

## LPA - CONSULTING CONTRACT

This Contract (“this Contract”) is made and entered into effective as of \_\_\_\_\_, 2017 (“Effective Date”) by and between the TOWN OF YORKTOWN, INDIANA, acting by and through its proper officials (“LOCAL PUBLIC AGENCY” or “LPA”), and BUTLER, FAIRMAN & SEUFERT, INC. (“the CONSULTANT”), [a corporation/limited liability company organized under the laws of the State of Indiana].

Des. No.: 1592998

Project Description: Nebo Road Sidewalk, from S.R. 32 to River Road Trail, Yorktown Indiana.

### RECITALS

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

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

WHEREAS, the CONSULTANT has extensive experience, knowledge and expertise relating to these Services; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the Services in connection therewith.

NOW, THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

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

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

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

**SECTION III TERM.** The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be **1,500 calendar days**. A schedule for completion of the Services and deliverables is set forth in Appendix “C” which is herein attached to and made an integral part of this Contract.

**SECTION IV COMPENSATION.** The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix “D” which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed **\$ 138,980.00.**

**SECTION V NOTICE TO PROCEED AND SCHEDULE.** The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from the LPA, and shall deliver the work to the LPA in accordance with the schedule contained in Appendix “C” which is herein attached to and made an integral part of this Contract.

## **SECTION VI GENERAL PROVISIONS**

1. **Access to Records.** The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by the LPA, INDOT and/or the Federal Highway Administration (“FHWA”) or its authorized representative, and copies thereof shall be furnished free of charge, if requested by the LPA, INDOT, and/or FHWA. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the CONSULTANT may release or make available to the agency any working papers from an audit performed by the LPA, INDOT and/or FHWA of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
  
2. **Assignment; Successors.**
  - A. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without the LPA’s prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of the LPA, provided that the CONSULTANT gives written notice (including evidence of such assignment) to the LPA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.
  
  - B. Any substitution of SUB-CONSULTANTS must first be approved and receive written authorization from the LPA. Any substitution or termination of a Disadvantaged Business Enterprise (“DBE”) SUB-CONSULTANT must first be approved and receive written authorization from the LPA and INDOT’s Economic Opportunity Division Director.
  
3. **Audit.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with 48 CFR part 31 and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.
  
4. **Authority to Bind Consultant.** The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed hereto.
  
5. **Certification for Federal-Aid Contracts Lobbying Activities.**
  - A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
    - i. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal grant, the making of any federal loan, the

entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

- B. The CONSULTANT also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

6. **Changes in Work.** The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by the LPA. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.

7. **Compliance with Laws.**

- A. The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract, shall be reviewed by the LPA and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.
- B. The CONSULTANT represents to the LPA that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:
  - i. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the LPA of any such actions. During the term of such actions, CONSULTANT agrees that the LPA may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
  - ii. *Professional Licensing Standards.* The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract.

- iii. *Work Specific Standards.* The CONSULTANT and its SUB-CONSULTANTS, if any, have obtained, will obtain and/or will maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the LPA.
  - iv. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
  - v. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State and will immediately notify the LPA of any such actions. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT or who has managerial or supervisory responsibilities for the Services.
  - vi. *Debarment and Suspension of any SUB-CONSULTANTS.* The CONSULTANT’s SUB-CONSULTANTS are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The CONSULTANT shall be solely responsible for any recoupment, penalties or costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the LPA and INDOT if any SUB-CONSULTANT becomes debarred or suspended, and shall, at the LPA’s request, take all steps required by the LPA to terminate its contractual relationship with the SUB-CONSULTANT for work to be performed under this Contract.
- C. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT’S violation of any of Section 7(A) through 7(B), the LPA may, at its sole discretion, do any one or more of the following:
- i. terminate this Contract; or
  - ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
- D. *Disputes.* If a dispute exists as to the CONSULTANT’s liability or guilt in any action initiated by the LPA, and the LPA decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to the LPA. A determination by the LPA under this Section 7.D shall be final and binding on the parties and not subject to administrative review. Any payments the LPA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.
8. **Condition of Payment.** The CONSULTANT must perform all Services under this Contract to the LPA’s reasonable satisfaction, as determined at the discretion of the LPA and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The LPA will not pay for work not performed to the LPA’s reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, “deficiencies”) until all deficiencies are remedied in a timely manner.

**9. Confidentiality of LPA Information.**

- A. The CONSULTANT understands and agrees that data, materials, and information disclosed to the CONSULTANT may contain confidential and protected information. Therefore, the CONSULTANT covenants that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the LPA's prior written consent.
- B. The parties acknowledge that the Services to be performed by the CONSULTANT for the LPA under this Contract may require or allow access to data, materials, and information containing Social Security numbers and maintained by the LPA in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the CONSULTANT and the LPA agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by the CONSULTANT, the CONSULTANT agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

- 10. Delays and Extensions.** The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by the LPA subject to the CONSULTANT's approval, it being understood, however, that permitting the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the LPA of any of its rights herein. In the event of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character or complexity of work the CONSULTANT is to perform under this Contract, the LPA at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify the LPA in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

**11. DBE Requirements.**

- A. Notice is hereby given to the CONSULTANT and any SUB-CONSULTANT, and both agree, that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification and failure to promptly cure such breach, may result in termination of this Contract or such remedy as INDOT deems appropriate. The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any SUB-CONSULTANT:

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

- B. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE SUB-CONSULTANTS identified on its Affirmative Action Certification submitted with its Letter of Interest, or with approved amendments. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and receive prior approval by the LPA and INDOT's Economic Opportunity Division Director. After this Contract is completed and if a DBE SUB-CONSULTANT has performed services thereon, the CONSULTANT must complete, and return, a Disadvantaged Business Enterprise Utilization Affidavit ("DBE-3 Form") to INDOT's

Economic Opportunity Division Director. The DBE-3 Form requires certification by the CONSULTANT AND DBE SUB-CONSULTANT that the committed contract amounts have been paid and received.

**12. Non-Discrimination.**

- A. Pursuant to I.C. 22-9-1-10, the Civil Rights Act of 1964, and the Americans with Disabilities Act, the CONSULTANT shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
- B. The CONSULTANT understands that the LPA is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

- C. The CONSULTANT shall not discriminate in its selection and retention of contractors, including without limitation, those services retained for, or incidental to, construction, planning, research, engineering, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisitions of right-of-way.
- D. The CONSULTANT shall not modify the Project in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability).
- E. The CONSULTANT shall not modify the Project in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability.)
- F. The CONSULTANT shall neither allow discrimination by contractors in their selection and retention of subcontractors, lessors and/or material suppliers, nor allow discrimination by their subcontractors in their selection of subcontractors, lessors or material suppliers, who participate in construction, right-of-way clearance and related projects.

- G. The CONSULTANT shall take appropriate actions to correct any deficiency determined by itself and/or the Federal Highway Administration (“FHWA”) within a reasonable time period, not to exceed ninety (90) days, in order to implement Title VI compliance in accordance with INDOT’s assurances and guidelines.
- H. During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:
- (1) **Compliance with Regulations:** The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
  - (2) **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
  - (3) **Solicitations for SUBCONSULTANTS, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential SUBCONSULTANT or supplier shall be notified by the CONSULTANT of the CONSULTANT’S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
  - (4) **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LPA or INDOT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the LPA, or INDOT as appropriate, and shall set forth what efforts it has made to obtain the information.
  - (5) **Sanctions for Noncompliance:** In the event of the CONSULTANT’S noncompliance with the nondiscrimination provisions of this contract, the LPA shall impose such contract sanctions as it or INDOT may determine to be appropriate, including, but not limited to:
    - (a) withholding of payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or
    - (b) cancellation, termination or suspension of the Contract, in whole or in part.
  - (6) **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

**13. Disputes.**

- A. Should any disputes arise with respect to this Contract, the CONSULTANT and the LPA agree to act promptly and in good faith to resolve such disputes in accordance with this Section 13. Time is of the essence in the resolution of disputes.
- B. The CONSULTANT agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs (including reasonable attorneys' fees and expenses) incurred by the LPA or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.
- C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have ten (10) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing to initiate negotiations to resolve the dispute. The LPA may withhold payments on disputed items pending resolution of the dispute.

**14. Drug-Free Workplace Certification.**

- A. The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the LPA within ten (10) days after receiving actual notice that an employee of the CONSULTANT in the State of Indiana has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of this Contract and/or debarment of contracting opportunities with the LPA.
- B. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:
  - i. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
  - ii. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

- iii. Notifying all employees in the statement required by subparagraph 14.B.i above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- iv. Notifying in writing the LPA within ten (10) days after receiving notice from an employee under subdivision 14.B.iii(2) above, or otherwise receiving actual notice of such conviction;
- v. Within thirty (30) days after receiving notice under subdivision 14.B.iii(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 14.B.i. through 14.B.v. above.

