

PART I. BASIC AGREEMENT BETWEEN THE NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION AND Geosyntec Consultants, Inc. and Planned Environment Associates, Inc. FOR Technical Green Infrastructure Guidelines for Transportation Projects PROCURED UNDER RFP 21-05.07

By agreement entered into by and between the Northwestern Indiana Regional Planning Commission, hereinafter referred to as the Commission, and Geosyntec Consultants hereinafter referred to as the Contractor, the following is hereby mutually agreed to:

1. Construction of Agreement:

This agreement consists of four parts: (1) the basic agreement, (2) scope of work, including fee schedule and required forms, and (3) any and all general terms and conditions required by the Indiana Department of Transportation and Federal Highway Administration. Each of these parts is hereby made a part of this agreement. The Commission shall be governed by and the Contractor shall comply with all terms and conditions set forth within all parts of the Agreement.

2. Description of Services provided by the Contractor:

The Contractor shall provide the following: Technical Green Infrastructure Guidelines for Transportation Projects. The Contractor shall perform the services to the satisfaction of the Commission as provided for in the scope of work which is described in **Part 2 of this Agreement**.

The Commission requires prior approval of the use of any Sub-Contractors for this agreement and a copy of the executed agreement between the Contractor and Sub-Contractor. The Commission hereby grants approval for the Contractor to sub-contract with its teaming partner Planned Environment Associates, Inc. (PEA) as per the Scope of Work identified in Part 2 of this Agreement.

3. Compensation:

The Contractor shall provide the identified goods and services as noted in Part 2 of this Agreement, for a cost not to exceed \$58,000.

Payment for services provided by the Contractor will be on a reimbursement basis and in accordance with procedures provided for in section 4 and 5 below.

4. Terms of Agreement:

The Contractor shall commence work hereunder on the November 30, 2021. Guidelines will be completed by May 31, 2022.

5. Payment Procedures:

The Commission shall make periodic payments to the Contractor for services rendered in conjunction with this Agreement in the following manner:

- (A) The Contractor shall submit invoices to the Commission. Invoices should be supported by documentation of included expenses.
- (B) Invoices shall be accompanied by a narrative progress report describing activities which have been performed and for which reimbursement is being claimed.
- (C) Following its approval of the invoice and related materials submitted by the Contractor, the Commission shall make payment. Payment will normally be made within thirty days after said approval.
- (D) **All invoices must be received by the Commission by June 3, 2022.**

(E) All invoices shall be submitted to:

Accounts Payable
Northwestern Indiana Regional Planning Commission
6100 Southport Road
Portage, Indiana 46368

6. Modification Provisions:

This Agreement shall not be modified except in writing, signed by both parties to this Agreement. Further, the parties hereby agree that the Commission may hereby modify **Part 2 to this Agreement** by adding, deleting or modifying tasks, subtasks, schedules or the content or quantity of products to be produced by the contractor to the extent that such modifications result in no upward or downward cost adjustment.

7. Termination:

Either party may terminate the agreement by providing a written notice at least thirty (30) days prior to an effective termination date, which shall coincide with the last day of a calendar month. In the event of termination, the Commission shall be obligated to pay the Contractor only for services rendered and expenses incurred through the date of termination.

8. Indemnification:

The contract agrees to indemnify and hold the Commission, its employees, officers, and agents harmless from and liability, loss or damage they may suffer as the result of claims, demands, costs or judgments against the Commission arising out of the activities to be performed by the contractor pursuant to the provisions of this agreement.

9. Agreement:

It is hereby agreed and understood by the party's signatory hereto that this Agreement becomes executed when the appropriate signatures are affixed hereto and the date of contract award is established as the nineteenth (19th) day of November, 2021.

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**NORTHWESTERN INDIANA REGIONAL
PLANNING COMMISSION**

GEOSYNTEC CONSULTANTS, INC.

By:

By:

Tyson Warner
Executive Director

NAME

Date:

Date:

Attest:

Kathy Luther
Chief of Staff

PART 2. SCOPE OF WORK

Project Approach

Introduction and Understanding of the Project

We understand the Northwest Indiana Regional Planning Commission (NIRPC) seeks a consultant team to assist in the development of technical guidelines for Green Infrastructure and Green Streets applications within roadway public rights-of-way for Lake County, Porter County, and LaPorte County. It is our understanding that the technical guidelines will be a supplement to the adopted Living Streets Policy that includes the Complete Streets Policy with Community Health and Green Streets principles. We recognize that the NIRPC adopted the Living Streets requirements for local transportation project sponsors to follow who seek federal highway funds and that the Green Streets represent sustainable stormwater infrastructure. It is our intent to produce clear and practical guidelines to be used by local project sponsors to select and plan for Green Infrastructure elements for a proposed transportation project and be utilized by local NIRPC to review applications for compliance with the Living Streets Policy Requirement.

