



OWNER – PROVIDER PROFESSIONAL SERVICES AGREEMENT

This **OWNER-PROVIDER PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into as of the 5th day of November, 2020, by and between the Indianapolis Public Transportation Corporation, an independent municipal corporation organized under the laws of the State of Indiana, of Indianapolis, Indiana (“Owner” or “IPTC”) and **UZURV** (“Professional Services Provider” or “Provider”), concerning the following:

OWNER: **IPTC**
1501 West Washington Street
Indianapolis, IN 46222

PROJECT: **RFP 20-08-357**
Transportation Network Company

PROFESSIONAL SERVICES PROVIDER: **UZURV**
413 Stuart Circle, Suite 100
Richmond, VA. 23220

SCOPE OF SERVICES: Provide all professional services set forth and described in IPTC RFP 20-08-357 Transportation Network Company, and Provider’s Response thereto and described in the Scope of Services set forth in Article II hereof and in accordance with the terms and conditions set forth herein (“Services”).

Provider shall furnish its professional services to IPTC during the term of this Agreement pursuant to this Agreement and any individual Task/Change Order(s) that may be issued by IPTC.

CONTRACT TERM: The duration of this Agreement is for 1 year, commencing with the date of this Agreement and ending on the 4th day of November 2021.

The Contract Term may be extended by IPTC acceptance of any options as provided in the IPTC RFP 20-08-357 and notification to Provider.

CONTRACT PRICE: The Provider shall furnish the Services based upon the rates established herein.

CONTRACT DOCUMENTS: The Contract Documents consist of (1) this Contract and the Exhibits attached hereto; (2) IPTC RFP, including all required Vendor Certifications and Affidavits, and all Addenda issued prior to the execution of this Contract; (3) Vendor's Proposal in response to IPTC RFP and (4) all Task/Change Orders issued after the execution of this Contract; Unless specifically enumerated in the Contract, the Contract Documents do not include other documents such as the request for quotation or Vendor's quotation. The Contract Documents form the Contract and are as fully a part of this Contract as if repeated herein.

ATTACHMENTS: Attachment 1 Federal Funding Compliance Requirements

EXHIBITS: Exhibit A Task/Change Order

Exhibit B Compensation Schedule for Professional Services and Expenses

In consideration of the promises and mutual agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, IPTC and Professional Services Provider agree as follows:

**ARTICLE I
INITIAL INFORMATION**

- 1.1.1 Subject to amendment by IPTC as the performance of this Agreement is undertaken, the date for commencement of the Services hereunder is the 5th day of November, 2020 and the date for completion of the Services hereunder is the 4th day of November, 2021 .
- 1.1.2 Provider shall perform and complete the Services in accordance with the commencement and completion dates and any interim and final performance milestones set forth in this Agreement and any individual Task Orders issued to Provider by Owner. The Task Orders shall be in the general format attached hereto as Exhibit B.
- 1.1.3 The term "day" as used in the Agreement and in any Task Order shall mean calendar day and not business or work day. If business day or work day is intended to be used herein in lieu of calendar day, it shall be specifically designated as such. Any reference to "business day" or "work day" shall mean Monday through Friday of a given week, and be exclusive of IPTC observed holidays.
- 1.1.4 Provider represents that it is financially solvent, able to perform the services being undertaken under this Agreement, able to pay its debts as they become due, and possesses sufficient working capital to complete the professional services and perform its obligations under this Agreement.
- 1.1.5 Provider represents that it possesses the experience, skill, ability and expertise in providing the services hereunder as service providers on similar scope of services engagements or projects of similar or like type, nature, complexity and size as the Scope of Services hereunder. Provider will assign to the services to be performed similarly qualified individual professional providers and manage them as needed to meet this quality of performance.
- 1.1.6 Provider represents that the Compensation for Basic Services provided for in this Agreement is adequate compensation for the timely and complete performance of the Basic Services, including all normal professional services provided hereunder, whether those services are performed by Provider or by consultants engaged by Provider.

- 1.1.7 IPTC is the intended end user and beneficiary of the Services being provided hereunder.
- 1.1.8 IPTC may at its sole option assign one or more full or part time project managers, inspectors or other representatives to observe the performance of the Services. The duties, responsibilities and limitations of authority of any such representatives will be as provided herein or in the individual Task Orders or as otherwise stated to Provider in writing by IPTC.
- 1.1.9 IPTC shall identify the Owner's Project Team members ("Owner's Project Team") and furnish their contact information to Provider. Owner's Designated Representative hereunder is the individual identified in ¶11.19 ("Owner's Representative"). Owner's Representative shall examine the Deliverables, as hereinafter defined in ¶2.1.6, ¶2.1.6.1 and ¶6.1, submitted by Provider and shall render decisions and approvals in a timely manner on which Provider may rely. Owner Representative may be changed and IPTC may modify the scope of authority of the Owner Representative. Written notice to Provider shall be furnished in the event of such change or modification.
- 1.1.10 Provider shall identify the Provider's consultants ("Provider's Consultants") and furnish their identification and scope of services to IPTC. They collectively, together with Provider, shall constitute the Provider Project Team ("Provider Project Team"). Provider shall furnish to Owner the contact person and contact information for each of the Provider Project Team. Provider's Designated Representative hereunder is the individual identified in ¶11.19 ("Provider's Representative").
- 1.1.11 All Task Order specific information, including IPTC's criteria furnished to Provider, including but not limited to area and cost information, operational or business information and other specific information, shall be considered to be confidential and proprietary information of IPTC and subject to the confidentiality provisions of this Subparagraph as well as those provisions set forth in ¶11.17 and ¶11.18 and its subparts. All studies, reports, designs, drawings, specifications, models, and other products prepared, provided or procured by Provider or any of its consultants during the course of furnishing services to IPTC under this Agreement or any individual Task Order shall be deemed to be Owner confidential or proprietary information.
- 1.1.12 If IPTC or Provider receives information specifically designated by the transmitting party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services solely and exclusively for this Agreement and any individual Task Order, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.
- 1.1.13 As set forth in the IPTC RFP 20-08-357, and as acknowledged by Provider herein, the Services being provided under this Agreement and any individual Task Orders may be subject to federal funding and related federal compliance rules and regulations, including those of the United States Department of Federal Transit Administration ("FTA"), an agency of the United States Department of Transportation ("USDOT"). Funding for the Services being provided under this Agreement and any individual Task Orders may be derived from State Funds, including the Public Mass Transit Funds and State Sales Tax, Local Funds through the Marion County Property Tax, and Passenger Fare Revenue.
- 1.1.14 As a public, municipal entity, IPTC is exempt from sales and compensating use taxes on all tangible personal property (materials, equipment and components) pursuant to the law of the State of Indiana. Provider shall not include any charges representing such taxes on any invoices hereunder.

Provider shall be responsible for all franchise fees and taxes of any kind whatsoever.

ARTICLE II PROVIDER'S SERVICES AND RESPONSIBILITIES

2.1 Basic Services

- 2.1.1 Provider shall provide all planning, studies, reports, and professional services set forth and described in the IPTC RFP 20-08-357, Provider's Response thereto, this Agreement and any individual Task Orders issued to Provider by Owner, and will perform the Services in an expeditious fashion, in accordance with the terms and conditions set forth herein.
- 2.1.2 Provider acknowledges Owner's reliance upon Provider's special and unique abilities and skills to perform the services provided by this Agreement and accepts the relationship of trust and confidence established between it and Owner by this Agreement. Provider agrees to use its customary efforts, skill, judgment and abilities to perform the services hereunder and comply with the Owner's requirements, program, budget, time schedule and procedures set forth in this Agreement and any individual Task Orders issued by Owner, and that such services shall be performed in conformity with the professional and technical standards of reasonable care and skill ordinarily used and exercised by members of the Provider's profession that are familiar with and providing such services for engagements or projects of the same type, nature, complexity and size as the Scope of Services covered by this Agreement. Provider otherwise disclaims any and all Uniform Commercial Code type of warranties of merchantability and/or fitness for a particular purpose and any and all warranties arising from course of dealing and/or usage of trade, consistent with Indiana law. Provider agrees that it possesses the skills that will enable it to supply its Services free from material error and that the Services provided hereunder, and the products thereof, will produce a functional, efficient and cost-effective end product or project for the Owner's use and operational activities.
- 2.1.3 All of the services to be furnished by Provider will be furnished in accordance with current technological practices, means, methods, procedures and techniques for engagements or projects of the type, nature, complexity and size as the engagements or projects identified in any individual Task Orders issued to Provider by Owner as of the time that Provider performs its services hereunder and delivers its work product to Owner.
- 2.1.4 Intentionally Omitted.
- 2.1.5 Neither Owner's approval of nor its acquiescence in any studies, reports, planning, design and implementation documents, submission, certification or action by Provider or its consultants shall in any manner relieve the Provider of any obligation, duty or responsibility under this Agreement and any individual Task Orders.
- 2.1.6 All studies, reports, plans, investigations, design, system and engineering analyses, calculations and assumptions serving as the basis of the work product, implementation plans, drawings, electronic or digital data or stored information ("ESI"), specifications, operating instructions, notes, other drawings, images, computations, sketches, test data, survey results, written works of authorship, and any other materials created, conceived, or first reduced to practice by Provider related to the Provider Services and prepared by Provider and/or its consultants, alone or in combination with others, on any and all media, in whole or in part, and all copies thereof, whether created before or during the term of this Agreement, together with those documents identified in ¶6.1, shall constitute the Deliverables ("Deliverables").