15. **Employment Eligibility Verification.** The CONSULTANT affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The CONSULTANT shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, the CONSULTANT is not required to participate if the CONSULTANT is self-employed and does not employ any employees.

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

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

The LPA may terminate for default if the CONSULTANT fails to cure a breach of this provision no later than thirty (30) days after being notified by the LPA.

16. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Contract shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

17. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.
18. **Liability.** If the CONSULTANT or any of its SUB-CONSULTANTS fail to comply with any federal requirement which results in the LPA's repayment of federal funds to INDOT the CONSULTANT shall be responsible to the LPA, for repayment of such costs to the extent such costs are caused by the CONSULTANT and/or its SUB-CONSULTANTS.
19. **Indemnification.** The CONSULTANT agrees to indemnify the LPA, and their agents, officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by, the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract, provided that if the CONSULTANT is a "contractor" within the meaning of I.C. 8-3-2-12.5, this indemnity obligation shall be limited by and interpreted in accordance with I.C. 8-23-2-12-5. The LPA shall not provide such indemnification to the CONSULTANT.
20. **Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents or employees of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.
21. **Insurance - Liability for Damages.**
- A. The CONSULTANT shall be responsible for the accuracy of the Services performed under this Contract and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from the LPA. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities. The CONSULTANT shall have no liability for the errors or deficiencies in designs, drawings, specifications or other services furnished to the CONSULTANT by the LPA on which the Consultant has reasonably relied, provided that the foregoing shall not relieve the CONSULTANT from any liability from the CONSULTANT'S failure to fulfill its obligations under this Contract, to exercise its professional responsibilities to the LPA, or to notify the LPA of any errors or deficiencies which the CONSULTANT knew or should have known existed.
  - B. During construction or any phase of work performed by others based on Services provided by the CONSULTANT, the CONSULTANT shall confer with the LPA when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes for a minimum of delay to the project.
  - C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred by the LPA as a result of any negligent act, error or omission of the CONSULTANT, and for the LPA's losses or costs to repair or remedy construction. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction.

- D. The CONSULTANT shall be required to maintain in full force and effect, insurance as described below from the date of the first authorization to proceed until the LPA's acceptance of the work product. The CONSULTANT shall list both the LPA and INDOT as insureds on any policies. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.
- E. The LPA, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, sub-consultants or any agent of any of them, and the obligations of indemnification in Section 19 herein shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.
- F. The CONSULTANT shall furnish a certificate of insurance and all endorsements to the LPA prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of Contract entitling the LPA to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For INDOT Prequalification **Work Types** 1.1, 12.2-12.6 the CONSULTANTS shall provide not less than \$250,000.00 professional liability insurance per claim and \$250,000.00 aggregate for all claims for negligent performance. For **Work Types** 2.2, 3.1, 3.2, 4.1, 4.2, 5.5, 5.8, 5.11, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 – 10.4, 11.1, 13.1, 14.1 – 14.5, the CONSULTANTS shall carry professional liability insurance in an amount not less than \$1,000,000.00 per claim and \$1,000,000.00 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two (2) years after substantial completion of construction.

II. Commercial General Liability Insurance

The CONSULTANT must obtain and carry Commercial / General liability insurance as follows: For INDOT Prequalification **Work Types** 2.1, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANT shall carry \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.
2. The policy shall provide thirty (30) days notice of cancellation to LPA.
3. The CONSULTANT shall name the LPA as an additional insured.

III. Automobile Liability

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than \$1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

1. Contractual Liability coverage shall be included.
2. The policy shall provide thirty (30) days notice of cancellation to the LPA.
3. The CONSULTANT shall name the LPA as an additional insured.

IV. Watercraft Liability (When Applicable)

1. When necessary to use watercraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT, or any SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the watercraft shall carry watercraft liability insurance in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.
2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:
  - a. United States Longshoremen & Harbor workers
  - b. Maritime Coverage - Jones Act
3. The policy shall provide thirty (30) days notice of cancellation to the LPA.
4. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

V. Aircraft Liability (When Applicable)

1. When necessary to use aircraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT or SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the aircraft shall carry aircraft liability insurance in the amount of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.
2. The policy shall provide thirty (30) days notice of cancellation to the LPA.
3. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

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

23. **Notice to Parties:** Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

Notices to the LPA shall be sent to:

Town of Yorktown  
Attn: Pete Olson, Town Manager  
9800 W. Smith St.  
Yorktown, IN 47396

Notices to the CONSULTANT shall be sent to:

Butler, Fairman and Seufert, Inc.  
8450 Westfield Blvd. Suite 300  
Indianapolis, IN 46240

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

24. **Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract and attachments, (2) RFP document, (3) the CONSULTANT's response to the RFP document, and (4) attachments prepared by the CONSULTANT. All of the foregoing are incorporated fully by reference.
25. **Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT assigns and transfers any ownership claim to the LPA and all such materials ("Work Product") will be the property of the LPA. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by the LPA. Use of these materials, other than related to contract performance by the CONSULTANT, without the LPA's prior written consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to any of the Work Product developed for or supplied by INDOT and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide the LPA full, immediate, and unrestricted access to the Work Product during the term of this Contract. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this Contract by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in Appendix "A" on other projects without the express written consent of the CONSULTANT or as provided in Appendix "A". The LPA acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.
26. **Payments.** All payments shall be made in arrears and in conformance with the LPA's fiscal policies and procedures.
27. **Penalties, Interest and Attorney's Fees.** The LPA will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.

28. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the CONSULTANT:
- i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
  - ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
  - iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.
29. **Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
30. **Status of Claims.** The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:
- Town of Yorktown  
Attn: Pete Olson, Town Manager  
9800 W. Smith St.  
Yorktown, IN 47396
31. **Sub-consultant Acknowledgement.** The CONSULTANT agrees and represents and warrants to the LPA, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, from all SUB-CONSULTANTS providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to the LPA for approval prior to performance of the Services by any SUB-CONSULTANT.
32. **Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.
33. **Taxes.** The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.
34. **Termination for Convenience.**
- A. The LPA may terminate, in whole or in part, whenever, for any reason, when the LPA determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. The LPA will not be liable for Services performed after the effective date of termination.
  - B. If the LPA terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, then and in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within ten (10) days to the LPA. In the event of the failure by the CONSULTANT to make

such delivery upon demand, the CONSULTANT shall pay to the LPA any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.

**35. Termination for Default.**

- A. With the provision of twenty (20) days written notice to the CONSULTANT, the LPA may terminate this Contract in whole or in part if
- (i) the CONSULTANT fails to:
    1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;
    2. Deliver the supplies or perform the Services within the time specified in this Contract or any amendment or extension;
    3. Make progress so as to endanger performance of this Contract; or
    4. Perform any of the other provisions of this Contract to be performed by the CONSULTANT; or
  - (ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.
- B. If the LPA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the LPA considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the LPA for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.
- C. The LPA shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and the LPA shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 13). The LPA may withhold from the agreed upon price for Services any sum the LPA determine necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. **Default by the LPA.** If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the LPA.

36. **Waiver of Rights.** No rights conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither the LPA's review, approval or acceptance of, nor payment for, the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the LPA in accordance with applicable law for all damages to the LPA caused by the CONSULTANT's negligent performance of any of the Services furnished under this Contract.
37. **Work Standards/Conflicts of Interest.** The CONSULTANT shall understand and utilize all relevant INDOT standards including, but not limited to, the most current version of the Indiana Department of Transportation Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in Appendix "A" or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.
38. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.
39. **No Investment in Iran.** As required by IC 5-22-16.5, the CONSULTANT certifies that the CONSULTANT is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.
40. **Assignment of Antitrust Claims.** The CONSULTANT assigns to the State all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

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**Non-Collusion.**

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

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

**CONSULTANT**

**BUTLER, FAIRMAN and SEUFERT,  
INC.**

**LOCAL PUBLIC AGENCY**

**YORKTOWN, INDIANA  
TOWN COUNCIL**

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Signature  
John w. Brand  
President

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Signature  
Rich Lee, President

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Signature  
Robert Ratchford, Vice President

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Signature  
Michael Burke, Member

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Signature  
Bryan Smith, Member

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Signature  
Rick Glaub, Member

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Signature  
Daniel Flanagan, Member

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Signature  
Lon Fox, Member

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## APPENDIX "A"

### SERVICES TO BE FURNISHED BY CONSULTANT:

In fulfillment of this Contract, the CONSULTANT shall comply with the requirements of the appropriate regulations and requirements of the Indiana Department of Transportation (INDOT) and Federal Highway Administration (FHWA).