Applying our collective backgrounds, Geosyntec and PEA can create Green Infrastructure standards and guidelines that can be used to reduce stormwater quantity and improve water quality for the Northwest Indiana counties by employing the strategies to achieve maximum function based on common site constraints and requirements.

Scope of Work

Task 1 - Develop Stormwater Performance Standards

Our team will develop performance standards for Green Infrastructure facilities within public rights-of-way based on data and research that will address pollutant removal benefits, tributary area ranges, typical unit costs, flooding benefits, and limitations. Geosyntec will be initiate this task by first meeting with NIRPC and the project team to understand the core objectives, outcomes, and milestones of the project. Project team meetings are outlined under Task 5 below.

Subtask 1.1 - Review of Existing Policies

As part of this task, our Team will perform a comprehensive review of existing policies that may impact or compliment the proposed guidelines. We will expand on the research that has been completed for this proposal to ensure complete understanding of the requirements the guidelines will build off. We will use the resources that include the Living Streets Policy, the 2050 Comprehensive Regional Plan, Deep River-Portage Burns Waterway Watershed Management Plan and INDOT and other local jurisdiction standards to use as a foundation.

Subtask 1.2 – Performance Metrics and Standards

Geosyntec will develop pollutant removal metrics based on substantiating data, such as total suspended solids (TSS) reduction metrics and phosphorus reduction metrics for an array of potential BMPs. The performance metrics for potential BMPs will be compared to performance objectives prior to developing stormwater performance standards. These standards will account for the typical range of site specific factors such as soil infiltration rates, slopes, and impervious

area treated. Using Geosyntec's specialized expertise in stormwater treatment and management validated by monitoring data and academic support, the performance standards will maximize the function of the Green Infrastructure strategies. Geosyntec will develop the performance standards in a collaborative approach, working closely with NIRPC to identify target performances that meet the agency's goals and objectives.

Geosyntec has developed design standards and performance standards for an array of BMPs based on site specific or regional characteristics. As an example, Geosyntec developed design factsheets for Stormwater BMPs for the University of Missouri as part of their Stormwater Master Plan and Campus Master Plan. Each factsheet included sizing criteria and performance standards to meet local water quality requirements. Each factsheet also provided a performance nomograph that accounted for the range of site specific characteristics that could be encountered such as soil type, infiltration rates, and tributary area cover.

Task 1 Deliverables

- Nomographs that identify a range of performance for each identified BMP
- Established a range or a minimum performance standard for each identified BMP
- Draft Design Standards will be presented in a memorandum format for review by NIRPC
- Final Design Standards will be presented in the *Design and Engineering Manual*

Task 2 - Develop Maximum Extent Practical Worksheets

Maximum extent practicable "MEP" is used within the Clean Water Act to set the standard to evaluate efforts pursued to achieve pollution reduction to United States waterbodies. MEP is achieved, in part, through a process of selecting and implementing different design options with various structural and non-structural stormwater BMPs. MEP is an iterative standard that can evolve with time as urban runoff management techniques and practices improve. The focus of this project is on transportation projects, which are typically confined to the public right-of-way.

Our Team will work with NIRPC to build upon existing information and our extensive experience working with the NCHRP to develop a Maximum Extent Practical Worksheet that can assist local entities select and implement best management practices. The worksheet will consider roadway classifications, location, local soils, and adjacent land uses, among other considerations identified as part of the project.

We will work with NIRPC to incorporate requirements for project proposal evaluations. Based on our interpretation, we would recommend utilizing a Microsoft Excel worksheet to create a tool that incorporates the standards to evaluate project feasibility and effort to achieve sustainable benefit requirements and evaluate the Green Infrastructure applicability and effectiveness. We have developed similar design or performance tools for agencies and as part of the NCHRP studies. Geosyntec has significant project experience in creating decision support tools for our clients and can work with NIRPC to tailor a worksheet to meet the intent.

