 20, 2020**

Michelle Chambers Chair

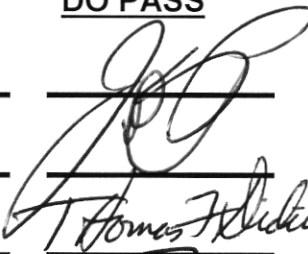
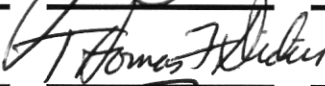

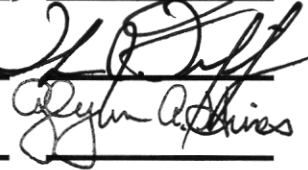
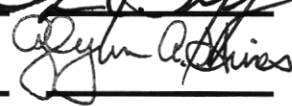
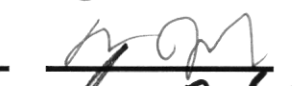


Paul Ensley Co-Chair

All Council Members

An Ordinance approving Professional Engineering Services Agreement – Bluffton Road Bridge Project - Resolution #0371X - between USI Consultants, Inc. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

Involving a total cost of not to exceed \$598,100.00

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilman Chambers.

Read the second time by title and referred to the Public Works Committee.

Read the third time in full and on motion by Councilman Chambers, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: October 27, 2020



LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Special Ordinance No. S-20-10-13 on the 27th day of October, 2020

ATTEST:



LANA R. KEESLING
CITY CLERK



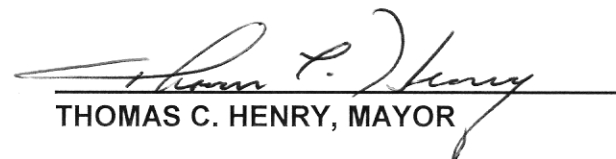
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th of October 2020, at the hour of 2:05 o'clock P.M. E.S.T.



LANA R. KEESLING, CITY CLERK

Approved and signed by me this 29th day of OCTOBER 2020, at the hour of 8:00 o'clock AM E.S.T.



THOMAS C. HENRY, MAYOR