- 2.1.6.1 If Provider, after delivery to Owner of the Deliverables and thereafter, observes or otherwise acquires actual knowledge of any fault or defect in the studies, reports, planning, design and implementation documents or non-conformance with them, including but not limited to errors, omissions or inconsistencies in the Deliverables of Provider and its Consultants, immediate verbal or telephonic notice shall be provided to Owner and written notice thereof shall be given by Provider to Owner within three (3) days thereafter.
- 2.1.7 Provider shall comply with all applicable Federal, State and Local Laws, rules, codes, ordinances, regulations and orders in effect as of the date of execution of this Agreement governing its Services and which are applicable to the studies, reports, planning, design and implementation documents provided under this Agreement and any individual Task Orders and will not knowingly violate any other law, rule, code, ordinance, regulation or order applicable to the Services which it renders pursuant to this Agreement. Provider shall notify Owner of any changes or pending changes in applicable laws, rules, codes, ordinances, regulations and orders of which Provider is aware, the impact of such changes on the Deliverables and recommendations for modifications to the Deliverables which minimize these impacts. Changes made necessary by newly enacted laws, codes and regulations after this date may, if agreed to by Owner, entitle Provider to a reasonable adjustment in the Provider's performance schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.
- 2.1.8 By signing studies, reports, planning, design and implementation documents or preparing the Deliverables to submit for purposes of obtaining requisite governmental approvals or permits, it shall be deemed that Provider has taken every reasonable measure to ascertain what laws, rules, codes, ordinances, regulations and orders apply to its services and Provider has applied them accordingly. If Provider performs its services contrary to applicable laws, rules, codes, ordinances, regulations and orders then in effect as of the date of this Agreement, then Provider shall assume responsibility for such services so provided and shall bear the costs attributable to correction of the studies, reports, planning, design and implementation documents, or any other Deliverables; provided, however, Provider shall not be responsible for any costs or expense that provide betterment or upgrades or enhancements to the value of the engagements or projects identified in this Agreement or any individual Task Orders.
- 2.1.9 Provider shall perform the Services with reasonable diligence and expediency in accordance with sound professional practices in order to promote the commencement and completion of such services, consistent with the performance dates and milestones schedule set forth in this Agreement and any individual Task Orders issued to Provider by Owner. If Provider is responsible for or the cause of any delays or hindrances in the Owner's overall completion and performance dates and milestones, then at no cost to Owner, Provider shall correct and expedite the performance of its services hereunder that may be causing or contributing to such delays or hindrances.
- 2.1.10 Provider recognizes and agrees that timely performance of the Services is required under the Agreement. Provider shall dedicate a sufficient number of qualified personnel and require the same of its consultants and to perform the Services with vigorous due diligence and expediency in accordance with sound professional practices and its commitments, obligations and duties hereunder in order to meet the commencement and completion dates and any interim and final performance milestones schedule set forth in this Agreement and any individual Task Orders issued to Provider by Owner. Such schedule may, if agreed to by Owner, be adjusted as required. Claims, if any, arising from delays in performance of the Services in accordance with such approved schedule shall be resolved in the same manner as other liability claims.

- 2.1.11 If the commencement, prosecution or completion of the Services, or of the undertaking or performance of services or work by others, is delayed, hindered, disrupted or interfered with by a breach of the standard of care in ¶2.1.2 or negligence, or the failure to perform any duty expressly assumed under this Agreement by Provider, or anyone for whom Provider is responsible, and if Owner incurs any damage, loss, cost, expense, assessment, fine or liability as a result or consequence thereof, Provider shall be liable to Owner for any and all such delay, hindrance, disruption and interference, and any resultant damage, loss, cost, expense, assessment, fine or liability actually and reasonably incurred or suffered by Owner.
- 2.1.12 Provider shall coordinate the Services with those services provided by Owner and Owner's representatives and consultants related to the engagements or projects identified in this Agreement and any individual Task Order. In the event that the performance of any of the Services shall require Provider to use, consider, complete, or evaluate any designs, specifications, contract documents, reports, studies or other services provided to Owner or Provider by another provider, engineer or consultant not retained directly or indirectly by Provider, Provider shall take reasonable and prudent steps in accordance with the standard of care set forth in ¶2.1.2 to review and study the technical accuracy of such items and shall promptly report in writing to Owner any conflict, error, omission or discrepancy discovered by such investigation and verification. Provider may rely upon and use such items in performing its Services without independent verification but only after reviewing and studying such items for any apparent or obvious conflict, error, omission or discrepancy, and Provider shall not be responsible for defects in its Services attributable to its reliance upon or use of such information provided that it has conducted such reasonable and prudent review and study; provided, however, Provider may be responsible for increased costs associated with any conflict, error, omission, inaccuracy or discrepancy in such items which are not discovered by Provider due to its failure to conduct such reasonable and prudent inquiry and study in accordance with the standard of care set forth in ¶2.1.2, or which are discovered by Provider but not promptly reported in writing to Owner.
- 2.1.13 Provider shall not make any substitutions or substantial changes to the Provider Project Team without the prior written approval of Owner. Should circumstances beyond the control of Provider require changes to the Provider Project Team, Provider shall submit the credentials of any proposed replacement team members to Owner for its approval, which shall not be unreasonably withheld.
- 2.1.14 Provider shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise Provider's professional judgment with respect to this Agreement and its Services.
- 2.1.15 Provider shall manage the Provider Services, consult with Owner and Owner's Representative, conduct applicable research, attend Project meetings, communicate with members of the Owner's Project team and report progress to Owner.
- 2.1.16 With respect to the documents and services provided by Provider, to the best of its knowledge, information and belief, the documents or services (i) are consistent with the Deliverables, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the individual engagement or project.
- 2.1.17 In the event that any action is taken against Owner, including but not limited to assessments of fines or penalties, whether by any local, state or federal regulatory or administrative agencies or otherwise, due to any actual or alleged violation, act or omission of the duties, responsibilities and obligations set out herein that are caused or created by Provider or any other party for whom

Provider is responsible relating to the Services, whether also caused in part but not solely caused by Owner, Provider shall indemnify and hold Owner harmless therefrom for any government claim, including, but not limited to, any assessment of fines or penalties and incurrence of reasonable attorney fees incurred in the defense of or appeal from any such action, and any proceeding or hearing which may occur or be related thereto; provided, however, Provider shall not be responsible for any field rework or reconstruction arising from such government claim unless it is caused by or attributable to any actual violation by Provider as described herein.

- 2.1.18 Owner shall require adequate time to secure any requisite Owner internal approvals, which time shall be taken into consideration by Provider in establishing its schedule of services under this Agreement and any individual Task Orders. Provider shall establish submission deadlines with Owner that will facilitate Owner's securing of any requisite approvals. The failure of Provider to meet those submission deadlines may result in the delay or prevention of the requested approvals.

2.2 Additional Services

- 2.2.1 Additional Services are not included in Basic Services but may be required for the services being provided under an individual Task Order. Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Provider shall advise Owner in writing before performing those services if it believes that Owner requested services are outside of the scope of Basic Services being provided herein and as set forth in Exhibit "A", Compensation Schedule for Professional Services and Reimbursable Expenses. Provider shall provide Additional Services as requested by Owner but only if specifically listed herein as Provider's responsibility and confirmed in writing by Owner. Owner shall compensate Provider for Additional Services consistent with the provisions of ¶4.2 below and Exhibit "A", Compensation Schedule for Professional Services and Reimbursable Expenses.
- 2.2.2 Upon recognizing the need to perform Additional Services, Provider shall notify Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. Provider shall not proceed to provide Additional Services unless and until the Provider receives Owner's written authorization.
- 2.2.3 Services as determined by both parties to be beyond the Basic Services shall be performed by the Provider at the rates set forth in Exhibit "A", Compensation Schedule for Professional Services and Reimbursable Expenses, if applicable, or as otherwise agreed upon.

ARTICLE III OWNER'S RESPONSIBILITIES

- 3.1 Unless otherwise provided for under this Agreement, Owner shall provide information regarding requirements for and limitations on the scope of services to be provided under this Agreement or any individual Task Orders which shall set forth Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems, and site requirements. Owner and Provider agree and acknowledge that the information being provided by Owner is subject to reasonable change based on Services required hereunder, and that the Basic Services compensation to be paid to Provider have taken such changes into account.
- 3.2 Owner shall establish and periodically update Owner's budget for this engagement or project. If Owner significantly increases or decreases Owner's budget, Owner shall notify Provider. Owner and Provider thereafter may agree to a corresponding change in the scope of services, as necessary,

and shall determine whether an adjustment in the fee to be paid to Provider is fair and reasonable.

- 3.3 Provider shall coordinate the services of its own consultants with those services provided by Owner. Upon Provider's request, Owner shall furnish copies of the scope of services in the contracts between Owner and Owner's consultants.
- 3.4 If Owner observes or otherwise acquires actual knowledge of any fault or defect or non-conformance with the Deliverables, prompt written notice thereof shall be given by Owner to Provider. However, nothing in this Agreement shall be construed so as to require Owner to determine the adequacy, accuracy or sufficiency of the Deliverables or Provider's Services.
- 3.5 Owner shall endeavor to furnish its required information and services and shall render approvals and decisions to facilitate in a timely manner so as to help maintain and to avoid unreasonable delay in the progress of the Provider services.

ARTICLE IV PAYMENTS TO THE PROVIDER

4.1 Payments on Account of Basic Services

- 4.1.1 Payments for Basic Services under this Agreement and any individual Task Orders issued to Provider by Owner shall be made monthly upon presentation of Provider's statement of services rendered and expenses incurred and shall be in proportion to services performed.
- 4.1.2 Invoices or statements for services are to be submitted to Owner by the 10th day of the month for services rendered through the end of the preceding month. Owner shall thereafter approve the amount as due, less any adjustments for amounts to be withheld or set-off by Owner pursuant to the terms and conditions of the Agreement, including Owner's right to withhold payment under ¶4.2.1 below, and otherwise shall make payment to Provider within thirty (30) days following the date that such invoice is received by Owner. Owner may only withhold amounts in good faith and shall pay all undisputed amounts within thirty (30) days following the date that such invoice is received by Owner.

