

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 2020 ("Effective Date") by and between City of Fishers, Indiana, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and GAI Consultants, Inc. ("the CONSULTANT"), a corporation organized under the laws of the State of Pennsylvania.

Des. No.: 1801420

Project Description: Roundabout at 106th Street and Hoosier Road, Fishers, 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 December 2025. 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 **\$293,185.73.**

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, reasonable attorney's fees, and other expenses to the extent 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 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 except Professional liability and workers comp. 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:

Jason Taylor, PE
City Engineer
City of Fishers
1 Municipal Drive
Fishers, Indiana 46038

Notices to the CONSULTANT shall be sent to:

Scott F. Hornsby, PE
GAI Consultants, Inc.
9998 Crosspoint Boulevard, Suite 110
Indianapolis, Indiana 46256

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

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

28. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the CONSULTANT:
- i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 - ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
 - iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.
29. **Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
30. **Status of Claims.** The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:
31. **Sub-consultant Acknowledgement.** The CONSULTANT agrees and 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. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Contract, the Party attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

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

LD ok OK to sign - HAT

CONSULTANT

Signature

Scott F. Hornsby, Vice President

LOCAL PUBLIC AGENCY

Signature

Scott Fadness, Mayor of Fishers

Signature

Jeff Lantz, Member

Signature

Jason Meyer, Member

Attest:

Signature

(Print or type name and title)

APPENDIX "A"

SERVICES TO BE FURNISHED BY CONSULTANT:

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

The CONSULTANT shall be responsible for performing the following activities:

Provide survey, roadway, traffic and drainage design, environmental services, land acquisition, permitting, utility coordination, and construction plans and contract documents for the improvement of the existing 106th and Hoosier Road two way stop controlled intersection to a roundabout. Signing, lighting, and pavement markings as specifically appropriate for roundabouts will be provided. The roundabout will include a delineated truck apron at the inside pavement edge circle. Curb and gutter will be constructed with storm sewer or curb turnouts to convey runoff the appropriate locations. Standard landscaping and no architectural features are planned in the roundabout center.

It is understood that the Project proposed by the LPA is to be constructed utilizing Federal funds made available by the Federal Highway Administration (FHWA). The tasks listed above will meet the requirements of the LPA, the Indiana Dept. of Transportation (INDOT), and the FHWA. The CONSULTANT shall work with the INDOT and FHWA representatives in the review and approval of the project requirements to insure LPA's ability to qualify said Project for Federal funding.

Specific items included in Basic Services are as follows:

1.0 Pre-Contract Coordination with Hamilton County Surveyors Office (HCSO)

- Create exhibits for Discussion with HCSO.
- Meet with HCSO to determine drainage alternatives for the proposed project.
- Prepare Meeting Minutes of meeting with HCSO.
- Coordinate internally the proposed scope of the project following the preferred alternative for the design of the project.

1.1 Topographic Survey

- All survey work will be in accordance with Indiana Code IC 25-21.5, Indiana Administrative Code 865 IAC 1-12, and typical survey procedures.
- Prior to commencing field survey activities, prepare and mail notification letters to the property owners adjacent to the project corridor.
- Prior to the commencement of the survey work, submit a request to Indiana Underground Plant Protection Services (811) for underground utility marking. Survey personnel shall locate existing underground utility evidence as marked on the ground by others.
- Survey personnel shall locate visible utility evidence, based on markings placed by 811 personnel, along with other visible above ground and overhead utility features.
- Place semi-permanent site horizontal control points within the project limits at convenient intervals and witness them to existing features for use in future recovery.
- Perform a level circuit along the project corridor, setting temporary benchmarks (TBMs).
- The vertical control network datum will be based on the North American Vertical Datum of 1988 (NAVD88) as observed using the nearby Hamilton County Benchmark and verify with INCORS network and/or other existing nearby benchmarks.