Task 2 Deliverables

- Maximum Extent Practical (MEP) Worksheet
- MEP User's Guide

Task 3 - Develop Design and Engineering Manual

Geosyntec and PEA will work collaboratively to develop a design and engineering manual to assist in the selection of beneficial Green Infrastructure strategies based on site constraints and street classification. This document will assist in the selection of green strategies to utilize in different transportation settings. This will include new and retrofit Green Infrastructure practices for use within transportation related applications that complement adjacent land use. Utilizing our strong technical knowledge of Green Infrastructure benefits and performance, the manual will address life cycle cost and benefits, climate resiliency with all Midwest seasons, nutrient reductions, regional soils, and placement considerations. The Team will work to seamlessly tie the manual into the current policies adopted and authored by NIRPC within the public right-of-way.

Standard drawings and cross-sections created using AutoCAD Civil 3D will be included as part of the manual. These drawings will incorporate Indiana Department of Transportation Design (INDOT) Manual and AASHTO Green Book standards along with local municipality utility and design requirements. Select informational details and sections will be presented graphically to easily communicate Green Infrastructure design intent.

Maintenance schedules will be developed based on relevant research accompanied by INDOT and local public works operations input. Constraints such as snow removal, salt use, trash accumulation will be taken into consideration. Both short-term and long-term maintenance will be addressed.

Plant, tree, and shrub lists will be developed for Green Infrastructure that will meet the needs of the local hydrology, climate, and soils. The plant selections will be identified by PEA and coordinated with NIRPC and local municipalities to select native, resilient vegetation.

Factsheets associated with the Green Infrastructure elements will be created to provide easy to read information regarding the Green Infrastructure strategies. These and the engineering manual will be accompanied by renderings and graphics created to provide supportive visuals and serve as example applications for successful installations.

Task 3 Deliverables

- Design and engineering manual
- Maintenance Schedules
- Plant, tree, and shrub lists
- Factsheets
- Associated graphics and renderings

Task 4 – Participate in Project Team Meetings

Subtask 4.1 Meet with Stakeholders

The project team will review and update the list of key stakeholders developed by NIRPC based on input from NIRPC. The list will include NIRPC, INDOT, and municipal staff. The project team anticipates holding a kick-off meeting with the stakeholders at the start of the project and status updated meetings during the execution of the project. We anticipate active collaboration with a work group comprised of representatives from NIRPC, INDOT, and local municipalities.

Geosyntec will develop draft outlines for the identified deliverables in the scope of work for distribution and coordination with the stakeholders prior to the meetings. To facilitate meetings and collaboration with the stakeholders, and to solicit feedback on project progress, Geosyntec will develop a SharePoint website.

Meetings are anticipated to include:

- Kick off meeting
- Status update and submittal review meetings
- Project close out meeting and final presentation

Subtask 4.2 Project Management

Managing the project deliverables, quality assurance, quality control, budget, and schedule to NIRPC's satisfaction will be a critical measure of the project's success. The project manager will monitor task efforts using Geosyntec's Project Delivery System, including check-ins with the team on progress challenges, deliverable status, and level of effort. We will prepare monthly invoices and status reports that summarize work completed, work anticipated, status of deliverables, budget forecasts, key project challenges, and action items for the project team or NIRPC. Each invoice and status report package will include NIRPC's required forms.

At the onset of the project, Geosyntec will prepare a project timeline from start to completion to ensure the project is complete by the required date of May 31, 2021. Geosyntec will also prepare and submit a Quality/Assurance/Quality Control (QA/QC) Plan that describes the process for performing peer and senior reviews and tracking review comments from NIRPC and the stakeholders. Coordination time for e-mails, phone calls, and as-needed informal meetings with NIRPC, INDOT and municipal staff is included under this task.

Task 4 Deliverables

- Communication plan (list of primary contacts, contact information, and protocol for communication)
- Monthly invoices and status reports
- Meeting materials including agendas and summaries
- Project timeline
- QA/QC Plan

Schedule of Fees

Based on our understanding of the scope and our project approach, our Team has put together the below schedule of fees. We understand the intent of the project is to remain below a \$60,000 budget and we are flexible to work with NIRPC to meet the intent of the guidelines through reallocation of cost as needed.

Task	Service	Cost
Task 1	Stormwater Performance Standards	\$7,000
Task 2	Maximum Extent Practical Worksheet	\$6,500
Task 3	Design and Engineering Manual	\$15,000
Task 3	Standard Drawings	\$11,000
Task 3	Maintenance Schedule	\$2,000
Task 3	Plant, tree, and shrub list	\$2,000
Task 3	Factsheets, graphics, and informational handouts	\$10,000
Task 4	Additional Costs (Project Meetings & Project Management)	\$4,500
	Total Fee	\$58,000

Executed Exhibits

5. CERTIFICATIONS

5.1. Compliance With Federal Requirements

CERTIFICATION OF COMPLIANCE WITH FEDERAL REQUIREMENTS

Geosyntec Consultants, Inc. _____ (Proposer) certifies that it can comply with the Federal requirements and conditions as outlined in this document.