4.2 Payments Withheld

- 4.2.1 Owner shall have the right to withhold payment to Provider of such amounts as may be necessary to protect Owner from loss because of the failure or default on the part of Provider to perform in accordance with the terms of this Agreement, including (1) errors or omissions in the Deliverables prepared by Provider caused by the non-conformance with the standard of care set forth in ¶2.1.2 or the failure to perform any duty expressly assumed under this Agreement that are not remedied; (2) third-party claims filed arising from Provider's negligence, provided that Owner is not in breach of its contractual obligations to make payment of undisputed sums to Provider for the Services provided hereunder; (3) failure of Provider to make payments properly to consultants or vendors for the Services provided in this Agreement unless there is a legal or contractual basis or justification for Provider not making such payments or unless such failure is due to Owner's failure to make payments of undisputed sums to Provider; (4) damage to Owner or any contractor engaged by Owner caused by Provider's negligence or the failure to perform any duty expressly assumed under this Agreement; or (5) persistent failure to carry out the Services under this Agreement in accordance with the terms and conditions hereof.
- 4.2.2 If Owner determines that Provider is not entitled to all or part of an invoice or request for payment

as set forth in this Article IV, Owner shall notify Provider in writing of its decision to withhold payment within ten (10) days of receipt of the invoice or request for payment. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Provider must take to rectify the Owner's concerns. If the parties cannot resolve such concerns, Provider may pursue its rights and remedies under this Agreement, including those set forth under Article X hereof. This right to withhold shall continue until such time as any claim for such loss has been finally decided or resolved in accordance with the provisions of Article X and will be paid within thirty (30) days thereafter. No interest shall accrue on any withheld payment amounts.

- 4.2.3 When the reasons for withholding payment, as provided in ¶4.2.1, are removed, payment will be made for amounts previously withheld. No interest shall accrue on amounts withheld from payment.

4.3 Invoice Preparation

- 4.3.1 All invoices or statements submitted by Provider for services covered within this Agreement shall be prepared in a form acceptable to Owner.

- 4.3.2 All invoices are to be addressed to Owner as follows:

Indianapolis Public Transportation Corporation
1501 West Washington Street
Indianapolis, IN 46222
Attention: **Mike Roth**, Project Manager

4.4 Task Suspension or Abandonment

- 4.4.1 If the services to be provided under this Agreement or any individual Task Orders are suspended in whole or in part for more than three (3) months or abandoned altogether, Provider shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment.

4.5 Trust Fund.

- 4.5.1 Provider agrees that monies received from Owner in payment for the performance of the Services hereunder shall be held in trust for payment for consultants, subcontractors, vendors, labor, machinery, equipment and material utilized by Provider in performing the Services, and said moneys received in payment from Owner to Provider shall not be diverted by Provider to satisfy any other obligations of Provider for services or work on any other than this Project and under this Agreement.

4.6 Final Payment.

- 4.6.1 No payment to Provider shall operate as an approval of the Provider Services, or any part thereof, or as a release of Provider from any of its obligations under this Agreement or any individual Task Orders issued to Provider by Owner.
- 4.6.2 Acceptance by Provider of any sum tendered by Owner as final payment shall constitute a waiver of all claims existing and known at the time of final payment, including claims for payment for services performed, by Provider with respect to this Agreement or any individual Task Order issued to Provider by Owner, except those claims authorized by this Agreement, previously made in

writing and submitted in a timely manner, and specifically identified and reserved by Provider as unresolved in the application for final payment.

ARTICLE V PROVIDER'S ACCOUNTING AND PROJECT RECORDS

- 5.1 Records of all Provider accounting records and expenses (the "Accounting Records"), including those pertaining to Additional Services, shall be kept on the basis of generally accepted accounting principles and shall be available, upon request, for review and verification by Owner or Owner's Representative within three (3) days, unless mutually agreed otherwise.
- 5.2 Owner shall have a right to audit Provider's Accounting Records, except for the derivation of any fixed price multiplier, lump sum or unit rate, throughout the performance time of this Agreement and for a period of four (4) years following completion of Provider's Basic and Additional Services hereunder.
- 5.3 Provider's Project or Task Order records (the "Project Records") and Accounting Records, including any, and all, electronically stored or saved information, shall be maintained and retained, and be made available, upon request, for review and verification by Owner or Owner's Representative, for a period of at least ten (10) years following completion of Provider's Basic and Additional Services hereunder. If any claim or litigation has been initiated during this period and not concluded by that ten (10) year date, then such records shall be maintained and retained until such claim or litigation is concluded.
- 5.4 Any additional or longer retention requirements of any controlling Federal, State or Local governmental or regulatory authority with jurisdiction over the services provided under this Agreement and individual Task Orders issued hereunder or funding source for the services or projects covered by such Task Orders, shall be met and complied with by Provider and its Consultants.

ARTICLE VI OWNERSHIP AND USE OF DOCUMENTS

- 6.1 Any and all studies, reports, plans, investigations, design, system and engineering analyses, calculations and assumptions serving as the basis of the work product, data, information and other documents, including those in electronic form, prepared, provided or procured by Provider during the course of furnishing services to Owner under this Agreement or any individual Task Order issued to Provider by Owner, together with the Deliverables specified in ¶2.1.6 and ¶2.1.6.1, shall be and become the property of Owner upon payment for the applicable services, whether the end product or project are completed or not; accordingly, such materials may be used by Owner for information and reference and in connection with Owner's use of the end product or Deliverables for the Owner's operational activities and occupancy of the project; provided, however, Owner's reliance upon and use of any incomplete data, information and other documents shall be the sole risk of Owner, provided that Provider identifies and discloses to Owner in writing such incomplete data, information and other documents or if such documents, normally to be stamped and sealed if complete, are not stamped and sealed by the Provider. Provider shall have no liability to Owner arising from Owner's use of such incomplete data, information and other documents identified and disclosed by Provider to Owner. It is understood that Provider shall retain all of its pre-existing know-how and pre-existing intellectual property not related to or created for the Services under this Agreement or any individual Task Orders.

6.2 If this Agreement is terminated under the provisions of ¶9.1, ¶9.2 or ¶9.3 of Article IX of this Agreement, Owner shall have the right to use the Deliverables to complete the engagement or project upon termination of this Agreement by Owner and notification thereof to Provider as provided in Article IX hereof.

6.3 Patents, Copyrights and Infringement Claims.

6.3.1 All inventions, ideas, designs and methods contained in the Deliverables in which Owner has, or acquires patent, copyright or other intellectual property rights (“Intellectual Property”) shall remain reserved for the exclusive use of Owner and may not be utilized, reproduced or distributed by or on behalf of Provider, or any employee, consultant or agent of Provider without the prior written consent of Owner except to the extent necessarily required in connection with performance of the Provider Services.

6.3.2 If, pursuant to performance of the Provider Services, Provider or any of its agents, officers, employees or consultants shall produce any patentable or copyrightable subject matter as to which Owner does not gain ownership rights, Owner shall thereupon have, without cost or expense, an irrevocable, non-exclusive, royalty-free license to make, have made or use, either itself or by another contractor or other party on its behalf, such subject matter in connection with any work or any activity now or hereafter undertaken by or on behalf of Owner. The license herein granted shall not be transferable and shall not extend to contractors or other parties except to the extent of their work or activity on behalf of Owner.

6.3.3 Except to the extent that rights are held by Provider or others under existing valid patents or copyrights and are not given to Owner, Owner shall have the right to use or permit the use of all such Deliverables, and also any oral information of any nature whatsoever received by Owner, and any ideas or methods represented by such Intellectual Property, for any purposes and at any time without other compensation than that specifically provided herein, and no such Intellectual Property shall be deemed to have been given in confidence and any statement or legend to the contrary on any of said Deliverables shall be void and of no effect.

6.3.4 Provider warrants that all Services performed shall be free from any claims made against Owner or Indemnified Parties of Intellectual Property from any other person or entity, unless arising from information provided by or through or at the direction of Owner. Provider shall save harmless and indemnify the Indemnified Parties from and against all costs, expenses and damages, including attorney fees and legal costs, which any of them shall incur or be obligated to pay by reason of any such infringement or claim of infringement, and shall, at the election of Owner, defend at the Provider’s sole expense all such claims in connection with any alleged infringement.

6.3.5 If Owner is enjoined from using any portion of the Deliverables as to which the Provider is to indemnify Owner against Intellectual Property claims, Owner may at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Provider to supply at its own expense, temporarily or permanently, facilities not subject to such injunction and not infringing any Intellectual Property, and if the Provider shall fail to do so, the Provider shall, at its expense, remove such offending facilities and refund the cost thereof to Owner or take such steps as may be necessary to ensure compliance by Owner with such injunction, to the satisfaction of Owner.

6.3.6 Provider is responsible to determine whether a prospective consultant is a party to any litigation involving Intellectual Property infringement claims, including antitrust or other trade regulation

claims, or is subject to any injunction which may prohibit it under certain circumstances from providing services or using any Deliverables to be used or furnished under this Agreement and any individual Task Order. Provider enters into any agreement with a party to such litigation at its own risk and Owner will not undertake to determine the merits of such litigation. Owner, however, reserves the right to reject any article which is the subject of such litigation or injunction, or in its judgment use of such article as a result of such circumstances, would delay the Provider Services or be unlawful.

ARTICLE VII DOCUMENT PREPARATION AND TRANSMISSION

- 7.1 Provider and Owner warrant that in transmitting Deliverables, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the services engagement or project, unless Provider Deliverables arise from information provided by or through or at the direction of Owner. If Provider and Owner intend to transmit Deliverables or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

ARTICLE VIII INSURANCE

- 8.1 Upon entering into the Agreement, and prior to Provider commencing performance of the Services under the Agreement, Provider shall secure and maintain at its own cost and covering all times herein, such insurance as will protect it from claims which may arise out of or result from Provider's furnishing of services under the Agreement and for which Provider may be legally liable, whether such services be by Provider or by Provider's consultants or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
- 8.2 Provider shall purchase and maintain such insurance as shall protect Provider from claims, losses and damages which may arise out of and during the operation of this Agreement, whether such claims, losses and damages arise out of or result from the acts or omissions of Provider or his consultants, or agents or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, and whether such claims, losses and damages are arising out of statutory liability, bodily injury, occupational sickness or disease, or death, insured personal injury liability, property damage, other than to the Work itself, contractual liability, products and completed operations, fire damage, advertising injury, medical expenses and comprehensive automobile liability. Such insurance shall specifically include, but not be limited to, insurance coverage under the workers compensation, disability benefit and other similar employee benefit laws of the state in which the Provider's Services are being performed. Such liability and property damage insurance shall be obtained in such amounts and with such coverage to fulfill Provider's obligations under the Agreement as well as Provider's contractual obligations with regard to any claim, damage, loss or expense described in this Agreement.
- 8.3 Such insurance coverage shall be placed with companies that have insurer ratings no lower than "A+ VIII" in the AM Best's Insurance Guide, latest edition as of the date of the Agreement, or at time of renewal, and to which Owner has no objection.
- 8.4 Prior to Provider commencing performance of the Work under the Agreement, Provider shall provide to Owner a Certificate of Insurance showing liability coverage for Provider and any employees, agents or consultants of Provider for the Workers Compensation, Employer's Liability and Automobile Liability coverage required by law and as set forth in ¶8.2 hereof. Coverage shall

be for no less than the statutory amounts required.