- The basis for the horizontal control network shall be the Indiana Geospatial Coordinate System (InGCS) for Hamilton County, as observed using global navigational satellite surveying equipment operating within the Indiana Continuously Operating Reference System (INCORS).
- Collect location, invert elevation, and size and material of existing culverts and headwalls along the project corridor.
- Collect surface elevations, ditch centerlines, tops and bottoms of slopes and relative changes in grade within the project limits to depict the existing site features and contours in a CAD drawing and digital terrain model.
- Perform site reconnaissance to recover and locate existing survey monuments and other physical evidence to help define the apparent right-of-way lines and apparent property lines near the project limits.
- Perform research to obtain a copy of the last deed of record for all properties adjacent to the design corridor.
- Limits of the topographic survey are as follows:
 - + 106th Street – Beginning approximately 800 feet west of the intersection of 106th Street with Hoosier Road and extending 1,900 feet easterly to a point approximately 100 feet east of the existing curbs west of the roundabout at Geist Road. The corridor width will be approximately 120 feet wide.
 - + Hoosier Road – Beginning at the intersection of 106th Street with Hoosier Road and extending 800 feet northerly. The corridor width will be approximately 100 feet wide.
 - + Windermere Boulevard – Beginning at the intersection of Governors Lane with Windermere Blvd and extending 450 feet northerly to 106th Street. The corridor width will be approximately 90 feet wide.
- Location Control Route Survey:
 - + Recover and collect available Section Corners and Quarter Corners for Section 4, Township 17 North, Range 5 East.
 - + Recover and collect available apparent property and other controlling corners along the project corridor.
 - + Prepare a Location Control Route Survey plat and associated surveyors report in accordance with Indiana Administrative Code 865 IAC 1-12 to be used as the basis of acquiring right-of-way parcels.
 - + Upon completion of the route survey and associated survey plat, CONSULTANT personnel will record the survey at the Hamilton County Recorder's Office.

1.2 Environmental

- It is anticipated that this project will require the preparation of a Level 1 Categorical Exclusion (CE) document due to the anticipated amount of new permanent right-of-way acquired. The document prepared will address anticipated environmental impacts for the proposed roundabout project in Hamilton County, Indiana. All services will be completed in accordance with the *INDOT Procedural Manual for Preparing Environmental Studies (2008 Edition)*, the *Indiana Categorical Exclusion Manual (Updated May 2017)*, and all other appropriate federal, state, and local laws relating to the environment.
- Activities for the CE will be coordinated with appropriate agencies including the LPA, Indiana Department of Transportation (INDOT), Indiana Department of Environmental Management (IDEM), U.S. Army Corps of Engineers (USACE), Indiana Department of Natural Resources (IDNR), the Natural Resource Conservation Service, Federal Highway Administration (FHWA), and the U.S. Fish and Wildlife Service.

- A Red Flag Survey will be completed that includes a review of the IndianaMap developed by the Indiana Geological Survey in conjunction with INDOT. The investigation will be utilized to identify areas of concern (Red Flags) within the project area.
- A field investigation of the project site will be conducted to identify the locations of environmental resources. All identified resources will be located on aerial mapping. Notice of Survey letters will be prepared and sent to the identified property owners in advance of the field inspection.
- An early coordination letter will be prepared and sent to the appropriate local, state, and federal resource agencies requesting comments on the proposed project. The letter will include a description of the existing project area, project location, and proposed project. A graphic of the project area and any known potential environmental issues will also be included with the letter.
- A routine wetland delineation and “waters of the U.S.” investigation will be completed to determine the presence of jurisdictional wetlands within the project area. A copy of the wetland delineation and “waters of the U.S.” report will be furnished to the USACE, Louisville District for verification with any required permitting documents.
- IPaC coordination will occur with INDOT for determination of the potential presence of the Indiana bat and the Northern Long Eared bat within 0.5 mile of the project area. An effect determination will be developed and appropriate AMMs summarized in a Consistency Letter and/or Verification Letter. Additional coordination beyond INDOT that may be necessary due to the potential presence of these species may require a supplemental fee.
- An existing pedestrian trail along 106th Street and a proposed trail along Hoosier Road, within project limits, have been identified and will likely be considered Section 4(f) resources. Impacts to these trail facilities are anticipated to be temporary during construction. Coordination with the owner of the trail(s) will occur documenting the temporary impacts and approval for the proposed construction activities. Should impacts to these publicly owned resources require a formal Section 4(f) evaluation, a supplemental fee may be required.
- The Minor Projects Programmatic Agreement (PA) is not applicable for roundabout projects. Section 106 Consultation, as required by the National Historic Preservation Act, will be completed prior to submittal of the environmental document for approval. As required by INDOT and FHWA, all tasks will be completed by individuals satisfying the *Secretary of Interior Professional Qualification Standards*. Section 106 compliance for the historic bridge will be fulfilled through adherence to the Historic Bridge PA Project Development Process (April 1, 2010). To fulfill Section 106 requirements for other properties the following will be completed:
 - + A field survey will be conducted and a Historic Property Report (HPR) will be prepared documenting the characteristics and eligibility of any historic properties found within an established Area of Potential Effect (APE). The HPR will be sent to the INDOT Cultural Resource Office for review and approval prior to submittal to the Indiana State Historic Preservation Office and invited consulting parties for review and comment. The HPR will be written to the standards of the “Indiana Cultural Resources Manual.”
 - + An Archaeological Records Review will be completed for the proposed project area to identify resources that may have been previously documented.
 - + A Phase Ia archaeological reconnaissance survey will be completed within the limits of disturbance of the preferred alternative to ensure no subsurface features of historic or pre-historic significance will be impacted by the proposed project.
 - + Documentation required for the issuance and concurrence of the appropriate effect finding will be completed. It is assumed that at finding of “No Historic Properties Affected” will be appropriate. Correspondence with invited consulting parties and the preparation of public notices offering the opportunity for public comment will be completed prior to the approval of the environmental document.

