



BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEN
Citizens Square Suite 410 · 200 East Berry Street · Fort Wayne, IN 46802
Phone: 260.449.7555 FAX: 260.449.7568

LINDA K. BLOOM THERESE M. BROWN NELSON PETERS

AGENDA

Commissioners' Legislative Session
10:00 AM Friday, July 21, 2017
Council Chambers Courtroom – Citizens Square

1. Consider approval of the minutes of July 14, 2017.
2. Consider approval of Construction Inspection Services between the Board of Commissioners and Butler, Fairman, Seufert, inc. for Washington Center Rd Bridge # 95 over Spy Run Creek, Project # 0100113. In the amount of \$260,000.00.
3. Consider approval of Supplemental Agreement # 1 for Right of Way Acquisition between the Board of Commissioners and Butler, Fairman, Seufert, Inc. for Edsall Avenue Bridge # 551 over Norfolk Southern Railroad, Project # 0100416. In the amount of \$24,200.00.
4. Consider approval of award of RFP #05-17 Food and Beverage Sales at Rousseau Centre Cafeteria to Revitalize Health Bar LLC.
5. Consider approval of claims submitted for payment.
6. Other Business:

Plat for Approval – Sycamore Lakes, Sec. 5

Consider Acceptance of Warranty Deed between the Commissioners and INDOT for Conveyance of Land at the Northwest Corner of Clinton and Superior.
7. Approval to waive the 2nd Reading on any matter approved today and for which it may be deemed necessary for the Legislative Session of July 21, 2017.
8. Comments from the Public
9. Motion to Adjourn.

Allen County does not discriminate because of disability in the admission to, or treatment or employment in, its programs or activities. The Human Resources Director has been designated to coordinate compliance with nondiscrimination requirements contained in Section 35.107 of the Department of Justice regulations. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided therein, and Allen County's ADA policy is available from the ADA Coordinator. Suggestions on how the County can better meet the needs of persons with disabilities may be submitted to the ADA coordinator at: Human Resources Department, 200 East Berry Street, Suite 380, Fort Wayne, IN 46802, or by phone at (260) 449-7217.



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NELSON PETERS LINDA K. BLOOM THERESE BROWN

MINUTES

Commissioners' Legislative Session
10:00 a.m., Friday, July 14, 2017
Council Chambers Courtroom – Citizens Square

Commissioners Present: Therese Brown, Linda Bloom and Nelson Peters

Others Present:	Chris Cloud	Commissioners Office
	Mike Green	Commissioners Office
	Jenni Overman	Commissioners Office
	Andrew Applegate	Commissioners Office
	Bill Fishering	County Attorney
	Jeff Stevens	ACCC
	Scott Harrold	DPS
	Bill Hartman	Highway Director
	Kevin Leininger	News Sentinel

Commissioner Brown called the meeting to order at 10:03 AM. Commissioner Brown led the meeting with the Pledge of Allegiance and a moment of silence.

- 1. Consider approval of the minutes of July 7, 2017.** Commissioner Peters made a motion to approve the minutes of July 7, 2017. Commissioner Bloom seconded the motion. Motion carried 3-0.
- 2. Consider approval of Agreement between the Board of Commissioners and BI Incorporated for extended warranty and support services agreement on behalf of Allen County Community Corrections.** Jeff Stevens, Sr. Finance Manager, of ACCC presented this item. This is a renewal for their electronic monitoring equipment. The rates remain the same. This contract covers the computer where all the data is stored as well as the GPS equipment used for home detention. All the older technology equipment has been removed. Some has been saved for emergency type things but it is not covered under maintenance. Commissioner Peters made a motion to approve the extended warranty and support services agreement on behalf of Allen County Community Corrections. Commissioner Bloom seconded the motion. Motion carried 3-0.
- 3. Consider approval of Consent Resolution for BF Goodrich Tire Manufacturing.** Scott Harrold, DPS, stated this is something that is required when someone gets a tax abatement in the TIF district. It used to go to the Redevelopment Commission but state law changed and said the Commissioners could do it. Basically it is just to make sure that the abatement is not giving away money that the Redevelopment Commission needs. BF Goodrich is investing \$100 million dollars in new equipment. The only obligation out there is TIF lease with BF Goodrich related to a substation they installed years ago. That was extended very recently another 5 years. It never really paid out the full amount of money and so we are still below what the original commitment was.
- 4. Consider approval of Consent Resolution for CRD Management and Saratoga Potato Chips.** Scott Harrold, DPS, stated this is something that is required when someone gets a tax abatement in the TIF district. He said this is out in Lincoln Industrial Park. They received an abatement in June 2017 for a \$2 million expansion of a building and equipment. The only obligation out there is related to a commitment we have with Brunswick. It is generating more than enough money to cover that commitment.