- 8.5 Provider's Commercial General Liability Insurance coverage, where applicable, shall be per occurrence and in the general aggregate (subject to a per project general aggregate provision applicable to the Project). Commercial General Liability Insurance coverage shall be for no less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage – with a combined single limit, One Million Dollars (\$1,000,000.00) for personal and advertising, One Million Dollars (\$1,000,000.00) for products and completed operations, and Two Million Dollars (\$2,000,000.00) for general aggregate. Provider's Commercial General Liability Insurance also shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, employee dishonesty, pollution liability and liability assumed under an insured contract, including any tort liability of another assumed by contract. Coverage shall be afforded to the Additional Insured whether or not a claim is in litigation.
- 8.6 Provider's Commercial General Liability Insurance shall be written on an occurrence basis. Owner shall be named as Additional Insured on all insurance coverage required under the Agreement except on the worker's compensation policy, employer's liability policy and professional liability policy. Additional Insured coverage shall apply as primary insurance with respect to any other insurance afforded to Owner, and the Provider's policy will not seek contribution from any, and all, insurance afforded to Owner, whether as Additional Insured or otherwise. Amounts of insurance and coverage provided shall be as required as set forth in this Article VIII.
- 8.7 Provider shall, throughout the term of this Agreement, maintain professional liability insurance in the aggregate amount of coverage of not less than Seven Hundred Thousand (\$700,000.00) per claim and One Million Dollars (\$1,000,000.00) in the aggregate. In addition to its own professional liability insurance, Provider shall require of any consultant utilized by Provider in connection with this Project that each maintain, throughout the term of this Agreement, its own professional liability insurance satisfactory to Owner. Provider shall provide evidence of such insurance coverage of Provider and of its consultants by a certificate or certificates of insurance provided to Owner, which certifications shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to Owner by the insurance carrier or its agent, with the exception that coverage may be terminated upon ten (10) days written notice provided to Owner for non-payment of the premium by Provider. If Provider receives notice of a threatened cancellation of coverage for non-payment of premium it shall immediately advise Owner in writing prior to any such cancellation deadline so as to provide Owner the opportunity to advance such payment on behalf of Provider out of monies to be paid to Provider under this Agreement for the coverage required hereunder. This insurance shall be maintained at no additional cost to Owner.
- 8.8 Intentionally Omitted.
- 8.9 Intentionally Omitted.
- 8.10 Provider shall provide evidence of all insurance coverage of Provider and of its consultants as required in this Article, including professional liability or errors and omissions policies of insurance by a certificate or certificates of insurance provided to Owner, which certifications shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to Owner by the insurance carrier or its agent with the exception that coverage may be terminated upon ten (10) days written notice provided to Owner for non-payment of the premium by Provider.

- 8.11 Intentionally Omitted.
- 8.12 The insurance carriers for Provider shall have no right of subrogation against Owner and its officers, directors, consultants, agents and employees, and Provider shall obtain from each of its insurers a waiver of subrogation on all insurance coverage required in this Article, including, but not limited to, Commercial General Liability, Workers Compensation, Employer's Liability and Business Auto Liability, in favor of the parties identified herein with respect to losses arising out of or in connection with the Work on the Project under the Agreement. Provider shall require waivers of subrogation in favor of Owner from its consultants, if any, in their agreements with those entities.
- 8.13 Notwithstanding any other provision of this Agreement to the contrary, should any policy required by this Agreement be canceled or otherwise terminated before the completion of the services hereunder, Provider shall exert all reasonable efforts to procure and maintain in force similar insurance from insurers satisfactory to Owner and provide certificates of such insurance to Owner upon Owner's written request.

ARTICLE IX TERMINATION OF AGREEMENT

- 9.1 **Termination for Cause.** This Agreement may be terminated for cause by either party should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. Such termination for cause shall be upon ~~fifteen (15) days~~ prior written notice by Owner if it is Owner terminating the Agreement and upon thirty (30) days prior written notice by Provider if it is Provider terminating the Agreement. The terminating Party shall provide to the other Party in its written notice specific reasons or grounds for its intended termination, with supporting factual details and with specific reference to the express terms and conditions of this Agreement which the defaulting Party has failed to perform and shall state with specificity the means by which the Party may cure the alleged grounds for default. This right to termination shall be in addition to, and not in lieu of, all other rights and remedies which the non-defaulting party may have by law or as otherwise provided in this Agreement, such rights and remedies being cumulative and none being exclusive of any other, and the defaulting party's liability shall survive such termination. No delay or forbearance by the non-defaulting party in exercising such termination or in enforcing any other rights and remedies hereunder shall constitute a waiver thereof in any instance. In any event, the Owner shall pay Provider all amounts invoiced and otherwise due and owing for Services performed up to the termination date that are not in dispute and are in excess of the costs or damages, if any, claimed by Owner against Provider and withheld under ¶4.2.1.
- 9.2 **Termination Due to Task Order Abandonment or Suspension.** This Agreement may be terminated by Owner upon at least ten (10) days written notice to the Provider in the event that the services engagement or project or any individual Task Order issued to Provider by Owner is temporarily or permanently abandoned, suspended or discontinued, whether by decision or action of governmental authority or unilateral decision by Owner. If the individual Task Order, services engagement or project is resumed, Provider shall be compensated for expenses incurred in the interruption and resumption of Provider's services.
- 9.3 **Termination for Convenience.** This Agreement may be terminated by Owner in whole or in part without cause and for its convenience upon ~~fifteen (15) days~~ prior written notice by Owner to Provider. In the event of such termination for convenience, Provider shall be compensated for all services performed to the date of such termination and any termination expense that is directly attributable to termination for which Provider is not otherwise compensated, subject to the

limitations upon compensation and expenses as provided herein. Such entitlement of Provider shall constitute Provider's sole and exclusive remedy and recovery and in no event shall Provider be entitled to recover anticipated profits on unperformed services, overhead, or other additional sums or consequential damages by reason of such termination for convenience.

- 9.4 If termination of this Agreement is effectuated by Owner under ¶9.1 and it is subsequently found or determined in legal proceedings that Provider was not in substantial breach of this Agreement by failure to perform in accordance with its terms, or that such failure was caused through the fault of Owner, then such termination shall be deemed to be a termination for convenience pursuant to ¶9.3 and Provider's remedy and recovery as against Owner shall, in such case, be limited to the payments provided by such in ¶9.3.
- 9.5 In the event of termination of this Agreement or upon request by Owner, Provider shall deliver to Owner within ten (10) days thereof all of the Deliverables, including in electronic format, not previously delivered to Owner during the course of the performance of the Services. Upon receipt of notice of a termination for default or for Owner's convenience, Provider shall: (1) promptly discontinue all the Services affected, unless the termination notice expressly directs otherwise; (2) deliver or otherwise make available to Owner the Deliverables and such other information, materials or documents as may have been accumulated by Provider in performing this Agreement and any individual Task Orders, whether completed or in process; and (3) assign upon the request by Owner those requested consultant agreements between Provider and its consultants performing any of the Services, in accordance with the provisions of ¶14.4 hereof. Owner's reliance upon and use of any incomplete Deliverable shall be the sole risk of Owner provided that Provider identifies and discloses to Owner in writing such incomplete data, information and other documents or if such documents, normally to be stamped and sealed if complete, are not stamped and sealed by a professional engineer. Provider shall have no liability to Owner arising from Owner's use of such incomplete data, information and other documents identified and disclosed by Provider to Owner.
- 9.6 For any written notice required under this Article, such notice shall be sent by certified mail, by hand delivery or by overnight courier service (Federal Express or equivalent) to the other party hereto in accordance with the provisions of ¶11.19 hereof.

ARTICLE X DISPUTE RESOLUTION

10.1 General

- 10.1.1 Owner and Provider are fully committed to working with each other throughout the term of the Agreement and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Owner and Provider each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Services.
- 10.1.2 Owner and Provider will first attempt to resolve disputes or disagreements through discussions between their Authorized Representatives as designated herein. If a dispute or disagreement cannot be resolved through discussions between the Owner's and Provider's Authorized Representatives, upon the request of either party, principals of Owner and Provider shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the principals of Owner and Provider, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. If after meeting the parties' principals determine that the

dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement, if mutually agreed upon by Owner and Provider, to non-binding mediation as set forth hereinafter in ¶10.2.

- 10.1.3 Owner and Provider shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but if not otherwise specified by applicable law, within not more than five (5) years after the actual date of completion of the services engagement or project or any individual Task Order issued to Provider by Owner with respect to any warranty claim and cause of action by Owner against Provider, or if the Project is permanently abandoned, suspended or discontinued as provided by ¶9.2, then within not more than five (5) years of the Date of Project suspension or abandonment. If a third party commences a claim or cause of action against Owner, whether based in warranty, contract, tort or otherwise, and such claim and causes of action include claims, issues or disputes involving the Services furnished under this Agreement, then such claims and causes of action which Owner may seek to pursue against Provider shall survive the five (5) year limitation provided herein and shall not be time barred if commenced within the period specified by applicable law.