- + Should a resource be identified causing an “Adverse Effect” finding to be appropriate, a change in scope will be necessary and a supplemental fee may be required.
- The CE Level 1 document will be prepared in accordance with FHWA regulations and the aforementioned INDOT guidance documents. The draft document will be submitted to INDOT for review and comment. Comments received will be evaluated and appropriate revisions will be completed. The document will then be submitted for final approval.
- Should new permanent right-of-way required for the project exceed 0.5 acre, the document will then gain approval for release to public involvement and a legal notice will be published offering the public the opportunity to request a public hearing for the project. Should no requests be received, the document will be updated and submitted for final approval. Should the public request a public hearing or should a public hearing be offered, a supplemental fee to schedule, prepare and conduct the public hearing will be required. This scope and fee do not include public involvement for the project.

1.3 Geotechnical Engineering

Geotechnical investigation, engineering, and reporting, including field, and lab work will be performed by Earth Exploration in accordance with INDOT requirements for federal aid LPA projects.

1.4 Utility Coordination

Coordination with all utilities to make them aware of the bridge replacement project and to eliminate all conflicts to allow the contractor to perform work functions necessary to build the project. The following activities will be performed:

- Determine utilities that are located within the geographical limits of the Project. Efforts to make this determination include review of INDOT-maintained utility list, investigate field conditions, review information from 811, and contact the LPA.
- Distribute an Initial Notice of Proposed Improvement Project letter and map of the project area to all utilities known to exist in the project area, then gather responses and adjust utility list as needed.
- Distribute a Verification of Existing Facilities letter and Preliminary Plans to all utilities known to exist in the project area, then gather responses and forward on any needed adjustments to the designer.
- Distribute a Conflict Analysis letter and Preliminary Field Check Plans to all utilities known to have facilities within the project limits. A Utility Coordination Meeting will be held with the Preliminary Field Check meeting, which will be performed under the Road Design section of this agreement.
- Distribute Work Plan Request letters with Preliminary Final plans to all utilities known to have facilities with the project limits.
- Coordinate resolution of utility work plan conflicts, and hold at least one Utility Coordination Meeting to resolve conflicts, if necessary.
- Review utility work plans and relocation plans, and request revisions as needed.
- Prepare Notice of Approved Work Plan and Notice to Proceed for Proposed Improvement letters and submit to LPA for approval. Distribute approved work plans and relocation plans to utilities.
- Review reimbursable utility relocation cost estimates, if applicable, and provide recommendation to Owner regarding execution of reimbursable agreement between LPA and utility(is).

Subsurface Utility Engineering services are not included in this contract and will not be performed.

1.5 Abstracting, Right of Way Engineering (ROW), and Appraisal Problem Analysis

The ROW activities of this section are to verify property ownership, prepare legal descriptions, and ROW plats for temporary and permanent ROW acquisition for the Project. Work will be performed in

accordance with the *INDOT Right-of-Way Acquisition and Procedure Manual for Local Public Agencies*. Two parcels are anticipated to be impacted by this project. Services included:

- Abstracting - Provide Title and Encumbrance (T&E) reports for each parcel anticipated to be involved in the right of way acquisition, including a search for all mortgages, easements, liens, contract sales, judgments, other encumbrances, and the current legal owner.
- Right of Way Engineering - Provide a metes and bounds legal description for each ROW parcel acquisition required for the Project.
- Appraisal Problem Analysis – Parcel takes will be evaluated to determine the appropriate appraisal report type.