Project Description: Construction of a 6'-wide sidewalk along Nebo Road between S.R. 32 and River Road, connecting existing S.R. 32 sidewalk to the River Road Trail, in the Town of Yorktown, Indiana.

The CONSULTANT shall be responsible for performing the following activities:

#### A. TOPOGRAPHIC SURVEY

1. Field survey data shall be in conformance with the requirements of Title 865 IAC 1-12 et sequential and the Indiana Design Manual, Part III, Location Surveys.
2. As a minimum the survey will include locating all visible features necessary for the proper design of the proposed improvements within the existing and proposed future right-of-way. This shall be done to insure the most efficient design can be achieved which will minimize land acquisition and relocation costs. These features will include buildings, paved surfaces, shrubs, signs, poles, utilities, manholes, valves and meters, utility locations marked by others, trees equal to and larger than 12 inches and limits of heavily wooded areas.
3. Before field work commences, an IUPPS ticket will be submitted for utility locates along the project route. Any marks completed by the respective utilities or their locators will be tied into the survey and graphically shown on the finished product.
4. Sufficient elevation shots (Cross sections at 100 foot intervals maximum with any intermediate breaks included) will be taken so that 1-foot contours can be calculated from a created Digital Terrain Model. These contours will be included in the survey submittal.
5. The Field Survey will be integrated with the United States Public Land System and physical monumentation as necessary to acquire Right of Way for this project in accordance with Title 865 IAC 1-12 et sequential.
6. Deed research, property ownership and right of way determination will be completed to show the limits of property ownership on the topographic survey. Research at the LaPorte County offices or any other entity will be completed to facilitate the determination of these lines.
7. A survey centerline will be established, set and referenced in the field at a maximum interval of 1,300 feet. The design plans will reference this survey centerline so that the survey control can be used to establish the construction centerline.
8. Vertical control points (benchmarks) will be set at a maximum interval of 1,300 feet.
9. A Location Control Route Survey Plat will be completed for the survey limits, where necessary for Right of Way Acquisition.
10. The survey will include the entire width of the Nebo Road corridor. Additionally, a potential route heading through a high tower transmission line easement to the west will be surveyed. Also, the north bank of Fall Creek under the Nebo Road bridge will be included.

## B. ENVIRONMENTAL SERVICES:

The environmental services required to develop this project shall meet the National Environmental Policy Act of 1969 (NEPA) regulations and, as appropriate, latest versions of the NEPA and the Indiana Department of Transportation (INDOT) Decision Making Process, INDOT Procedural Manual for Preparing Environmental Documents, INDOT Categorical Exclusion Manual, and Chapter 8 of the INDOT LPA Process Guidance Document for Local Federal-Aid Projects.

The environmental document completed for this project will be coordinated, as required, with the Environmental Scoping Manager at the INDOT LaPorte District, and as appropriate, the INDOT Office of Environmental Services, and the Federal Highway Administration.

The CONSULTANT shall provide the following services and environmental documentation:

1. Public Involvement:
  - a. If the project meets the minimum requirements for Public Involvement per Part I, Section IV, C, 4 of the August, 2012 INDOT Public Involvement Procedures Policy Manual (PIPPM), the CONSULTANT shall prepare and advertise a legal notice offering the public the opportunity to request a Public Hearing per Part I, Section IV, C, 5a of the INDOT PIPPM. If no requests are forthcoming prior to the established deadline date, the CONSULTANT shall obtain Public Involvement certification from the Public Hearings Section at INDOT prior to receiving final environmental document approval.
  - b. If limited requests for a Public Hearing are received or it is determined by the CONSULTANT that the comments received could be adequately answered by meeting with those respondents, a Public Meeting will be organized and held to answer their specific questions. Minutes of the Public Meeting will be taken along with a list of attendees. All comments made in the Public Meeting will be answered and submitted to the INDOT Public Hearings Section for Public Involvement certification prior to receiving final environmental document approval.
  - c. If a Public Hearing is required, or the LPA desires to hold a Public Hearing, the CONSULTANT shall prepare and advertise a legal notice per Part I, Section IV, C, 5c of the INDOT PIPPM, coordinate, prepare for and conduct a Public Hearing per Part I, Section VI, D, and prepare a Transcript and comment/response sheets. Subsequent to the requirements of the Public Hearing, the CONSULTANT shall obtain Public Involvement certification from the INDOT Public Hearings Section prior to receiving final environmental document approval.
2. Early coordination with various required local, state and federal agencies.
3. Project corridor impact evaluation including:
  - a. Ecological Evaluation Form
  - b. Threatened and endangered species review
  - c. Karst, Sole Source Aquifers, Wellhead Protection Areas, Ground Water, Surface Water and Drinking Water reviews.
  - d. Floodplain review
  - e. Farmland review and completion of the Farmland Conversion Impact Rating form (NRCS-CPA-106) for corridor type projects.
  - f. Section 6(f) (Land and Water Conservation Fund) and Section 4(f) (public park and recreation land, wildlife and waterfowl refuges and historic properties) reviews.

- g. Identification and recording of existing documentation in regards to the criteria air pollutants and the conformity status of the project in addition to identifying additional requirements beyond conformity (hot spot analyses and mobile source air toxics analyses) that may be applicable.
  - h. Community impacts, Indirect and Cumulative Impacts, Relocation Studies.
  - i. Determination of the Regulatory Permits required for the project.
  - j. Environmental Justice determination.
4. Section 106 Consultation including, as appropriate,
    - a. Historic Property Report
    - b. Coordination with Consulting Parties
    - c. Preparation of a Minor Project Programmatic Agreement (MPPA) or 36 CFR 800.11(d) (“No Historic properties Effected”) based upon results of the Historic Property Report and consultation with the State Historic Preservation Officer (SHPO), the Indiana Department of Transportation (INDOT) Cultural Resources Section (CRS) and other consulting parties.
  5. Evaluation of Hazardous Materials and Regulated Substances, including:
    - a. Completion of a Red Flag Investigation.
    - b. Completion of a Hazardous Waste Site Assessment form.
    - c. Evaluation of the need for a Phase I ESA to determine specific contamination.

Items not included in the above descriptions include the following:

1. Mitigation plans
2. Stream enhancement plans
3. Section 106 documentation meetings or the advertising of legal notices for a “No Adverse Effect” or an “Adverse Effect” finding pursuant to 36 CFR 800.11(e), (f) or (g).
4. Preparation of a Memorandum of Agreement associated with 36CFR 800.11(e) for an “Adverse Effect.”
5. Endangered species studies or reports beyond the minimum early coordination review of the Indiana bat and the northern long-eared bat.
6. Archaeological studies beyond a Phase 1a reconnaissance.
7. Woody revegetation plan
8. Phase I or Phase II Environmental Site Assessment
9. Wetland delineation
10. Public hearing (it is assumed that no hearing will be required, even if the project warrants providing the opportunity for a hearing)
11. Section 6(f) (Land and Water Conservation Fund) and Section 4(f) (public park and recreation land, wildlife and waterfowl refuges and historic properties) coordination.

### C. PROJECT DESIGN

1. Project Limits are as described above in Project Description.
2. The CONSULTANT shall participate in stakeholder meetings and initial site investigations with the LPA to review and establish detailed alignments for the proposed trail.
3. The CONSULTANT shall prepare preliminary plans and preliminary estimates of cost, which shall be in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: Chapter 7 (Plan Preparation) of the "INDOT LPA Guidance Document for Local Federal-Aid Projects" (latest revision), INDOT 3-R Design Standards, American Association of State Highway and Transportation Officials "A Policy on Geometric Design of Highways and Streets", Indiana Department of Transportation's Standard Specifications, Road and Bridge Memoranda and Road and Bridge Design Manuals except as modified by supplemental specifications and special provisions, if any.
4. Hydraulic Submission for Structures and Culverts: The CONSULTANT shall prepare the Hydraulic Submittal in accordance with Indiana Design Manual Section 14-2.04(01), if required.
5. The CONSULTANT shall determine the need for Level 1 Design exceptions that will be required during the project development. All necessary documentation to request a formal Level 1 Design

Exception shall be completed, plans and design calculations shall be prepared in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the Field Check Plans are distributed: "Indiana Department of Transportation Design Standards for 3R Projects", Indiana Department of Transportation's Standard Specifications, Road and Bridge Memoranda, except as modified by supplemental specifications and special provisions, if any.