10.2 Mediation

- 10.2.1 All claims, disputes, or other matters in question between the parties to this Agreement or breach thereof shall, as a condition precedent to binding dispute resolution, be submitted to nonbinding mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Indiana Rules for Alternative Dispute Resolution currently in effect.
- 10.2.2 A request for mediation shall be made in writing and delivered to the other party to the Agreement. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of ninety (90) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
- 10.2.3 The Parties, in good faith, shall attempt to agree upon a mediator. If the Parties cannot so agree within ten (10) business days of the other Party's receipt of the request for mediation, the Parties shall jointly petition the Circuit Court of Marion County, Indiana to provide a list of five (5) mediators from which the parties shall strike. The Parties shall strike within five (5) business days of receipt of the list of mediators with the Party that requested mediation striking first. The individual remaining at the conclusion of the striking process shall serve as mediator, unless the Parties agree otherwise on a mediator. The parties shall share the mediator's fee and any filing fees equally.
- 10.2.4 The mediation shall be held in the City of Indianapolis, Indiana, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. If mediation is unsuccessful, the parties shall proceed to litigation as described hereinafter.

10.3 Litigation

- 10.3.1 Claims, disputes and other matters in controversy arising out of or related to this Agreement, not otherwise resolved in accordance with ¶10.2 above, shall be decided through litigation in an Indiana court of law, and by trial to the bench. Trial by jury is expressly waived by Owner and Provider.

- 10.3.2 Any litigation arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement as a party to the litigation provided that the claims and issues being litigated relate to or involve such additional person or party. The foregoing agreement to litigate and other agreements to litigate with an additional person or entity shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.
- 10.3.3 For any litigation undertaken pursuant to this ¶10.3, exclusive venue for such judicial proceedings shall be in Indianapolis, Marion County, Indiana, and any hearing, trial or conference shall take place in that locale, unless agreed to otherwise in writing by Owner and Provider. The judicial proceedings, and all claims, disputes and other matters in controversy arising out of or related to this Agreement or the performance or breach thereof shall be governed by the laws of the State of Indiana. Owner and Provider consent to the choice of law, the choice of dispute resolution designated by them, venue as provided herein, and to personal jurisdiction over each of them as provided herein, and waive any right to object to the exercise of personal jurisdiction by the court and to exclusive venue in this locale.
- 10.3.4 No dispute under this Article shall interfere with the progress of the Provider's Services, and Provider shall proceed with furnishing its Services, including disputed performance, despite the existence of, and without awaiting the resolution of, any such dispute. The failure or refusal of Provider to continue performing under such circumstances shall constitute a default under the Contract as provided in Article IX hereof.
- 10.3.5 In any instance or proceeding whereby any claim, dispute or other matter in controversy between Owner and Provider involves, arises from or gives rise to a similar claim, dispute or other matter in controversy as between Owner and another third party, Provider shall furnish and present to Owner evidence, documentation and other information to support its claim, defense or other position with respect thereto. It is expressly understood that as to any and all Provider Services performed or agreed to be performed by Provider and as to any and all actual or alleged damages or costs incurred by Provider in connection with the Project, Owner shall under no circumstances be liable to Provider to any greater extent than Provider is found liable to Owner.

ARTICLE XI MISCELLANEOUS PROVISIONS

- 11.1 **Governing Law.** Unless otherwise specified, this Agreement shall be governed by the laws of the State of Indiana without regard to its choice of law provisions.
- 11.2 **Force Majeure.** Any delay or failure of Provider in performing its required obligations hereunder shall be excused if and to the extent such delay or failure is caused by a Force Majeure Event. A "Force Majeure Event" means an event due to any acts of God, strike, labor dispute fire, storm, flood, windstorm, unusually severe weather, sabotage, embargo, terrorism, energy shortage, accidents or delay in transportation, accidents in the handling and rigging of heavy equipment, explosion, riot, war, court injunction or order, delays by acts or orders of any governmental body or changes in laws or government regulations or the interpretations or application thereof. In the event of a Force Majeure Event, Provider shall receive an equitable adjustment extending Provider's time for performance for such Services sufficient to overcome the effects of any delay.
- 11.2.1 **Compensable Delays.** Any delay or failure of Provider in performing its required obligations hereunder shall be excused if and to the extent such delay or failure is caused by the acts or

omissions of Owner or Owner's other contractors, vendors or consultants, and which delay or failure is not due to any fault or neglect on Provider's part, and the risks of which are not otherwise assumed by Provider pursuant to the provisions of this Agreement. The time for completion of the portion or portions of the Services directly affected by such delay, shall upon timely request of Provider be extended by a period equivalent to the time lost by reason of any and all of the aforesaid causes. Any claim for an extension in the Contract Time or for increased compensation under this Agreement or any individual Task Orders, in order to be considered by Owner, shall be based on written notice delivered to Owner in accordance with ¶11.19 within fourteen (14) days of Provider becoming aware of the event or occurrence giving rise to the claim. Failure to timely submit notice as required herein shall constitute a waiver of the right to seek a time extension or additional compensation. Provider's compensation for Basic Services may be adjusted as mutually agreed by Owner and Provider for any increased costs of performing the Services.

- 11.3 **Statute of Limitations.** As between the parties of this Agreement, as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have occurred in any and all events no later than the Date of Completion of the Services under this Agreement or as provided by current law unless and except as provided otherwise by applicable statute.
- 11.4 **Precedence.** In the event of a conflict among the IPTC RFP, the Provider Response thereto, and this Agreement, the terms and conditions of this Agreement take precedence over the terms of the RFQ and Provider Response, and no term or condition in the Provider Response that contradicts, conflicts with, limits or narrows any term or condition of the Agreement or the IPTC RFQ shall be effective or controlling. In the event of a conflict within the language of this Agreement typed language, terms and conditions shall take precedence over printed language, terms and conditions and the term or condition which provides the greater benefit or protection to Owner shall control.
- 11.5 **Severability.** Every provision of the Agreement is intended to be severable such that, if any term or provision hereof is illegal or invalid for any reason whatsoever, such provision shall be severed from the Agreement and shall not affect the validity of the remainder of the Agreement.
- 11.6 **Indemnity.** To the fullest extent permitted by law, Provider shall indemnify, hold harmless and defend Owner and all of its officers, directors, and employees, from and against all claims, suits, demands, causes of action, damages, losses, costs and expenses, including reasonable attorney's and consultant's fees and expenses, brought by a third party to the extent caused by Provider's negligent performance of professional services under this Agreement, or caused by Provider's failure to perform any duty expressly assumed under this Agreement in performing the Services, provided that any such claim, suit, demand, cause of action, damage, loss, cost, fees or expense: (a) is attributable to bodily injury, sickness, disease or death, or patent infringement, or injury to or destruction of tangible or real property, including the loss of use thereof; and (b) only to the proportionate extent caused in whole or in part by any negligent act or omission or wrongful act by Provider or anyone directly or indirectly employed by it or anyone for whose acts it may be liable, regardless of whether such claim, suit, damage, loss, cost or expense is caused in part by any joint, several or comparative, but not sole, negligent act or omission, of Owner.
- 11.7 Without limiting the generality of the foregoing and in addition thereto, the indemnification, hold harmless and defense duties and obligations of Provider under ¶11.6 shall apply to any claims, suits, demands, causes of action, damages, losses, costs and expenses, including attorney's and consultant's fees and court costs of Provider against any other consultant, contractor, subcontractor, material supplier or third party, and to their claims against Owner or any other party indemnified hereunder which may be triggered or caused by Provider's actions taken under this

Paragraph, subject to the indemnity provisions of ¶11.6.

- 11.8 In any and all claims against Owner or any of its officers, directors, agents or employees, by any employee of Provider or anyone directly or indirectly employed by Provider, or anyone for whose acts Provider may be liable, the indemnification obligations under ¶11.6 and ¶11.7 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Provider under worker's compensation acts, disability benefit acts or other employee benefit acts.
- 11.9 **Right to Attorney Fees.** In the event Owner employs attorneys or incurs other expenses it may deem necessary to protect or enforce its rights under the Agreement where Provider is in default or breach of the Agreement, or Owner otherwise is required to undertake performance of Provider's obligations hereunder because of Provider's failure or refusal to perform, Provider agrees to pay the attorney fees, costs and expenses so incurred by Owner. Furthermore, wherever in the Agreement Provider agrees to pay expenses incurred by Owner such expenses shall include, but are not limited to, attorney fees incurred by Owner.
- 11.10 **Independent Contractor Status.** Provider agrees that it is, or prior to the start of the performance of the Services hereunder will become, an independent contractor and an employing unit subject as an employer to all applicable unemployment compensation statutes so as to relieve Owner of any responsibility or liability for treating Provider's employees as employees of Owner for the purpose of keeping records, making reports and payment of unemployment compensation taxes or contributions; and Provider agrees to indemnify and hold Owner harmless and reimburse it for any expense or liability incurred under said statutes in connection with employees of Provider, including a sum equal to benefits paid to those who were Provider's employees, where such benefit payments are charged to Owner under any merit plan or to the individual reserve account pursuant to any state unemployment compensation statute.
- 11.11 **No Third-Party Beneficiary Rights.** Nothing set forth and contained in this Agreement shall create or establish any contractual relationship or obligations between Owner and any of Provider's employees, consultants, agents or representatives nor create a cause of action in favor of any third party against either Owner or Provider. There are no intended present or third-party beneficiaries under this Agreement, and any and all rights and remedies hereunder are exclusively for the benefit of the parties hereto. Provider's services under this Agreement are being performed solely for Owner's benefit and no other entity shall have any claim against Owner or Provider because of this Agreement or the performance or non-performance of Provider's services hereunder.
- 11.12 **Provider's Consultants.** Owner shall enjoy the same benefits and rights as to Provider's consultants as Provider enjoys with respect to its consultants. Such consultants shall owe the same duties and obligations to Owner as they do to Provider.
- 11.13 **No Agency Relationship.** Nothing set forth and contained in this Agreement creates an agency relationship by and between Owner and Provider whereby Provider has actual, implied or apparent authority, rights, duties or powers to act for or on behalf of Owner, or otherwise to bind or commit Owner to any third party, without the express, prior written approval and notice from Owner to such third party.
- 11.14 **Waiver of Consequential Damages.** Provider waives any claims against Owner for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred by Provider for principal office expenses, including the compensation of personnel stationed there and other components of home office overhead, for losses of financing, business and reputation, for

loss of management or employee productivity or of the services of such persons and for loss of profit except anticipated profit arising directly from the Provider Services being furnished hereunder. This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article IX.