All additional right of way services such as appraising, appraisal review, and buying (negotiating) services are not included and will require an amendment to the contract later.

1.6 Permits

Coordinate, apply for, and track the status of the following applicable project permits until received. Permits anticipated are based on preliminary desktop research and may change based on field investigations. A Rule 5 Permit will be obtained as more than one acre of ground will be disturbed. The Hamilton County Soil and Water Conservation District will be contacted, and coordination of the proposed erosion control plan and Stormwater Pollution Prevention Plan will occur prior to the publication of the Notice of Intent and application to IDEM. No additional permits are anticipated to be necessary at this time.

1.7 Traffic Analysis

Traffic data collection will be provided to acquire the information needed to effectively design and analyze the operation characteristics of the roundabout. Traffic data will be input to simulation software to analyze various roundabout configurations. Several iterations of geometrics design then analysis will be undertaken to result in the most desirable solution.

1.8 Design and Construction Documents

1.8.1 Design and plan development services will include the following submittals:

Stage 1 Design Plans (approximately 30% design)

- Establish the preliminary geometrics for the roundabout and all approaches, splitter islands, truck aprons, and incidental areas.
- Document truck movements and fast-path calculations through the intersection to verify geometrics.
- Document roundabout stopping sight distance and intersection sight distance.
- Document all roundabout geometric parameters according to the INDOT roundabout design checklist.
- Establish preliminary horizontal and vertical alignments for roundabout curb lines and street approaches.
- Develop preliminary typical cross sections for 106th Street through the roundabout and for each street approach.
- Develop preliminary plans, including plan and profiles for the preliminary alignments and cross sections.
- Prepare preliminary quantities and opinion of probable cost.
- Prepare an abbreviated engineer's assessment per *Indiana Design Manual* (IDM) chapter 14-2.01(03).
- Prepare Level One Design Checklists and design computations necessary to document the design criteria used for the roundabout and street approaches.

- Prepare and submit all documents required for the Stage 1 Review Submission per IDM 14-2.01(03) to INDOT and the LPA for review and approval.
- Send plans to the LPA, INDOT Greenfield District personnel, and utilities. Conduct a Preliminary Field Check meeting to discuss the project design, schedule, impacts, and ROW.
- Draft meeting minutes following the preliminary field check meeting.

Stage 2 / Public Hearing Opportunity (approximately 60% design)

- Incorporate comments from Stage 1 / PFC review and revise plans as necessary.
- Finalize plan and profile sheets and develop geometric detail sheets.
- Design proposed ROW and develop a Plat detail sheet for ROW acquisition.
- Develop preliminary maintenance of traffic (MOT) plans including detour signing and general layout and MOT typical cross sections.

Stage 3 Design Plans (approximately 95% design)

- Draft written responses to all comments from previous reviews and preliminary field check comments.
- Document allowable landscaping areas for sight distance.
- Develop erosion control plan sheets and tables.
- Prepare proposed signing and pavement marking details and tables.
- Prepare spot elevation and grading details.
- Finalize drainage design and incorporate into plan and profile sheets and cross sections.
- Develop road summary tables including structure data table, quantities and approach table, and pipe material selection table.
- Draft recurring and unique special provisions for inclusion into the bidding documents.
- Finalize quantities and opinion of probable cost.
- Prepare and submit all documents required for the Stage 3 Review Submission per IDM 14-2.01(12).

Final Tracings

- Incorporate comments from Stage 3 review and revise plans as necessary.
- Finalize resolutions to the project commitments within INDOT's Commitment Database.
- Coordinate with the INDOT Greenfield District construction engineer to finalize the Contract Preparation Document.
- Upload construction cost estimate into INDOT's Cost Estimate Software (CES) database.
- Prepare and submit all documents required for Final Tracings Submission per IDM 14-1.02(04).

1.8.2 Lighting Design and Plans

Lighting will be designed using LED lights and decorative poles and luminaires.

- Coordinate with LPA to select preferred light pole, mast arm, and luminaires.
- Perform illumination design for three different light manufacturers.
- Coordinate with area power utility for service point location.
- Prepare voltage drop calculations and plot luminaire table.
- Prepare lighting plan sheets and tables to be incorporated into the design plans.