6. Stage 1 Review Submission: The CONSULTANT shall submit Stage 1 Plans to the LPA, and INDOT if required, for review and approval, including LPA review meeting.
7. Preliminary Field Check Plans and Meeting: The CONSULTANT shall prepare necessary information and notices, and conduct a Preliminary Field Check.
8. Stage 2 Review Submission: A Stage 2 submission will not be required for this project.
9. Stage 3 Review Submission: Following receipt of the public hearing certification, the CONSULTANT shall complete the final plans, special provisions (recurring and unique), final opinions of probable construction costs, and all other necessary documents, reports and calculations. The opinion of probable construction cost shall be prepared according to the current practices of the INDOT and shall include all items of work required for the complete construction of the work, including all temporary work necessary in connection therewith, but shall not include the cost of such items of work for which the LPA, through its own forces or through other party or parties will prepare detail plans. The unit prices to be used shall be in accordance with the methods used by the INDOT. The CONSULTANT shall submit Stage 3 Review Submission to the LPA and INDOT for review and approval.
10. Final Tracings Package: Upon receipt of Stage 3 Review Submission review comments from INDOT, the CONSULTANT shall submit to INDOT all required documentation for the Final Tracings Package Submission.
11. Bid Assistance: The CONSULTANT shall provide contract document and bid assistance to INDOT and the LPA, including review of INDOT's Contract Information Book and addressing contractor inquiries.
12. The CONSULTANT shall provide the design, the layout, and configuration of the sidewalk for the entire length of the, including pavement, connections to existing trails and streets, and street and drive crossings.
13. The CONSULTANT shall provide the design, layout, plans and details modifications to the Nebo Road Bridge over Fall Creek as needed to accommodate the sidewalk.
14. The CONSULTANT shall provide the design, layout, plans and details for a trail under the Nebo Road Bridge over Fall Creek, including retaining walls if necessary. It is assumed that construction will not take place below Ordinary High Water and therefore no IDEM 401 or Corps 404 Permits will be required.
15. The CONSULTANT shall provide the design of all safety and traffic signs as required for the new sidewalk.
16. The CONSULTANT shall design all improvements to meet the erosion control regulations and guidelines of the Indiana Department of Environmental Management (IDEM) and the local governing agencies.
17. The CONSULTANT shall assist the LPA in submitting and obtaining permits and approvals for the project from all state and local governing agencies for erosion control (Rule 5).
18. The CONSULTANT shall make a study of the possible flood hazards that may be encountered on the project in accordance with Volume 6, Chapter 7, Section 3, Subsection 2 of the Federal-Aid Highway Program Manual entitled "Location and Hydraulic Design of Encroachment of Flood Plains".
19. The CONSULTANT shall assist the LPA in submitting and obtaining a Construction in a Floodway permit from the Indiana Department of Natural Resources (IDNR), and water quality permits from the U.S. Army Corps of Engineers and IDEM.

## D. UTILITY COORDINATION SERVICES

### UTILITY COORDINATION DURING DESIGN

The CONSULTANT shall perform utility coordination which shall include the following in accordance with 105 IAC 13 "Utility Facility Relocation on Construction Contracts" for INDOT and federal-aid local projects:

1. Send out Initial Notice Letters for preliminary contact to all utilities, both public and private, to establish: a point of contact, the location of the utilities facilities within the field survey limits, and documentation of reimbursable property interests if any.
2. Submit Preliminary Field Check Plans and Verification of Existing Facility Letters to the utilities. Attend the preliminary field check meeting and discuss both locations of existing facilities shown on the plans and potential conflicts between the utilities and the proposed project.
3. Send out Conflict Analysis Letters to all utilities with revised plans and utility information from discussions at the Preliminary Field Check to verify eliminated or additional conflicts with the proposed improvements for the project.
4. Submit Final Plans to Utilities at the same time plans are submitted to the LPA and send out Requests for Work Plans Letters and Work Plan Documents to each utility.
5. Review Utility Relocation Work Plans and Relocation Drawings for possible conflicts with the proposed improvements for the project, and for conflicts between additional utilities and their proposed relocations.
6. After relocation plan(s) are approved, the CONSULTANT will submit a draft copy of the "approved work plan and notice to proceed" letter to the LPA for approval. After approval by the LPA the CONSULTANT will issue the notice to proceeds to the utilities.

### UTILITY COORDINATION DURING CONSTRUCTION

The CONSULTANT shall remain active throughout construction as needed attending field meetings, participating in conference calls, performing utility relocation assistance, and construction phase Utility Coordination, including coordination and inspection necessary for unforeseen conditions for the hourly not to exceed amount established in Appendix D.

### UTILITY RELOCATION STAKING

The CONSULTANT shall perform staking of the right-of-way, proposed structures, or other design items necessary for utilities to perform their relocation prior to the contract being let on an as needed basis for the hourly not to exceed amount established in Appendix D.

## E. GEOTECHNICAL INVESTIGATION

The CONSULTANT shall make or cause to be made a complete Geotechnical Investigation in accordance with "Requirements for Geotechnical Investigations" dated 1 November 1984. Copies of this document are on file with INDOT and the documents are incorporated herein by reference and is made a part hereof. Borings shall extend sufficiently in depth to obtain characteristic data for the proper design of the foundation. In the event more extensive boring, sampling, and testing is needed, a supplemental agreement shall be executed to pay for the additional work. The Consultant shall backfill bore holes or cause to be backfilled in accordance with "Aquifer Protection Guidelines" dated December 9, 1987. A copy of the document is on file with the INDOT, Division of Materials and Tests, Geotechnical section.

## F. Upon final approval of the Final Tracings Package submittal by the LPA, the CONSULTANT shall deliver to the LPA the following, which shall become the property of the LPA:

1. Set of final approved tracings of the contract plans drawn to a suitable scale on standard 36" x 23" sheets prepared in Adobe Acrobat® .pdf format (latest version at the time of completion of the plans) on CD-ROM.
2. Set of Special Provisions for the Specifications in Adobe Acrobat® .pdf format (latest version at the time of completion of the plans) on CD-ROM.
3. Copy of the construction cost estimates in Adobe Acrobat® .pdf format (latest version at the time

- of completion of the plans) on CD-ROM.
4. Copy all design computations, quantity calculations, indexed, paged and bound in Adobe Acrobat® .pdf format (latest version at the time of completion of the plans) on CD-ROM.
- G. The CONSULTANT shall attend and participate in the MPO Quarterly Tracking and Review meetings, providing timely and accurate federal aid project updates.
  - H. The CONSULTANT shall provide the LPA with documentation necessary for submission of vouchers to INDOT for reimbursement of services.
  - I. The CONSULTANT shall attend all such conferences with the officials of the LPA and other interested agencies as may be required in connection with the work.
  - J. The CONSULTANT shall provide the LPA services during construction of the work for the pre-construction meeting, shop drawing review, interpretation of the plans where disagreement may arise, and for consultation during construction in the event unforeseen or unusual conditions may arise, with compensation in accordance with Appendix D.A.4 of this Contract.
  - K. Additional general data shall be issued at the mutual agreement of the CONSULTANT and the LPA. The CONSULTANT does not authorize or assume liability for any reuse of the documents or digital materials described in this section for any purpose other than this project and the specific use intended, unless adapted by and approved by the CONSULTANT.
  - L. The CONSULTANT shall provide Right-of-Way Engineering for a maximum of **6 parcels** along the route in accordance with the procedures and standards as indicated in the INDOT, Land Acquisition Division, Right-of-Way Engineering Procedures Manual, including the following:
    1. Provide project oversight and management for Right-of-Way Engineering, coordinating with designers, review appraisers, sub-consultants, and INDOT.
    2. Provide a documented 20-year title search (T&E Report) for each parcel prepared by an abstractor as approved by INDOT. 6 tax parcels anticipated.
    3. Provide legal descriptions and transfer documents for each parcel. The descriptions shall be prepared and certified by an Indiana Professional Surveyor.
    4. Prepare Right-of-Way Plans.
    5. Provide an Appraisal Problem Analysis (APA) for each parcel prepared by an appraiser as approved by INDOT.
    6. Provide Appraisal Problem Analysis.
    7. Provide parcel staking (1 time only).

**APPENDIX "B"**

**INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:**

The LPA shall furnish the CONSULTANT with the following:

- A. Assist the CONSULTANT in obtaining property owner information, deeds, plans of adjacent developments, section corner information, and any other pertinent information necessary to perform work under this Contract.
- B. Criteria for design and details for signs, signals, highways and structures such as grades, curves, sight distances, clearances, design loadings, etc.
- C. Specifications and standard drawings applicable to the project.
- D. Plans of existing structures and roads within the project limits, if available.
- E. All written views pertinent to the project that are received by the LPA.
- F. Actual relocation and land acquisition costs.
- G. Traffic assignments.
- H. Available data from the transportation planning process.
- I. Utility plans available to the LPA covering utility facilities throughout the affected areas.
- J. Guarantee access to enter upon public and private lands as required for the CONSULTANT under this Contract.
- K. All legal services as may be required for development of the project.
- L. Determining and obtaining locations/time/dates for all public meetings and/or hearings.