- 11.15 **Waiver.** No action or failure to act by Owner shall constitute a waiver of any right or duty afforded Owner under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing. Owner's right to require strict performance of the Agreement shall not be affected by any previous waiver or course of dealings. Permitting Provider to continue after the date of scheduled completion shall not be construed as a waiver of any such claim or damages or increased costs due to delays.
- 11.16 **Publicity.** All publicity, press releases and other announcements relating to the Agreement or the Services being provided hereunder will be reviewed in advance by and subject to the approval of Owner. Without the prior written consent of Owner, Provider shall not, and shall cause its employees and consultants not to, make any statements that are based on knowledge gained as a result of performing the Provider Services.
- 11.17 **Confidential Information.** During the course of performing the Services hereunder, Provider may be given access to information that relates to Owner's past, present and future research, development, business activities, products, work and technical knowledge that is considered by Owner as confidential ("Confidential Information"). Confidential Information also includes derivatives and enhancements to preexisting Confidential Information. For these reasons, Provider agrees that all Confidential Information disclosed to or discovered by Provider in the course of the performance of the Agreement shall be considered confidential and protected information, and that Provider shall not disclose such information to a third party unless: (1) such disclosure is necessary in the performance of the Services, (2) Provider obtains Owner's prior written consent to such disclosure, or (3) as may be required by laws and/or regulations; provided, however, Confidential Information shall not include information (a) independently developed by Provider without use of Confidential Information; (b) separately acquired by Provider from a third party that is not under an obligation of confidence with respect to such information; or (c) that is or becomes publicly known through no breach of the Agreement.
- 11.18 Provider agrees to protect the confidentiality of Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall Provider exercise less than reasonable care in protecting such Confidential Information. Confidential Information may not be copied or reproduced without Owner's prior written consent. All Confidential Information, including copies thereof, shall be returned or destroyed upon the request of Owner; provided, however, Provider may retain one copy of the Confidential Information. Confidential Information disclosed hereunder shall at all times, as between Owner and Provider, be the property of Owner. No express or implied license or right to or under any patents, trade secrets, copyrights or other rights are granted by any disclosure of Confidential Information. If Provider receives a subpoena or other validly issued administrative or judicial process demanding Confidential Information, it shall immediately notify Owner in writing of such receipt and tender to it the defense of such demand. Provider shall thereafter be entitled to comply with such subpoena or other process to the extent required by law.
- 11.18.1 Provider acknowledges the economic value of Owner's Confidential Information. Provider shall (a) use the Confidential Information only in connection with this Agreement and the Provider Services and for no other purpose; (b) restrict disclosure of the Confidential Information to only those employees and contractors of Provider and its affiliates with a "need-to-know" and not

disclose it to any other person or entity, including any regulatory agencies, without the prior written consent of Owner; (c) advise those employees, Consultants or contractors who access the Confidential Information of their obligations with respect thereto and, prior to disclosure to Consultants and contractors, have entered into non-disclosure agreements with such Consultants and contractors having obligations of confidentiality as strict as those contained in this Agreement; and (d) copy the Confidential Information only as necessary for those employees, Consultants or contractors who are entitled to receive it. A "need-to-know" means that the employee, Consultant or contractor requires the Confidential Information to perform their responsibilities in connection with this Agreement and the Provider Services. Provider shall be responsible for any disclosure of Confidential Information by its employees or contractors.

11.18.2 Provider agrees that an impending or existing violation of ¶11.18 and ¶11.18.1 of this Agreement may cause Owner irreparable injury for which it would have no adequate remedy at law and agrees that Owner shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.

11.18.3 Provider acknowledges that Owner is subject to the Access to Public Records Act (APRA), IC 5-14-3 et seq. and that this Agreement and any written communication between the Parties may be disclosed by Owner pursuant to an APRA request. Any written documentation that Provider considers to be Confidential Information must be clearly marked as such and include the statutory exemption to the ARPA protecting such document(s) from disclosure. In the event Provider takes legal or protective action and directs Owner not to disclose the Confidential Information, Provider shall indemnify Owner against any losses, including reasonable attorney fees and costs, arising from the non-disclosure of the Confidential Information

11.19 **Written Notice.** Whenever written notice is required to be sent under the Agreement, such notice shall be deemed to have been duly served if (a) delivered in person to the designated representative or corporate officer of the party, (b) delivered at or sent to such designated representative or corporate officer by registered or certified mail, or (c) delivered by a reputable delivery service, to the address set forth below or such other address as Owner or Provider may designate for itself in accordance with this Paragraph:

Owner:

Indianapolis Public Transportation
Corp. (IndyGo)
1501 West Washington St.
Indianapolis, IN 46222

Attention: Mike Roth, Project Manager

Provider:

UZURV Holdings, Inc
413 Stuart Circle, Suite 100,
Richmond, VA. 23220
Attention: Jessica Mooney, Director Client
Services

11.20 **Non-Discrimination.** Provider shall comply with all federal, state, and municipal and local rules, ordinances, rules, regulations, orders, notices and requirements relating to non-discrimination in employment, fair employment practices, and equal employment opportunity, whether or not provided elsewhere in the Agreement without additional charge or expense to Owner, and shall be responsible for and correct, at its own cost and expense, any violations thereof resulting from or in connection with the performance of the Provider Services hereunder. Provider shall at any time upon demand, furnish such proof as Owner may require to demonstrate compliance with such requirements and correction of any violations. Provider agrees to save harmless and indemnify Owner from and against any and all loss, injury, claims, actions, damages, costs and expenses,

including legal fees and disbursements, caused or occasioned directly or indirectly by Provider's failure to comply with any of said laws, ordinances, rules, regulations, orders, notices or requirements, or to correct violations.

- 11.21 Pursuant to the requirements of existing laws of the State of Indiana and the United States of America, Provider and its consultants shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement, with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of his or her race, creed, religion, color, sex, pregnancy, national origin, ancestry, age, disability, genetic information, veteran status, or any other characteristic or status protected by law. Provider agrees to comply with all the provisions contained in the Equal Opportunity Clause quoted in Executive Orders No. 11246 and No. 113375. In addition, Provider shall cause this Equal Opportunity Clause to be included in the consultant agreements hereunder unless exempted by rules, regulations and orders of controlling local, state or federal agencies having jurisdiction over the Project, including but not limited to, the Secretary of Labor issued pursuant to Section 204 of the Executive Orders No. 11246 and No. 11375 as amended. Breach of this covenant may be regarded as a material breach of contract.
- 11.22 Provider and its consultants shall, in all solicitations or advertisements for employees placed by them or on their behalf, state all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, pregnancy, national origin, ancestry, age, disability, genetic information, veteran status, or any other characteristic or status protected by law. In the hiring of employees for the performance of work under the Agreement or any consultant agreement hereunder, neither Provider, its consultants, nor any person acting on behalf of Provider or its consultants, shall by reason of race, religion, color, sex, pregnancy, national origin, ancestry, age, disability, genetic information, veteran status, or any other characteristic or status protected by law discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.
- 11.23 **E-Verify Compliance.** As required by Ind. Code §22-5-1.7, Provider swears and affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien. Provider further agrees that:
- a. Provider 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 Ind. Code §22-5-1.7-3. Provider is not required to participate should the E-Verify program cease to exist. Additionally, Provider is not required to participate if Provider is self-employed and does not employ any employees.
 - b. Provider shall not knowingly employ or contract with an unauthorized alien. Provider shall not retain an employee or contract with a person that Provider subsequently learns is an unauthorized alien.
 - c. Provider shall require all of its consultants or subcontractors who perform work under this Agreement to certify to Provider that the consultant or subcontractor does not knowingly employ or contract with an unauthorized alien and that the consultant or subcontractor has enrolled and is participating in the E-Verify program. Provider agrees to maintain this certification throughout the duration of the term of its contract with its consultant or subcontractor.
 - d. If Provider or any consultant or subcontractor violates the requirements of this ¶11.23 and

its subparts, and it is brought to the attention of Owner, Owner shall require Provider to remedy the violation, or require the subcontractor or consultant to remedy the violation, not later than thirty (30) days after Owner notifies Provider. If Provider fails to remedy the violation, either directly or through its subcontractor or consultant, within the thirty (30) period, the failure of Provider to comply with this requirement may be treated by Owner as a default under the Agreement as provided in Article IX hereof. If Provider employs or contracts with an unauthorized alien but Owner determines that terminating the Agreement would be detrimental to the public interest or public property, Owner may allow the Agreement to remain in effect.

- 11.24 **Drug Free Work Site.** Provider and its employees shall comply with all provisions of the Drug Free Workplace Act of 1988 as amended. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the workplace is prohibited. In all cases where Provider is permitted to employ a consultant, Provider is responsible for the consultant and consultant's employees being in compliance with the Substance Abuse Policy.
- 11.25 **Competing Laws.** As between inconsistent provisions among Federal, State and local laws, Provider should generally comply with the more stringent requirement, unless a Federal law, rule or regulation requires that the affected Federal provision be observed, notwithstanding the existence of a more stringent applicable State or local requirement.
- 11.26 **Differing Dates of Execution.** Notwithstanding differing dates of execution hereof, this Agreement shall be deemed to have been made and entered into on the year and date hereinabove described, and except as otherwise provided for herein with respect to effective dates for specific obligations, shall become binding and effective upon that date.
- 11.27 **Execution in Counterparts.** This Agreement may be executed in counterparts by each party signing a separate signature page which then shall be furnished to the other party hereto. Counterparts executed and distributed by email copy are acceptable and shall be considered as binding and effective as an original signature, and all of which together shall constitute one and the same instrument.