5. **Consider approval of Consent Resolution for Lippert Components.** Scott Harrold, DPS, stated this is something that is required when someone gets a tax abatement in the TIF district. He stated Lippert and Superior (below item) are kind of unique in that they are right next to the Cassad Depot by Bryan and Edgerton which was annexed by New Haven recently. New Haven gave us continuing jurisdiction for the TIF district so we can keep those going. Lippert has proposed building a \$15million building and adding about \$4million in equipment to the property right next to Superior which the Redevelopment Commission just sold that property last year.
6. **Consider approval of Consent Resolution for Superior Aluminum Alloys.** Scott Harrold, DPS, stated this is something that is required when someone gets a tax abatement in the TIF district. Superior is investing \$1million in expansion for finished good storage which opens up some room in the currently building for additional equipment so they will be expanding production there. The only use of that TIF is for pay for the engineering for the Ryan Bruick project and once that project is under construction, some future money can be used to help pay for that. There is a little money accumulating but not enough to pay for the whole project but over time it could help out. Scott stated that items #3, 4, 5 and 6 have already been approved by Council.

Commissioner Peters made a motion to approve Consent Resolutions for BF Goodrich Tire Manufacturing, CRD Management and Saratoga Potato Chips, lippert Components and Superior Aluminum Alloys. Commissioner Linda Bloom seconded the motion. Motion carried 3-0.

7. **Consider approval of Bid Award for Bid Ref # 07-17 for HMA Resurface Package #1 for Monroeville Rd from Marion Center Rd to Minnich Rd, Project # 0701017, Monroeville Rd Culvert 5399 over Snyder Sarfars Drain (Emanuel Rd to Wayne Trace), Project # 1800916, and Wayne Trace from Monroeville Rd to Adams Center Rd, Project # 0701317, to the lowest bidder, Brooks Construction Co. Inc., in the amount of \$506,732.00.** Bill Hartman, Highway Director, stated we had 3 bidders on this project. The engineers estimate was \$620,000. Brooks was \$113,000 under estimate. This is resurfacing for about 5.5 miles and then replacement of a 6 foot diameter culvert within the project limits. Commissioner Bloom made a motion to approve Bid Award for Bid Ref # 07-17 for HMA Resurface Package #1 for Monroeville Rd from Marion Center Rd to Minnich Rd, Project # 0701017, Monroeville Rd Culvert 5399 over Snyder Sarfars Drain (Emanuel Rd to Wayne Trace), Project # 1800916, and Wayne Trace from Monroeville Rd to Adams Center Rd, Project # 0701317, to the lowest bidder, Brooks Construction Co. Inc., in the amount of \$506,732.00. Commissioner Peters seconded the motion. Motion carried 3-0.
8. **Consider approval of Bid Ref # 08-17 for Cedar Lakes Subdivision for 60/40 resurface, Cedar Oaks Lane - Project # 0700417, Banyan Court, Project # 0700517, and Secluded Place, Project # 0700617, to the lowest bidder, API Construction Corp., in the amount of \$83,389.00.** Bill Hartman, Highway Director, stated we had 3 bidders on this project and API was \$14,000 under the engineers estimate. Commissioner Peters made a motion to approve Bid Ref # 08-17 for Cedar Lakes Subdivision for 60/40 resurface, Cedar Oaks Lane - Project # 0700417, Banyan Court, Project # 0700517, and Secluded Place, Project # 0700617, to the lowest bidder, API Construction Corp., in the amount of \$83,389.00. Commissioner Bloom seconded the motion. Motion carried 3-0.
9. **Consider approval for Bid Award for Bid Ref # 09-17 for Coldwater Rd Widening from ±3300' North of Union Chapel to 500' North of Pion Rd, Project # 1200316, to the lowest bidder, E & B Paving, Inc., in the amount of \$546,414.49.** Bill Hartman, Highway Director, stated there were 3 bidders on this project. E & B was \$34,000 under engineers estimate. Commissioner Bloom made a motion to approve Bid Award for Bid Ref # 09-17 for Coldwater Rd Widening from ±3300' North of Union Chapel to 500' North of Pion Rd, Project # 1200316, to the lowest bidder, E & B Paving, Inc., in the amount of \$546,414.49. Commissioner Peters seconded the motion. Motion carried 3-0.
10. **Consider approval of Bid Ref # 10-17 for West Hamilton Place Subdivision for 60/40 resurface, West Hamilton Place, Project # 0700117, Aboit Cove, Project # 0700217, and Beeson Cove, Project # 0700317, to the lowest bidder, Brooks Construction Co, Inc., in the amount of \$43,464.00.** Bill Hartman, Highway Director, stated there were 2 bidders on this project and Brooks Construction was

\$4,400 under the engineers estimate. Commissioner Peters made a motion to approve Bid Ref# 10-17. Commissioner Bloom seconded the motion. Motion carried 3-0.