## APPENDIX "C"

### SCHEDULE:

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

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

- A. Topographic Survey: within 60 calendar days after receipt of Notice to Proceed.
- B. Environmental Services
  - 1. Draft Environmental Document submitted to INDOT within 240 calendar days after receipt of Notice to Proceed.
  - 2. Final Environmental Document approval within 30 calendar days after completion of Public Involvement (if applicable).
- C. Design
  - 1. Stage 1 Review Submission within 60 calendar days after completion of the Topographic Survey
  - 2. Preliminary Field Check submission and conduct Field Check within 60 calendar days after receipt from LPA of approval of Stage 1 Plans.
  - 3. Right of Way Engineering to be completed within 60 calendar days after Field Check.
  - 4. Stage 3 Review Submission completed and ready for submission within 75 calendar days after Preliminary Field Check.
  - 5. Final Tracings Package completed and ready for submission within 30 days after receipt from INDOT of approval of Stage 3 Plans, and no less than 100 calendar days prior to letting.

**APPENDIX "D"****COMPENSATION:****A. Amount of Payment**

1. The CONSULTANT shall receive as payment for the services performed under this Contract, as identified in Items 2, 3, and 4 below, the total fee not to exceed \$138,980.00 unless a modification of the Contract is approved in writing by the LPA.
2. The CONSULTANT will be paid for the work performed under this Contract on a lump sum basis in accordance with the following schedule:
  - a. Topographic Survey/Location Control Route Survey Plat \$ 16,900.00
  - b. Environmental Document \$ 27,500.00
  - c. Sidewalk Design \$ 42,500.00
  - d. Bridge Design \$ 6,300.00
  - e. Utility Coordination and Certification – Design Phase \$ 5,000.00
  - f. Geotechnical Investigation (Not to Exceed) \$ 4,800.00
  - g. IDEM Rule 5 Erosion Control Permit \$ 3,300.00
  - h. IDNR Construction in a Floodway Permit (if required) \$ 3,300.00

Total, Section 2: \$ 109,600.00

3. The CONSULTANT will be paid for the Right-of-Way Engineering services performed under this Contract in accordance with the following schedule:

<u>Item</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
1. Project Management	Lump Sum	-	\$ 1,600.00
2. T&E Reports	6 Parcels	\$ 480.00	\$ 2,880.00
3. Legal Description, Transfer Documents, Land Plats	6 Parcels	\$ 1,450.00	\$ 8,700.00
4. R/W Plans	Lump Sum	-	\$ 4,200.00
5. Appraisal Problem Analysis	6 Parcels	\$ 200.00	\$ 1,200.00
6. R/W Stake Out	Lump Sum	-	<u>\$ 2,800.00</u>
	Total, Section 3:		\$ 21,380.00

4. The LPA agrees to compensate the CONSULTANT for On-Call Additional Services on the basis of actual hours of work performed on the project at the hourly billing rates noted in APPENDIX "D-1". The Hourly Billing Rates include overhead and fixed fee. The CONSULTANT will be paid for the following work under additional services in accordance with the following schedule:
- |   |                    |
|---|--------------------|
| a. Potential on-call additional services required:  | \$ 4,000.00        |
| 1. Pre-Construction Meeting   |                    |
| 2. Shop Drawing Reviews – reviewed and returned to LPA within 7 calendar days   |                    |
| 3. Revisions to Contract Documents related to Owner and Property Owner(s) Right-of-Way Acquisition                                      |                    |
| 4. Consultation during construction for unforeseen or unusual conditions  |                    |
| b. Utility relocation assistance and construction phase utility coordination, including unforeseen conditions and construction meetings | \$ 2,000.00        |
| c. Utility relocation staking   | <u>\$ 2,000.00</u> |
| Total, Section 4:   | \$ 8,000.00        |
5. The CONSULTANT shall not be paid for any service performed by the LPA or services not required to develop this project. Costs for routine photocopy and paper reproduction, cellular phone costs, pager costs and computer time costs will not be paid as a reimbursable but is to be included in the above fees and overhead costs.

**B. Method of Payment:**

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Contract. The invoice voucher shall be submitted to the LPA. The invoice voucher shall represent the value, to the LPA, of the partially completed work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each pay item in Section A of this Appendix, percentage completed and prior payments in a form acceptable to the LPA.
2. The LPA for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay the CONSULTANT for rendering such services the fee established above upon completion of the work thereunder, acceptance thereof by the LPA and upon the CONSULTANT submitting an invoice as described above.
3. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with Item VI.6 (changes in work), as set out in this Contract.

**APPENDIX “D-1”**

**SCHEDULE OF COMPENSATION**

**BUTLER, FAIRMAN and SEUFERT, INC.**

**HOURLY RATE SCHEDULE**

<u>Classification</u>	<u>Hourly Rates</u>
E-V      Engineer V (Principal)	\$ 205.00
E-IV     Engineer IV	\$ 185.00
E-III    Engineer III	\$ 156.00
E-II     Engineer II	\$ 119.00
E-I      Engineer I	\$ 83.00
FP-IV   Field Personnel IV – (Project Coordinator)	\$ 163.00
FP-III   Field Personnel III	\$ 134.00
FP-II    Field Personnel II	\$ 102.00
FP-I     Field Personnel I	\$ 84.00
EA-III   Engineer’s Assistant III	\$ 162.00
EA-II    Engineer’s Assistant II	\$ 124.00
EA-I     Engineer’s Assistant I	\$ 94.00
SP-1    Support Personnel I	\$ 66.00
C-II     Clerical II	\$ 102.00
C-I      Clerical I	\$ 66.00
P-III    Planner/Environmental Specialist III	\$ 177.00
P-II     Planner/Environmental Specialist II	\$ 109.00
P-I      Planner/Environmental Specialist I	\$ 84.00

The billing rates are effective January 2017 and may be adjusted annually (beginning January 2018) to reflect changes in the compensation payable to the **ENGINEER**.

## **TABLE OF CONTENTS**

- I. Project Description and Scope of Work
  - II. Man-Hour Justification and Fee Computations
  - III. Consultant Pre-Qualification/Overhead Certification Letters
  - IV. LPA-Consultant Contract Review Checklist
  - V. Request for Proposals Notification
-

**EXHIBIT I**

**PROJECT UNDERSTANDING AND SCOPE OF WORK**

**NEBO ROAD SIDEWALK**

**YORKTOWN, INDIANA**

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## **Nebo Road Sidewalk, Des. 1592998**

### **Project Understanding**

The City proposes to install a new 6' sidewalk along Nebo Road from S.R. 32 to River Road. In order to minimize right-of-way acquisition, the existing four-lane roadway section will be reduced to either narrower lanes or a 3-lane section, providing adequate room for a grass strip and the new sidewalk within the existing curb-to-curb footprint.

The City prefers to install the sidewalk along the west side of Nebo Road, provided that this is economically feasible. Work on the Nebo Road Bridge over Fall Creek will involve widening the sidewalk and eliminating the center curb. The railing along the new sidewalk will be replaced with appropriate-height railing. Structural modification will be required to eliminate the gap in the center of the slab (the bridge is constructed as two separate slabs, with a 3" gap separating them).

The design will consider a connection of the existing River Road Trail (in the southeast quadrant of the River Road intersection) to the new sidewalk via an underpass under the bridge. This will eliminate an undesirable at-grade crossing.

The design will also consider routing the sidewalk east to a high-tower transmission line easement near S.R. 32 to avoid two difficult properties.

See the following graphic for street reduction options.

### **Scope of Work**

BF&S will provide all project development services required to bring this project to a successful construction. The primary agreement covers all services except Right-of-Way Acquisition and Construction Inspection.

The design services will include evaluation of Nebo Road lane configuration options, trail underpass options at Fall Creek, sidewalk side options, and sidewalk route options at S.R. 32.