ARTICLE XII FEDERAL FUNDING COMPLIANCE REQUIREMENTS

- 12.1 **Federal Funding.** This Agreement and any individual Task Orders may be funded in part by grant monies supplied through the FTA of the USDOT. Federal funding assistance up to eighty percent (80%) may be provided. As such, federal funding terms are required to be included in the Agreement and shall be binding terms and conditions of this Agreement.
- 12.2 **Provider Compliance.** If Federal funding is utilized, Provider shall comply with each and every federal funding compliance requirement set forth in Attachment No. 1, Federal Funding Compliance Requirements, attached hereto and made a part hereof.
- 12.3 **Incorporation of FTA Terms.** If Federal funding is utilized, in addition to the provisions of Attachment No. 1, all contractual provisions set forth in FTA Circular 4220.1F are incorporated herein by reference and made a part hereof. Provider shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests which would cause Owner to be in violation of the FTA terms and conditions.

- 12.4 **Flow Down of Obligations.** Provider shall require each and every vendor, consultant or services provider performing part of the Services under this Agreement or any individual Task Order issued to Provider by Owner, as a material term of performance, to comply with the terms and conditions of this Article. Provider shall furnish to Owner upon Owner's request copies of all subcontracts, agreements and purchase orders entered into by Provider for performance of part of the Provider Services under this Agreement, demonstrating compliance with this provision.

ARTICLE XIII
PROVIDER REPRESENTATIONS
AND ACKNOWLEDGEMENTS

- 13.1 **Provider Representations.** In order to induce Owner to enter into and perform this Agreement, Provider represents and warrants to Owner that:
- a. **Authority.** Provider has full power, authority and legal right to execute, deliver and perform this Agreement. Provider has taken all necessary action to authorize the execution, delivery and performance of this Agreement.
 - b. **No Litigation.** Except as specifically disclosed to Owner in writing prior to the date hereof, no claim, litigation, investigation or proceeding of or before any court, arbitrator or governmental authority is currently pending nor, to the knowledge of Provider, is any claim, litigation or proceeding threatening against Provider or against its properties or revenues (i) which involves a claim of defective design or workmanship in connection with any agreement entered into by Provider or (ii) which, if adversely determined, would have an adverse effect on the business, operations, property or financial or other condition of Provider. For purposes of this paragraph, a claim, litigation, investigation or proceeding may be deemed disclosed to Owner if Owner has received, prior to the date hereof, detailed information concerning the nature of the matter involved, the relief requested, and a description of the intention of Provider to controvert or respond to such matter.
 - c. **No Default.** Provider is not in default in any respect in the payment or performance of any of its obligations or in the performance of any mortgage, indenture, lease, contract or other agreement or undertaking to which it is a party or by which it or any of its properties or assets may be bound, and no such default or Event of Default (as defined in any such mortgage, indenture, lease, contract, or other agreement or undertaking) has occurred and is continuing or would occur solely as a result of the execution and performance of this Agreement. Provider is not in default under any order, award, or decree of any court, arbitrator, or government binding upon or affecting it or by which any of its properties or assets may be bound or affected, and no such order, award or decree would affect the ability of Provider to carry on its business as presently conducted or the ability of Provider to perform its obligations under this Agreement or any of the other financing to which it is a party.
 - d. **Conflict of Interest.** Provider covenants that neither it, nor any officer, director, partner, employee or agent of Provider has any interest, nor shall it acquire any interest, either directly or indirectly, which would conflict in any manner or degree with the performance of the Work hereunder. Prior to entering into the Agreement Provider has conducted all requisite due diligence to investigate and confirm that neither Provider nor its intended subcontractors and consultants have an existing conflict of interest with Owner and that by entering into the Agreement or subcontractor or consultant agreements no conflict of interest with Owner shall be created. Provider shall exercise all requisite care and due

diligence to prevent any actions or conditions that may result in a conflict with Owner's best interest. A conflict of interest shall mean any interest, relationship, transaction or other matter that conflicts, or could conflict, with the best interests of Owner. A conflict of interest shall include, but is in no way limited to, where Provider recommends, suggests or in any way encourages Owner to enter into an agreement or any type of business arrangement with a firm or company in which Provider, or its employee or agent, or a family member of its employee or agent, has a pecuniary interest.

In the event Provider discovers or becomes aware of a conflict of interest, Provider shall immediately disclose to Owner in writing the conflict of interest including, but in no way limited to, prior to Provider making any recommendation, suggestion or otherwise encouraging Owner to enter into an agreement or any type of business arrangement with a firm or company in which Provider, or its employee or agent, or a family member of its employee or agent, has a pecuniary interest. Provider's efforts shall include, but is in no way limited to, continually making itself aware of the firms or companies that Provider's employees or agents, or family members of its employee or agents, have a pecuniary interest in as well as establishing precautions to prevent its employees or agents, or family members of its employee or agents, from making, receiving, providing or offering substantial gifts, extravagant entertainment, payments, loans or other considerations for the purpose of influencing individuals to act contrary to Owner's best interests.

It is expressly understood that breach of any of the covenants contained in this paragraph is a material breach hereof and shall entitle Owner to all remedies and relief as otherwise provided in the case of a contractual breach in accordance with Article IX hereof.

- 13.2 **Antitrust Assignment.** Provider hereby assigns, sells and transfers to Owner all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State of Indiana or of the United States relating to the particular goods or services purchased or procured by Owner under this Agreement.

ARTICLE XIV SUCCESSORS AND ASSIGNS

- 14.1 Owner and Provider, respectively, bind themselves, their agents, partners, successors, assigns and legal representatives to the other party to this Agreement and to the agents, partners, successors, assigns and legal representatives of such other party with respect to all terms, duties and covenants of this Agreement.
- 14.2 Provider shall not assign or transfer any interest in this Agreement without written consent of the Owner, whose consent shall not be reasonably withheld. Provider may subcontract certain portions of its services to qualified consultants upon written consent of Owner.
- 14.3 This Agreement may be assigned by Owner, with the consent of Provider, which consent shall not be unreasonably withheld, to another entity, either existing or formed at a later date that will own the Project. Provider shall be notified in writing of such change in ownership within thirty (30) days of its occurrence.
- 14.4 Pursuant to Article X, should this Agreement be terminated by Owner for any reason, Owner shall have the right to have Provider's subcontractor and consultant agreements assigned to it, and upon Owner's request to Provider, Provider shall assign such subcontractor and consultant agreements to Owner. Copies of Provider's subcontractor and consultant agreements shall be furnished to

Owner within thirty (30) days from the date of execution of this Agreement, or within such longer time period as may be acceptable to Owner. The assignment of Provider's subcontractor and consultant agreements to Owner shall not obligate Owner to pay for any services provided under any of the subcontractor and consultant agreements to Provider prior to the date of such assignments and their acceptance by Owner, Owner's payment obligations to any subcontractor and consultant being limited to payment for services that may be provided to Owner thereafter by that subcontractor and consultant.

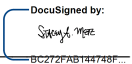
**ARTICLE XV
EXTENT OF AGREEMENT**

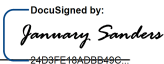
15.1 This Agreement represents the entire and integrated agreement between Owner and Provider and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument approved and executed by both Owner and Provider.

Owner and Provider agree to the terms above and as set forth in the Attachments and Exhibits attached hereto, all of which are a material part of this Agreement. This Agreement is not valid unless signed by Owner and shall become effective on the date first above written notwithstanding different dates of execution hereof.


REVIEWED AND APPROVED BY:

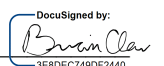
General Counsel:  DocuSigned by: *Jill A Russell* Date: 11/5/2020, 2020
C07C7D05EEF0411...

Procurement Director:  DocuSigned by: *Stephen A. Moore* Date: 11/5/2020, 2020
BC272FAB144748F...

Contract Specialist:  DocuSigned by: *January Sanders* Date: 11/5/2020, 2020
24B9FE18ADB8496...

Project Manager:  DocuSigned by: *Michael Roth* Date: 11/5/2020, 2020
71D43BFACD024BB...

Director of Security & Training:  DocuSigned by: *Mark Emmons* Date: 11/5/2020, 2020
889D8642677A46E...

Director of Safety:  DocuSigned by: *Brian Claw* Date: 11/5/2020, 2020
3ERDEC749DF2440...

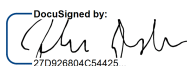
**OWNER: INDIANAPOLIS PUBLIC
TRANSPORTATION CORPORATION**

By:  DocuSigned by: *Inez Evans*
9DF928898BE4D2...

Inez Evans, President and CEO

Date: 11/5/2020, 2020

SERVICE PROVIDER:

By:  DocuSigned by: *[Signature]*
27D926804C54425...

Its Duly Authorized Representative

Date: 11/9/2020, 2020

Attachment 1: FEDERAL FUNDING COMPLIANCE REQUIREMENTS

- 1. Government Access to Records and Reports.** In accordance with 49 CFR §18.36(i), Contractor agrees to provide the IPTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Contractor which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR §633.17, to provide the FTA Administrator or his/her authorized representatives, including any Project Management Oversight Provider (“PMOC”), access to Contractor’s records and work sites pertaining to a major capital project, defined at 49 U.S.C. §5302(a)1, which is receiving Federal financial assistance through the programs defined at 49 U.S.C §5307, 5309 or 5311.

 - a. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - b. Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Contractor agrees to maintain same until the IPTC, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

- 2. Government-Wide Debarment and Suspension.** In accordance with Executive Order 12549, as implemented by 49 CFR Part 29, a person (as defined in 49 CFR Part 49.105) who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities. As a participant in a federally assisted primary covered transaction (grant recipient), the IPTC is required to obtain a certification entitled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions” from all lower tier participants on this Agreement whose Agreement or agreement will exceed \$25,000. Contractor will submit for itself and obtain and submit from all consultants and subcontractors whose Agreements will exceed \$25,000 the certification entitled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions” Any Agreement or sub-Agreement executed without such certification will be voidable by the IPTC.

 - a. In the event that Contractor has certified prior to award that it is not debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Agreement may be cancelled, terminated or suspended by the IPTC and Contractor will be liable for any and all damages incurred by the IPTC as a result of such cancellation, termination or suspension because of such false certification.
 - b. Contractor will ensure that certifications completed by subcontractors, lower tier subcontractors or suppliers are attached to and incorporated into their subcontracts or agreements.