11. **Consider approval of Bid Ref # 06-17 for Rock Salt for the 2017-2018 Winter Season to the lowest bidder, Cargill Salt, in the amount of \$54.00 per ton for pick up and \$56.78 per ton for delivery.** . Bill Hartman, Highway Director, stated this is \$11.79 a ton under the previous bid and also 27 cents a ton under the City's recently approved bid. He stated the reason we don't pick this up is that it is in Toledo, Ohio. Commissioner Bloom made a motion to approve Bid Ref#06-17 for Rock Salt. Commissioner Peters seconded the motion. Motion carried 3-0.
12. **Consider approval of interlocal cooperation agreement between the Board of Commissioners and City of Fort Wayne for the exchange of services related to river cleanup.** Chris Cloud stated that the County was approached by the City to share costs of a river barge to help with cleanout of debris under bridges. Bill Hartman, Highway Director, stated he thinks their request is for \$50,000 towards the barge itself and the cleanup that they do. Primarily the bridges on the St. Mary's River starting from Hale Avenue bridge, Taylor, Main Street, Jefferson, Harrison, Van Buren, Tennessee, and Parnell. State Street, they are going to do as much as they can to clean up with this new piece of equipment. We are going to look into it and see if we do indeed get \$50,000 worth of value. Regularly we spend anywhere from \$75,000 to \$150,000 a year in this area. Commissioner Bloom made a motion to approve the interlocal cooperation agreement between the Board of Commissioners and City of Fort Wayne for the exchange of services related to river cleanup. Commissioner Peters seconded the motion. Motion carried 3-0.
13. **Consider approval of addition to the Allen County Code Title 12 (Financial) – Article 221 (Allen County Abandoned Vehicle Fund).** Chris Cloud, Executive Asst., stated that occasionally the AC Building Department gets complaints about abandoned vehicles at properties. There is a State outlined process for dealing with said abandoned vehicles. This is step 1 of the process. Step 2 is that County Council approves an ordinance or resolution which they will be hearing this Friday. After that, if we have to tow a vehicle, store a vehicle and there are fees paid by the owner to recover it, it will go into this fund. If we sell a vehicle that has not been claimed, the fees will go into this fund for eventual covering of costs of towing and storage. The goal is that this fund is solely related to furthering the abandoned vehicles program. Commissioner Bloom made a motion to approve the addition to the Allen County Code Title 12 (Financial) – Article 221 (Allen County Abandoned Vehicle Fund). Commissioner Peters seconded the motion. Motion carried 3-0.
14. **Consider approval of grant agreement between the Board of Commissioners and Indiana Family and Social Services Administration for funding for Adult Protective Services on behalf of the Prosecutor's Office.** Chris Cloud, Executive Assistant, stated this is the annual Adult Protective Services Grant. The Prosecutor's Office does this on behalf of a number of local counties. The grant is for \$478,000 for the next year. Commissioner Bloom made a motion to approve the grant agreement between the Board of Commissioners and Indiana Family and Social Services Administration for funding for Adult Protective Services on behalf of the Prosecutor's Office. Commissioner Peters seconded the motion. Motion carried 3-0.
15. **Consider approval of resolution for the reporting of hours worked by members of the Board of Commissioners of the County of Allen.** Commissioner Bloom made a motion to approve the resolution for the reporting of hours worked by members of the Board of Commissioners of the County of Allen. Commissioner Peters seconded the motion. Motion carried 3-0.
16. **Consider approval of plat: Whisper Rock Section IV and Morgan Creek Section VI** Commissioner Peters made a motion to approve Plats. Commissioner Bloom seconded the motion. Motion carried 3-0.
17. **Consider approval of claims submitted for payment.** Commissioner Bloom made a motion to approve the claims as submitted in the amount of \$396,177.36. Commissioner Peters seconded the motion. Motion carried 3-0.
18. **Other Business:**

19. Approval to waive the 2nd Reading on any matter approved today and for which it may be deemed necessary for the Legislative Session of July 14, 2017. Commissioner Peters made a motion to approve the waiving of the 2nd Reading on any matter approved today and for which it may be deemed necessary for the Legislative Session of July 14, 2017. Commissioner Bloom seconded the motion. Motion carried 3-0.

20. Comments from the Public.

21. Motion to Adjourn. Meeting adjourned 10:22 a.m.

Allen County does not discriminate because of disability in the admission to, or treatment or employment in, its programs or activities. The Human Resources Director has been designated to coordinate compliance with nondiscrimination requirements contained in Section 35.107 of the Department of Justice regulations. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided therein, and Allen County's ADA policy is available from the ADA Coordinator. Suggestions on how the County can better meet the needs of persons with disabilities may be submitted to the ADA coordinator at: Human Resources Department, 200 East Berry Street, Suite 380, Fort Wayne, IN 46802, or by phone at (260) 449-7217.

#2

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 2017 ("Effective Date") by and between THE COUNTY OF ALLEN, INDIANA acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and BUTLER, FAIRMAN and SEUFERT, INC. ("the CONSULTANT"), a corporation organized under the laws of the State of Indiana.

Des. No.: 1382497

Project Description: Construction Inspection services for the construction of Bridge No. 95 carrying Washington Center Road over Spy Run Creek

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 November 2019. 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 **\$260,000.00.**

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;