Nebo Road Sidewalk Improvements

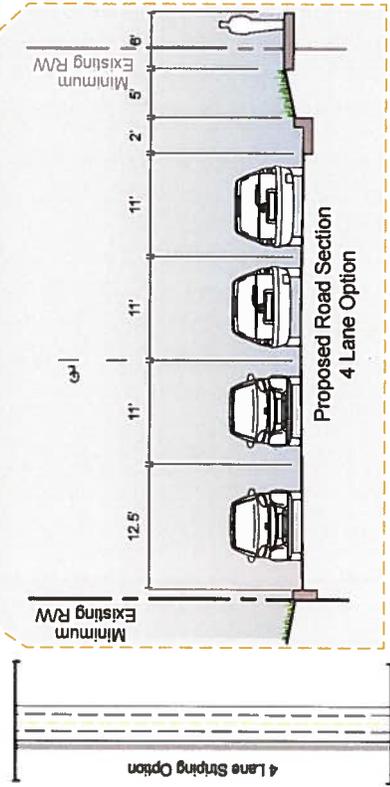
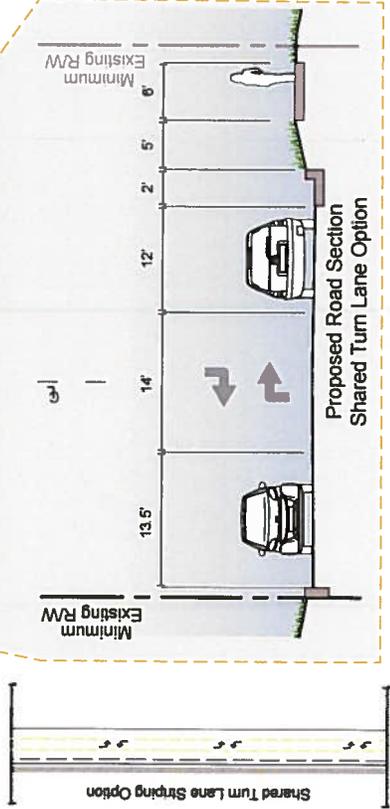
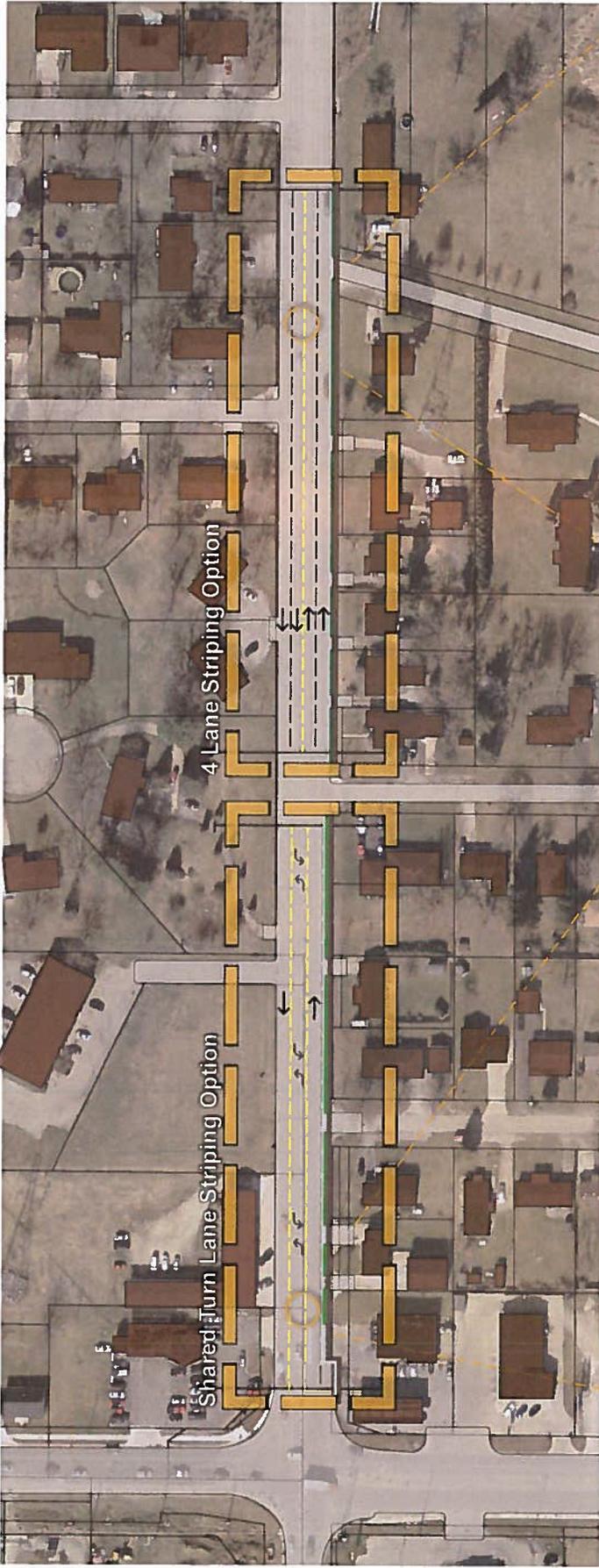


EXHIBIT II  
MAN-HOUR JUSTIFICATION AND FEE COMPUTATIONS  
NEBO ROAD SIDEWALK  
YORKTOWN, INDIANA

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**EXHIBIT III**

**CONSULTANT PRE-QUALIFICATION AND OVERHEAD CERTIFICATION LETTERS**

**NEBO ROAD SIDEWALK**

**YORKTOWN, INDIANA**

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## INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue  
Room N749  
Indianapolis, Indiana 46204

Eric Holcomb, Governor  
Joe McGuinness, Commissioner

April 3, 2017

Mr. Bradley D. Watson, Executive Vice President  
Butler, Fairman, & Seufert, Inc.  
8450 Westfield Blvd., Suite 300  
Indianapolis, IN 46240

Dear Mr. Watson:

We have performed a cognizant review of the audit and supporting workpapers of the Indirect Cost Rate of Butler, Fairman, & Seufert, Inc. as presented in the Statement of Direct Labor, Fringe Benefits, and General Overhead for the year ended September 30, 2016 in accordance with our role as Cognizant Agency as defined in 23 U.S.C. 112(b)(2)(c) and 23 CFR 172.3 and 172.7. The audit was performed by the independent CPA firm Somerset CPAs. The CPA represented that the audit was conducted in accordance with the *Government Auditing Standards*, as promulgated by the Comptroller General of the United States of America, and the audit was designed to determine that the indirect cost rate was established in accordance with Cost Principles contained in the Federal Acquisition Regulation, 48 CFR Part 31. Our cognizant review was performed in accordance with the AASHTO *Review Program for CPA Audits of Consulting Engineers' Indirect Cost Rates*.

In connection with our cognizant review, nothing came to our attention that caused us to believe that the audit and supporting workpapers for the Indirect Cost Rate and the related Audit Report we reviewed did not conform in all material respects to the aforementioned regulations and auditing standards with one exception. Our review of the executive compensation analysis resulted in a minor adjustment which is reflected in the rates below.

Corporate: 169.48%  
Facilities Capital Cost of Money (FCCM): 0.27%

Yours truly,

David E. Brewer  
Manager of External Audit



# INDIANA DEPARTMENT OF TRANSPORTATION

*Driving Indiana's Economic Growth*

100 North Senate Avenue  
Room N725  
Indianapolis, Indiana 46204

PHONE: (317) 232-5095  
FAX: (317) 233-8862

Michael R. Pence, Governor  
Brandye Hendrickson, Commissioner

March 23, 2016

Prequalification Section  
(317) 232-5095

John Brand  
Butler, Fairman and Seufert, Inc.  
8450 Westfield Blvd., Suite 300  
Indianapolis, IN 46240

Re: Consultant Prequalification

Dear John Brand:

The Consultant Prequalification Financial Update Application submitted on 3/3/2016 has been reviewed by this office. Your firm has been prequalified to provide consulting services to the Indiana Department of Transportation (INDOT) in the work groups listed on the attached Work Type Certification, effective 03/22/2016. This approval supersedes any previous approval for prequalification, but is subject to revision or modification in accordance with the most current edition of the INDOT Consultant Prequalification Manual. Your Financial approval will expire on 03/30/2017. Your General/Technical approval will expire on 09/30/2017.

INDOT has performed a cognizant audit of the information provided in this application. Your Firm's annual contracting capacity for the Cognizant Audit Level is \$26,945,658.00 for the fiscal period that ended on 9/30/2015. Your firm was approved for this financial level as notified separately by the External Audit Section. Your requested and approved financial level determines the firm's service limitations as stated in the INDOT Consultant Prequalification Manual. Consultant firms must submit their annual financial application within 180 calendar days of the end of each fiscal year.

You are required to submit a modification application in the event of any changes in firm ownership, firm address, form of business entity under which the firm operates, manpower significant enough to affect the firm's qualifications or capacity (or operations of laboratories, facilities, etc.), financial status (such as filing for bankruptcy), or any other change which affects an element INDOT considers when prequalifying a consultant. The Consultant must notify INDOT within 15 days of any change in the information provided in its Prequalification Application and to submit a modification application in a timely manner. Failure to submit a modification application within 30 days after the initial notification will result in the loss of the Consultants Prequalification Status.

Please contact Mr. John Leming, Consultant Prequalification Research Analyst at 317-234-4917 if you have any questions on this matter.