Signature

Senior Principal

Title

November 1, 2021

Date

5.2 Compliance With Debarment and Suspension

CERTIFICATION OF COMPLIANCE WITH GOVERNMENT-WIDE DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION PROVISIONS – LOWER TIER COVERED TRANSACTIONS

(Contractors that apply or bid for an award of \$25,000 or more must file the required certification)

In regard to 2 CFR Part 180 and Executive Order 12549 and 12689

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below in accordance with the following instructions:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, NIRPC may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to NIRPC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 and 12689 [2 CFR Part 180]. You may contact NIRPC for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by NIRPC.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, NIRPC may pursue available remedies including suspension and/or debarment.

Pursuant to the above instructions:

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 2 C.F.R. 180] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.



Signature of Proposer's Authorized Official

Matthew R. Bardol, P.E./Senior Principal

Name and Title of Proposer's Authorized Official

November 1, 2021

Date

5.3 Certification Regarding Lobbying

CERTIFICATION REGARDING LOBBYING

2 CFR Part 200 - Appendix II

Certification For Contracts, Grants, Loans, And Cooperative Agreements

(Contractors that apply or bid for an award of \$100,000 or more must file the required certification)

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Matthew R. Bardol, P.E./Senior Principal

Signature of Proposer's Authorized Official

Name and Title of Proposer's Authorized Official

November 1, 2021

Date

5.4 Non-Collusion Affidavit

NON-COLLUSION AFFIDAVIT

The undersigned Proposer, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person from Proposing not to induce anyone to refrain from proposing, and that this proposal is made without reference to any other proposal and without any agreement, understanding or combination with any other person in reference to such proposing. He further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly any rebate, fee, gift, commission or thing of value on account of such sale.

Matthew R. Bardol, P.E./Senior Principal

Printed Name of Proposer



Signature of Proposer

November 1, 2021

Date

5.5 No Investment in Iran

CERTIFICATION IN NO INVESTMENT IN IRAN

As required by IC 5-22- 16.5, Contractor certified that it 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 imposition of a civil penalty.

Contractor



Signed: _____

Printed Name: Matthew R. Bardol, P.E.

Title: Senior Principal

5.6 Employment Eligibility Verification

EMPLOYMENT ELIGIBILITY VERIFICATION

Contractor affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien. Contractor shall enroll in and verify the work eligibility status of all its newly hired employees through the Federal E-Verify program as defined in IC 22-5-1.7-3. Contractor is not required to participate should the Federal E-Verify program cease to exist. Contractor shall not knowingly employ or contract with an unauthorized alien. Contractor shall not retain an employee or contract with a person that Contractor subsequently learns is an unauthorized alien. Contractor shall require its subcontractors, who perform work under this contract, to certify to the Commission that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the Federal E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of this agreement with the Commission and during the term of any subsequent contract with a subcontractor performing work under this agreement. The Commission may terminate for default if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the Commission.

Contractor



Signed: _____

Printed Name: Matthew R. Bardol, P.E.

Title: Senior Principal

Date: November 1, 2021

PART 3. GENERAL TERMS AND CONDITIONS FOR FEDERAL HIGHWAY ADMINISTRATION FUNDED CONTRACTS

1.1. Access to Records. The CONTRACTOR shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred and shall make such materials available, at their respective offices at all reasonable times during the period of the Agreement and for three years from the date of final payment of federal funds, to INDOT for inspection by INDOT, FHWA, or any other authorized representative of the federal and state government and copies thereof shall be furnished at no cost if requested.

1.2. Assignment; Successors. The CONTRACTOR binds its successors and assignees to all the terms and conditions of this Agreement. Except as otherwise specifically provided herein, the CONTRACTOR shall not assign or subcontract the whole or any part of this Agreement without the Commission's prior written consent. The CONTRACTOR may assign its right to receive payments, if any, to such third parties as the CONTRACTOR may desire without the prior written consent of Commission, provided that the CONTRACTOR gives written notice (including evidence of such assignment) to Commission thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

1.3. Audits. The CONTRACTOR acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

1.4. Authority to Bind the CONTRACTOR. The signatory for the CONTRACTOR represents that he/she has been duly authorized to execute this Agreement on behalf of the CONTRACTOR and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the CONTRACTOR when his/her signature is affixed, and accepted by the State.