- 3. Civil Rights.** The following requirements apply to this Agreement:

 - a. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U. S. C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans With Disabilities Act of 1990, 42 U.S.C. §12132, and the Federal

law at 49 U.S.C. §5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- b. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Agreement:
 - c. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - d. **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - e. **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Subcontracts.** Contractor agrees to include these requirements in each consultant contract or subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.
5. **Clean Air Requirements.** Contractor and its subcontractors and consultants shall be required to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq.* To the extent that Contractor discovers or becomes aware of a violation of these requirements during the course of performing this Agreement, Contractor agrees to report such violation to the IPTC and understands and agrees that the IPTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include the requirements of the above clause in each subcontract issued pursuant to this Agreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.
6. **Clean Water Requirements.** Contractor and its subcontractors and consultants shall be required to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U. S. C. 1251 *et seq.* To the extent that Contractor discovers or becomes aware of a

violation of these requirements during the course of performing this Agreement, Contractor agrees to report such violation to the IPTC and understands and agrees that the IPTC will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office. Contractor also agrees to include the requirements of the above clause in each subcontract issued pursuant to this Agreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

- 7. Changes to Federal Requirements.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement between the IPTC and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.
- 8. Anti-Lobbying.** In accordance with the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. §1601, *et seq.*], Contractors who apply or propose for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. §1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Agreement, grant or award covered by 31 U.S.C. §1352. Such disclosures are forwarded from tier to tier up to the recipient.

 - a. Contractor will submit for itself the form entitled "Certification of Restrictions on Lobbying" and if applicable, the form entitled "Disclosure of Lobbying", and obtain and retain from all consultants and subcontractors whose Agreements will exceed \$100,000 the certification entitled "Certification of Restrictions on Lobbying", and obtain from all consultants and subcontractors, at any tier, whose agreements will exceed \$100,000, and submit to the IPTC, if applicable, the form entitled "Disclosure of Lobbying".
 - b. Contractor and its consultants and subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such Contractor, consultants and subcontractors under ¶7.1. An event that materially affects the accuracy of the information reported includes:
 - c. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - d. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - e. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
 - f. Contractor will ensure that certifications completed by lower tier consultants and subcontractors are attached to and incorporated into their Agreements or agreements.
- 9. False Statements or Claims.** Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 *et seq* and U.S. DOT regulations, "Program Fraud Civil

Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA-assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

- a. Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate. Contractor also agrees to include the terms of ¶18 and ¶18.1 in each consultant agreement and subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the consultants and subcontractors who will be subject to the provisions.

10. Fly America. Contractor agrees to comply with 49 U.S.C. §40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in each consultant agreement and subcontract that may involve international air transportation.

11. Energy Conservation. Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act. To the extent that Contractor discovers or becomes aware of a violation of these requirements during the course of performing this Agreement, Contractor agrees to report immediately such violation to IPTC. Contractor also agrees to ensure that its Services performed under the Agreement, including all portions of the Services performed by subcontractors or consultants, shall be in compliance with the energy efficient standards required in the Contract Documents.

12. No Federal Government Obligation to Third Parties. Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to IPTC, Contractor, or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the Agreement. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

13. Agreements Involving Federal Privacy Act Requirements. The following requirements apply to Contractor and its employees that administer any system of records on behalf of the Federal Government under the Agreement: (1) Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before

Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement. (2) Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

14. Disadvantaged Business Enterprise Participation.

- a. **DBE Program.** This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is ten percent (10%). The IPTC's overall goal for DBE participation is ten percent (10%). The DBE commitment for this Agreement is as stated on the DBE Commitment Form executed by Contractor and on file with the Director of Procurement. If the total Agreement price is increased as a result of change orders (modifications), the Contractor shall make a good faith effort to achieve a commensurate increase in DBE participation.
- b. **DBE Obligation.** 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 IPTC deems appropriate, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the Contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph.
- c. **DBE Modifications or Substitutions.** In the event that Contractor wishes to modify its DBE subcontractor commitments, the Contractor must notify the IPTC DBE Liaison Officer in writing and request approval for the modification. Contractor may not, without IPTC's prior written consent, terminate for convenience any DBE subcontractor approved by IPTC under this Agreement and then perform the work of the subcontract with its own forces. This includes any changes to items of work, material, services or DBE firms which differ from those identified on the DBE Commitment Form on file with the Director of Procurement. When a DBE subcontractor is terminated or fails to complete its work for any reason, Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE firm. These good faith efforts must be directed at finding another DBE firm to perform at least the same amount of work under this Agreement as the DBE firm that was terminated or failed to complete its work. Contractor must provide the IPTC with any and all documents and information as may be requested with respect to the requested substitution. If IPTC determines that Contractor failed to make good faith efforts, IPTC will provide the opportunity for administrative reconsideration pursuant to 49 CFR 26.53. As part of this reconsideration, Contractor will have the opportunity to provide written documentation or argument and to meet with a designated IPTC official concerning the issue of whether it met the goal or made adequate good faith efforts to do so. A written decision will be sent to Contractor explaining the basis for finding that Contractor did or did not meet the goal or make adequate good faith efforts to do so.
- d. **Reporting and Recordkeeping.** Contractor shall submit documentation concerning Contractor's performance in meeting the DBE commitment during the period of the Agreement. Contractor shall enter into written agreements with the DBEs listed in its DBE

Commitment Form or with substitutes which have been approved by IPTC. Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which it is listed unless the Contractor obtains written consent from IPTC as provided in paragraph (c) above. Unless consent is provided, Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. Copies of all executed DBE agreements shall be provided to IPTC's Director of Procurement by Contractor immediately upon execution with a duplicate copy furnished to the IPTC DBE Liaison Officer. In addition, thereto, Contractor shall meet the following requirements:

- i. Submit a work schedule outlining when the DBE subcontractors and material suppliers will commence and complete their services or work under the Agreement within 30 days of Agreement execution.
- ii. Submit monthly reports in a format approved by IPTC detailing progress toward meeting the DBE commitment for this project and proofs of payment to the IPTC DBE Liaison Officer. Monthly claims for payment from Contractor will not be processed without submission of these reports and documentation.
- iii. Promptly notify IPTC of any situation in which any regularly scheduled progress payment is not made to a DBE.
- iv. Not willfully make any false statements or provide incorrect information as part of its reporting and recordkeeping duties and obligations hereunder. The willful making of false statements or providing of incorrect information is considered a material breach of Agreement and shall entitle IPTC to all remedies and relief as otherwise provided in the case of a contractual breach in accordance with Article XI of the Agreement.

15. Prompt Payment and Retainage. Contractor is required to pay its subcontractors, suppliers and consultants performing services related to this Agreement for satisfactory performance of those services no later than fifteen (15) days following Contractor's receipt of payment for that work from IPTC. Contractor may not hold retainage from its subcontractors, suppliers and consultants. Failure to carry out prompt payment is considered a breach of the Agreement. IPTC will not reimburse Contractor for work performed by subcontractors, suppliers and consultants unless and until Contractor ensures that all subcontractors, suppliers and consultants are promptly paid. IPTC may not award future contracts to Contractors who refuse to pay promptly in accordance with this provision.

16. Incorporation of FTA Terms. All contractual provisions set forth in FTA Circular 4220.1F are incorporated herein by reference and made a part hereof. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any IPTC requests which would cause IPTC to be in violation of the FTA terms and conditions.

17. Default and Termination. If Contractor fails, neglects or is unable to carry out the Work in accordance with the strict requirements of the Contract Documents, IPTC may declare Contractor in default and, in addition to any other right or remedy afforded by the Contract Documents, stop, correct and/or carry out the Work after prior written notice to Contractor.

- i. If Contractor fails to cure any defaults within seven (7) days after receipt of written notice, IPTC may, and without prejudice to any other remedy IPTC may have, terminate the Contract and finish the Work by whatever method IPTC may deem expedient. All claims costs, losses and damages incurred or sustained by IPTC in exercising such rights and remedies, including but not limited to delay damages, attorney fees and costs of administration, will be charged against Contractor and IPTC shall be entitled to a corresponding decrease in the Contract Price. If payments then or thereafter due

Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to IPTC.

- 18. Dispute Resolution.** IPTC and Contractor are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, IPTC and Contractor each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. IPTC and Contractor will first attempt to resolve disputes or disagreements through discussions between their Authorized Representatives, and if not successful, then through discussions between the party principals. Disputes or disagreements that are not resolved shall, at IPTC's sole option, be subject to mediation as a condition precedent to binding dispute resolution. All disputes not resolved by mediation shall be subject to binding arbitration (administered by the American Arbitration Association) or litigation. IPTC shall have the sole option of selecting arbitration over litigation as means for binding dispute resolution. All binding dispute resolution proceedings shall be venued Marion County, Indiana.

**Exhibit B
Task/Change Order**

Project Manager:	Vendor:
Department:	Address:
Project Title:	Phone:
Contract #:	Contact Person:
Scope of Work: _____ _____ _____ _____	
Project Start Date:	Project End Date:
Funding Source: _____	Fixed Price _____ Time & Material
Total Cost (not to exceed):	

To Be Completed by Vendor: Task Order Work Sheet

<u>Resources</u>				
Name	Level	Hourly Rate	# of Hours	Cost
<u>Deliverables</u>				
Description of Deliverables			Due Date	Cost
Total Cost of Project:				

Project Manager: _____
 Dept. Head: _____

Task Exceeding \$50,000
 VP Finance / CFO _____ President/CEO: _____

Exhibit A
Compensation Schedule

<u>Basic Cost Structure Requirements</u>	<u>Cost</u>	<u>Additional/ Supplementary Comments</u>
Cost Per Trip	\$ 16	Cost for first mile
Cost Per Mile	\$ 1.10	Cost per additional mile
<u>Additional Costs (if applicable)</u>		
Fee for Waiting (provide time allotments)	\$ 0	Drivers will wait for 5 minutes past the scheduled pick up time
Outside of Standard Mileage fee	\$ 0	
Wheelchair accessible vehicle fee	\$19 extra per trip . plus \$.40 extra per mile	Wheelchair accessible vehicle price in total therefore equals \$35 per trip plus \$1.50 per mile
No Show Fee	\$ 7.00	
No Ride Fee	\$ 5.00	
Additional Passenger Fee	\$ 0	