*Note: Financial Update submitted  
as CPA level. Ext Audit  
performed a Cognizant review.*

Respectfully,

  
Karen B. Macdonald, P.E.  
Prequalification Engineer

cc: Prequalification File  
External Audit

[www.in.gov/dot/](http://www.in.gov/dot/)

An Equal Opportunity Employer

**Prequalified Work Type Certification**  
Issued By  
**Indiana Department of Transportation**

Date Printed: 03/23/2016

**Butler, Fairman and Seufert, Inc.**

**Valid Work Groups**

Effective: 03/22/2016

Expires on: 09/30/2017

Work Type Code	Work Type Description	Qualifying Person(s)
1.1	Systems Planning	Vandenberg, Thomas S
2.2	Traffic Forecasting	Vandenberg, Thomas S
3.1	Non-Complex Traffic Capacity and Operations Analysis	Vandenberg, Thomas S
3.2	Complex Traffic Capacity and Operations Analysis	Vandenberg, Thomas S
4.1	Traffic Safety Analysis	Vandenberg, Thomas S
5.1	Environmental Document Preparation - EA/EIS	Davenport, Aaron L
5.2	Environmental Document Preparation - CE	Davenport, Aaron L
5.3	Environmental Document Preparation - Section 4(f)	Davenport, Aaron L
5.4	Ecological Surveys	Bennett, Neal E
5.5	Wetland Mitigation	Bennett, Neal E
5.6	Waterway Permits	Bennett, Neal E
5.8	Noise Analysis and Abatement Design	Davenport, Aaron L
5.10	Historical/Architectural Investigations	Anderson MS, Britta A
5.11	ESA Screening, Phase I and Phase II, Remedial Design	Scott, Ryan L
6.1	Topographic Survey Data Collection	Neal, Mark W Nick, Randall A

*MSM*  
3-24-16

Work Type Code	Work Type Description	Qualifying Person(s)
8.1	Non-Complex Roadway Design	Wheatley, Christopher W
8.2	Complex Roadway Design	Isaacs, Daniel J Wheatley, Christopher W
9.1	Level 1 Bridge Design	Eichenauer, Michael D Matel, Michael
9.2	Level 2 Bridge Design	Eichenauer, Michael D Matel, Michael
10.1	Traffic Signal Design	Vandenberg, Thomas S
10.2	Traffic Signal System Design	Vandenberg, Thomas S
10.3	Complex Roadway Sign Design	Isaacs, Daniel J
10.4	Lighting Design	Isaacs, Daniel J
11.1	Right of Way Plan Development	Herendeen, Douglas K McCort, Jason N
12.1	Project Management for Acquisition Services	Deahl, James A
12.2	Title Research	Herendeen, Douglas K
12.3	Value Analysis	Deahl, James A
12.4	Appraisal	Shockley, Steven M
12.5	Appraisal Review	Shockley, Steven M
12.6	Negotiation	Francis, Ronald L
12.7	Closing	Francis, Ronald L
13.1	Construction Inspection	Biesecker, Michael W Books, Jeremy L
14.1	Regular Bridge Inspection	Olson, Jonathan D
14.2	Complex Bridge Inspection	Olson, Jonathan D

*JFM*  
103-2A-16

<b>Work Type Code</b>	<b>Work Type Description</b>	<b>Qualifying Person(s)</b>
14.4	Small Structure and Miscellaneous Structure Inspections	Olson, Jonathan D Scott, Michael D
14.5	Bridge Load Capacity Rating & Other Bridge Analysis/Testing	Olson, Jonathan D
15.1	Bicycle/Pedestrian Trail Planning & Design	Hamersly, Alan L
15.1	Landscape Architecture	Griffin, Jason G
15.1	Transportation Enhancement Projects	Hamersly, Alan L

cc: Prequalification File

  
Karen B. Macdonald, P.E. 3-24-16  
Prequalification Engineer

EXHIBIT IV

LPA-CONSULTANT CONTRACT REVIEW CHECKLIST

NEBO ROAD SIDEWALK

YORKTOWN, INDIANA

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# INDIANA DEPARTMENT OF TRANSPORTATION

## LPA – Consultant Contract Review Checklist

Version 02/05/15-LPA

Local Public Agency: Town of Yorktown

Project Name: Nebo Road Sidewalk

Des. No.: 1592998

Consultant Name: Butler Fairman & Seufert, Inc.

1. Review the contract document:
  - a.  Verify that draft contract is consistent with the latest INDOT boilerplate.
  - b.  Verify that the contract description, Des. number and scope of work is within the parameters described in the RFP advertisement and in SPMS.
  - c.  Verify that the maximum compensation amount shown on page one matches the amount shown in Appendix D.
  - d.  Verify that Section 23 of the draft contract includes proper addresses for the LPA and for the consultant.
  - e.  Verify that the signature page contains the names and titles for either the Board of County Commissioners, City Board of Public Works and Safety or the Town Board, as appropriate.
2.  Verify Appendix "C" of construction inspection contracts indicates the Final Construction Records is to be submitted within 45 days of the contractors last day of work.
3.  Verify the Appendix "D" compensation method is appropriate for the scope of work.
  - a. Construction inspection services should be paid for on a negotiated hourly billing rate basis.
  - b. Other types of services may be paid for on a lump sum basis, cost plus fixed fee basis, unit price basis or negotiated billing rate basis.
  - c. Cost plus percent of cost compensation is not allowed on any consultant contracts.
  - d. See the INDOT Professional Services Contract Administration Manual for more information on the compensation methods. The manual is available at: <http://www.in.gov/indot/2733.htm>.
4.  Verify the consultant has provided a copy of the lead consultant's prequalification letter showing their approved overhead rate.
5. Verify the consultant has provided a fee proposal and the fee proposal includes the following:
  - a.  Itemization of task elements with estimated hours by employee classification.
  - b.  Cost calculations show the overhead rate and profit rate has been applied.

6. Analyze the Consultant Fee Proposal.

- a.  Confirm the task elements are relevant to the scope of work.
- b.  Confirm the profit rate does not exceed 15%. INDOT's profit rate guidelines are available at <http://www.in.gov/indot/2730.htm>. LPA's are not required to follow INDOT's practice; however, use of rates above 15% is not acceptable.
- c.  Confirm the proposal does not exceed the Escalation Values for INDOT Consultant Contracts [http://www.in.gov/indot/files/DBWI\\_ProposalsContracts\\_EscalationRates.pdf](http://www.in.gov/indot/files/DBWI_ProposalsContracts_EscalationRates.pdf). INDOT uses the Bureau of Labor and Statistics Employment Cost Index (ECI) to determine appropriate escalation values. INDOT's guidelines are available at: <http://www.in.gov/indot/2730.htm>.
- d.  Confirm the overhead rate used in the fee proposal is consistent with or lower than the rate shown in the consultant's prequalification letter.
- e.  Confirm, to the extent possible, major task element and overall cost totals are not excessive.

7. If the contract is for Construction Inspection, is an Engineer's Assignment letter attached?

- a.  Not Applicable
- b.  Engineer's Assignment is attached.

ERC signature: \_\_\_\_\_ Date: \_\_\_\_\_

EXHIBIT V  
REQUEST FOR PROPOSALS NOTIFICATION  
NEBO ROAD SIDEWALK  
YORKTOWN, INDIANA

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Posting Date: January 11, 2017

## Request for Proposals Notification

**Title:** Town of Yorktown Sidewalk Installation on Nebo Road (Des # 1592998) in Greenfield District

**Response Due Date & Time:** February 8, 2017 at 10:00 AM

This Request for Proposals (RFP) is official notification of needed professional services. This RFP is being issued to solicit a letter of Interest (LOI) and other documents from firms qualified to perform engineering work on federal aid projects. A submittal does not guarantee the firm will be contracted to perform any services but only serves notice the firm desires to be considered.

**Contact for Questions:** Pete Olson, Town Manager  
P.O. Box 518  
Yorktown, Indiana 47396  
765-759-2203  
polson@townofyorktownindiana.org

### Submittal Requirements:

1. Letter of Interest – Three (3) Copies (required content and instructions follow)
2. One (1) signed Affirmative Action Certification and associated required documents for all items if the DBE goal is greater than 0%.

---

**Submit To:** Pete Olson, Town Manager  
P.O. Box 518  
Yorktown, Indiana 47396  
765-759-2203  
polson@townofyorktownindiana.org

**Selection Procedures:**

Consultants will be selected for work further described herein, based on the evaluation of the Letter of Interest (LOI) and other required documents. The Consultant Selection Rating Form used to evaluate and score the submittals is included for your reference. Final selection ranking will be determined by:

- The weighted score totals with the highest score being the top ranked firm
- Rank totals with the lowest rank total being the top ranked firm

**Requirements for Letters of Interest (LOI)**

A. General instructions for preparing and submitting a Letter of Interest (LOI).

1. Provide the information, as stated in Item B below, in the same order listed and signed by an officer of the firm. Signed and scanned documents, or electronically applied signatures are acceptable. Do not send additional forms, resumes, brochures, or other material unless otherwise noted in the item description.
2. LOI's shall be limited to twelve (12) 8 ½" x 11" pages that include Identification, Qualifications, Key Staff, and Project Approach.
3. LOI's must be received no later than the "Response Due Date and Time"; as shown in the RFP header above. Responses received after this deadline will not be considered. Submittals must include all required attachments to be considered for selection.