1.5. Certification for Federal-Aid Contracts Lobbying Activities. The CONTRACTOR certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the CONTRACTOR has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, 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 agreements, 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 agreement, grant, loan, or cooperative agreement.

B. 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 such federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The CONTRACTOR also agrees by signing this Agreement that it shall require that the

language of this certification be included in all contractor agreements including 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.

1.6. Compliance with Laws.

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

B. The CONTRACTOR and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the CONTRACTOR has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the CONTRACTOR shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the CONTRACTOR is not familiar with these ethical requirements, the CONTRACTOR should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the CONTRACTOR or its agents violate any applicable ethical standards, the Commission may, in its sole discretion, terminate this Agreement immediately upon notice to the CONTRACTOR. In addition, the CONTRACTOR may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

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

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

G. As required by IC §5-22-3-7:

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

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

1.7. Debarment and Suspension.

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

B. The CONTRACTOR certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The CONTRACTOR shall immediately notify the Commission if any subcontractor becomes debarred or suspended, and shall, at the Commission’s request, take all steps required to terminate its contractual relationship with the subcontractor for work to be performed under this Agreement.

1.8. Drug-Free Workplace Certification.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the CONTRACTOR hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The CONTRACTOR will give written notice to the Commission within ten (10) days after receiving actual notice that the CONTRACTOR, or an employee of the CONTRACTOR in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

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

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is

prohibited in the CONTRACTOR's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONTRACTOR's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONTRACTOR of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the Commission in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

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

A. The CONTRACTOR 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 CONTRACTOR is not required to participate should the E-Verify program cease to exist. Additionally, the CONTRACTOR is not required to participate if the CONTRACTOR is self-employed and does not employ any employees.

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

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

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

1.11. Funding Cancellation Clause. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

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

1.13. Indemnification. The CONTRACTOR agrees to exculpate and hold harmless the State of Indiana, INDOT, the Commission and their officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, or by whosoever caused, to the person or property of anyone arising out of, or resulting from the performance of this Agreement or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent of negligence of the CONTRACTOR, including any claims arising out the Worker's Compensation Act or any other law, ordinance, order or decree. The Commission shall not provide indemnification to the CONTRACTOR.

The CONTRACTOR agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State, INDOT and the Commission in connection herewith in the event that the CONTRACTOR shall default under the provisions of this Section.

1.14. Independent Entity; Workers' Compensation Insurance. The CONTRACTOR is performing as an independent entity under this Agreement. No part of this Agreement shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

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

1.16. Non-Discrimination.

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

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

B. The CONTRACTOR understands that the Commission is a recipient of federal funds. Pursuant to that understanding, the CONTRACTOR agrees that if the CONTRACTOR employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONTRACTOR will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONTRACTOR 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 Agreement.

It is the policy of the Commission 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.

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

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

2. Nondiscrimination: The CONTRACTOR, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including

employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

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

5. Sanctions for Noncompliance: In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this Agreement, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the CONTRACTOR under the Agreement until the CONTRACTOR complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions: The CONTRACTOR shall include the provisions of paragraphs 1. through 5. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONTRACTOR shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the CONTRACTOR may request the United States of America to enter into such litigation to protect the interests of the United States of America.

1.17. Penalties, Interest and Attorney's Fees. The Commission 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, IC §34-54-8, and IC §34-13-1.

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

1.18. Public Record. The CONTRACTOR acknowledges that the Commission will not treat this Agreement as containing confidential information.

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

1.20. Status of Claims. The CONTRACTOR shall be responsible for keeping the Commission currently advised as to the status of any claims made for damages against the CONTRACTOR resulting from services performed under this Agreement.

1.21. Substantial Performance. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

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

1.23. Disadvantaged Business Enterprise Program. Notice is hereby given to the CONTRACTOR or SUB-CONTRACTOR that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Grant Agreement and, after notification, may result in termination of the Agreement or such remedy as the Commission deems appropriate. The referenced section requires the following policy and disadvantaged business enterprise (DBE) assurance to be included in all subsequent Agreements between the CONTRACTOR and any SUB-CONTRACTOR:

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

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

1.24. General. This Agreement represents the entire understanding between the Parties relating to the subject matter, and supersedes any and all prior oral and/or written

communications, understandings or agreements relating to the subject matter. The headings are inserted for convenience only and do not constitute part of this Agreement.

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