B. Letter of Interest Content

1. Identification, Qualifications and Key Staff

- a. Provide the firm name, address of the responsible office from which the work will be performed and the name and email address of the contact person authorized to negotiate for the associated work.
- b. List all proposed sub consultants, their DBE status, and the percentage of work to be performed by the prime consultant and each sub consultant. (See Affirmative Action Certification requirements below.) A listing of certified DBE's eligible to be considered for selection as prime consultants or sub-consultants for this RFP can be found at the "Prequalified Consultants" link on the Indiana Department of Transportation (INDOT) Consultants Webpage. (<http://www.in.gov/indot/2732.htm>).

- c. List the Project Manager and other key staff members, including key sub consultant staff, and the percent of time the project manager will be committed for the contract, if selected. Include project engineers for important disciplines and staff members responsible for the work. Address the experience of the key staff members on similar projects and the staff qualifications relative to the required item qualifications.
- d. Describe the capacity of consultant staff and their ability to perform the work in a timely manner relative to present workload.

## 2. Project Approach

- a. Provide a description of your project approach relative to the advertised services. For project specific items confirm the firm has visited the project site. For all items address your firm's technical understanding of the project or services, cost containment practices, innovative ideas and any other relevant information concerning your firm's qualifications for the project.

### **Requirements for Affirmative Action Certification**

A completed Affirmative Action Certification form is required for all items that identify a DBE goal greater than 3%. The consultant must identify the DBE firms with which it intends to subcontract, include the contract participation percentage of each DBE and list what the DBE will be subcontracted to perform on the Affirmative Action Certification Form. **Copies of DBE certifications, as issued by INDOT, for each firm listed are to be included as additional pages after the form.**

If the consultant does not meet the DBE goal, they must provide evidence of a good faith effort to achieve the DBE goal; said evidence must be provided in additional documentation. Please review the DBE program based on set goals and complete the DBE Affirmative Action Certification form as applicable. What constitutes as a good faith effort is explained in detail within the DBE program information referred to above. If no goal is set, no Affirmative Action Certification form is required. Indiana Department of Transportation's (INDOT) DBE Program Information is available at the Indiana Department of Transportation's website.

A listing of certified DBE's eligible to be considered for selection as prime consultants or sub-consultants for this RFP can be found at the "Prequalified Consultants" link on the Indiana Department of Transportation (INDOT) Consultants Webpage. (<http://www.in.gov/indot/2732.htm>).

**DBE subcontracting goals apply to all prime submitting consultants, regardless of the prime's status of DBE.**

## Work item details:

Local Public Agency: Town of Yorktown

Project Location: Nebo Road from SR 32 to River Road

Project Description: Construction of 6 foot sidewalk on one side of Nebo Road from State Road 32 north approximately 2,000 feet to River Road.

INDOT Des #: 1592998

Phases Included: PE, ROW and CE

Estimated Construction Amount: \$300,000

Funding: 80% federal funding-CMAQ

Term of Contract: Until project completion

DBE goal: 3%

### Required Prequalification Categories:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 5.2 Environmental Document Preparation - CE | <input checked="" type="checkbox"/> 12.1 Project Management for Aquisition Services |
| <input checked="" type="checkbox"/> 6.1 Topographical Survey Data Collection    | <input checked="" type="checkbox"/> 12.2 Title Search                               |
| <input checked="" type="checkbox"/> 8.1 Non-Complex Roadway Design              | <input checked="" type="checkbox"/> 12.4 Appraisal                                  |
| <input type="checkbox"/> 9.1 Level 1 Bridge Design                              | <input checked="" type="checkbox"/> 12.5 Appraisal Review                           |
| <input checked="" type="checkbox"/> 11.1 Right of Way Plan Development          | <input checked="" type="checkbox"/> 13.1 Construction Inspection                    |
| <input checked="" type="checkbox"/> Additional Categories Listed Below:         |   |
| 3.1 Non-Complex Traffic Capacity and Operations Analysis                        |   |
| 12.3 Value Analysis   |   |
| 12.6 Negotiations   |   |
| 12.7 Clearing   |   |

LPA Consultant Selection Rating Sheet

Sample:

<b>RFP Selection Rating for</b> _____ <b>Des. No.</b> _____					
(City, County, Town, etc.) - or - (Local Public Agency)					
<b>Consultant Name:</b> _____		<b>Services Description:</b> _____			
<b>Evaluation Criteria to be Rated by Scorers</b>					
Category	Scoring Criteria	Scale	Score	Weight	Weighted Score
Past Performance	<b>Performance evaluation score averages from historical performance data.</b>				
	Quality score for similar work from performance database			6	
	Schedule score from performance database			3	
	Responsiveness score from performance database			1	
Capacity of Team to do Work	<b>Evaluation of the team's personnel and equipment to perform the project on time.</b>			20	
	Availability of more than adequate capacity that results in added value	1			
	Adequate capacity to meet the schedule	0			
	Insufficient available capacity to meet the schedule	-1			
Team's Demonstrated Qualifications	<b>Technical expertise: Unique Resources that yield a relevant added value or efficiency to the deliverable.</b>			15	
	Demonstrated outstanding expertise and resources identified for required services for value added benefit	2			
	Demonstrated high level of expertise and resources identified for required services for value added benefit	1			
	Expertise and resources at appropriate level	0			
	Insufficient expertise and/or resources	-3			
Project Manager	<b>Predicted ability to manage the project, based on: experience in size, complexity, type, subs, documentation skills.</b>			20	
	Demonstrated outstanding experience in similar type and complexity	2			
	Demonstrated high level of experience in similar type and complexity	1			
	Experience in similar type and complexity shown in resume	0			
	Experience in different type or lower complexity	-1			
	Insufficient experience	-3			
Approach to Project	<b>Project Understanding and Innovation that provides cost and/or time savings.</b>			15	
	High level of understanding and viable innovative ideas proposed	2			
	High level of understanding of the project	1			
	Basic understanding of the project	0			
	Lack of project understanding	-3			
Location	<b>Location of assigned staff office relative to project.</b>			5	
	Within 50 mi.	1			
	51 to 150 mi.	0			
	151 to 500 mi.	-1			
	Greater than 500 mi.	-2			
				<b>Weighted Sub-Total:</b>	
It is the responsibility of scorers to make every effort to identify the firm most capable of producing the highest quality deliverables in a timely and cost effective manner without regard to personal preference.					
I certify that I do not have any conflicts of interest associated with this consultant as defined in 49CFR18.36					
I have thoroughly reviewed the letter of interest for this consultant and certify that the above scores represent my best judgment of this firm's abilities.					
Signature: _____					
Print Name: _____					
Title: _____					
Date: _____					
(Form Rev. 3-30-10)					

Project \_\_\_\_\_

**AFFIRMATIVE ACTION CERTIFICATION FOR DBE**

I hereby certify that my company intends to affirmatively seek out and consider Disadvantaged Business Enterprises (DBEs) certified in the State of Indiana to participate as part of this proposal. I acknowledge that this certification is to be made an integral part of this proposal. I understand and agree that the submission of a blank certification may cause the proposal to be rejected. I certify that I have consulted the following DBE website to confirm that the firms listed below are currently certified DBEs:  
[https://financial.gmis.in.gov/psc/guest/EMPLOYEE/ERP/c/SOI\\_APPS\\_MWBE.SOI\\_DBE\\_CERT.GBL?&](https://financial.gmis.in.gov/psc/guest/EMPLOYEE/ERP/c/SOI_APPS_MWBE.SOI_DBE_CERT.GBL?&)  
 I certify that I have contacted the certified DBEs listed below, and if my company becomes the CONSULTANT, these DBEs have tentatively agreed to perform the services as indicated. I understand that neither my company nor I will be penalized for DBE utilization that exceeds the goal. After contract award, any change to the firms listed in this Affirmative Action Certification to be applied toward the DBE goal must have prior approval by INDOT's Economic Opportunity Division.

**SUBCONSULTANTS**

**DBE SUBCONSULTANTS TO BE APPLIED TOWARD GOAL**

Certified DBE Name	Service Planned	Estimated percentage to be paid to DBE*

**DBE SUBCONSULTANTS TO BE USED BEYOND GOAL**

Certified DBE Name	Service Planned	Estimated percentage to be paid to DBE*

Estimated Total Percentage Credited toward DBE Goal: \_\_\_\_\_

Estimated Percentage of Voluntary DBE Work Anticipated over DBE Goal: \_\_\_\_\_

Name of Company: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

\*It is understood that these individual firm percentages and dollar amounts are estimates only and that amounts paid may be greater or less as a result of negotiation of the contract scope of work. My firm will use good faith efforts to meet the overall DBE goal through the use of these or other certified and approved DBE firms.