1.8.3 Drainage Design

Two potential stormwater outlets have been identified. The first outlet requires the LPA to petition the Hamilton County Surveyors Office (HCSO) to reconstruct the existing Beaver and Brooks Drain as a storm sewer. The second potential outlet option is to the Windermere Subdivision where some stormwater runoff from the intersection currently discharges. Analyze the existing drainage conditions

and analyze which outlet or combination of outlets yields the most benefit to the project. If the Beaver and Brooks drain is not reconstructed as a storm sewer and discharging flow from the entire project area to Windermere is not possible, an amendment will be needed to develop an alternative discharge location. Specific tasks to be completed are as follows:

- Watersheds will be delineated for the pre- and post-construction conditions. Ten-percent exceedance probability (EP) peak discharges will be computed according to the Hamilton County Stormwater Management Technical Standards Manual (Manual).
- Analyze the Windermere storm water system to determine if there is any available capacity. From available GIS mapping, the storm system appears to currently drain portions of the northeast, southeast, and southwest quadrants of the intersection. Analyze the storm sewer system from these inlets to where they discharge into the pond at the west end of Governors Lane. The analysis does not include evaluating the flows from all the interconnected ponds within the subdivision.
- Determine which outlet or outlet combination provides the most benefit to the project area. Coordinate these discussions with the HCSO and the LPA.
- Storm sewer design will include inlet spacing calculations and modeling using Bentley StormCAD. As specified in the Manual:
 - + Inlets will be spaced to pass the peak 10% EP event with 50% of sag inlets clogged, and the allowable pavement spread will be limited to maintain two clear 10-foot moving lanes of traffic.
 - + Pipe design will include slopes capable of maintaining velocities between 2.5 and 10 feet/second. Minimum pipe size, cover, and separation from any sanitary sewers will be maintained.
- Any increase in runoff rates from the pre-construction condition will be detained on site. Methods of detention design will follow the Manual. In-line detention will be applied where feasible.
- Coordinate with the HCSO regarding connection to the reconstructed Beaver and Brooks system (if completed). Additionally, a drainage report, proposed storm sewer plans, and hydrologic and hydraulic calculations will be submitted to the HCSO as part of the Plan Review and required Outlet Permit.

1.9 Bid and Construction Phase Services

This section includes services required during bidding and during the construction phase of the project. Services include:

- Review plans and bid documents as advertised by INDOT and look for inconsistencies from submitted documents which require correction.
- Respond to bidder questions.
- Issue addenda as appropriate to interpret, clarify, or expand the plans and bid documents that are not directly related to an error or omission from the Consultant.
- Attend Preconstruction Conference with Contractor, INDOT, and LPA.
- Respond to contractor Requests For Information (RFIs) during construction to clarify design intent.
- Review shop drawings

Construction inspection services are not included.

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

The LPA shall furnish the CONSULTANT with the following:

1. Local Public Agency shall designate an employee as Employee in Responsible Charge (ERC) to coordinate activities between Consultant, INDOT and the Local Public Agency.
2. Assistance to the CONSULTANT by placing at his disposal all available information pertinent to the project.
3. Provide access to enter upon public and private lands as required for the CONSULTANT to perform work under this Contract.
4. Criteria for design and details for signs, signals, lighting, highway and structures such as grades, curves, sight distances, clearances, design loading, etc.
5. Standard Specifications and standard drawings applicable to the project.
6. All written views pertinent to the location and environmental studies that are received by INDOT.
7. Utility plans covering utility facilities governing the location of signals and underground conduits throughout the affected areas.
8. Existing Plans for 106th Street and Hoosier Road, LPA to determine if existing system has capacity to take on additional storm water from this project. Approved Environmental document from the 106th Street and Hoosier Road project.
9. Pavement Design and typical pavement section to be used.
10. Aerial Survey information, if available.

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:

Anticipated Notice to Proceed	February 1, 2020
Survey Complete	30 days after NTP (March 1, 2020)
Stage 1 / Preliminary Field Check	210 days after NTP (July 1, 2020)*
Stage 2 / Public Hearing	180 days after PFC (January 1, 2021)*
Environmental Document Certification	90 days after Stage 2 (April 1, 2021)
ROW certification (by LPA)	15 months after Enviro Cert. (July 1, 2022)
Stage 3 Plans	Per INDOT Letting Schedule (July 15, 2022)*
Final Tracings	Per INDOT Letting Schedule (August 29, 2022)
Letting (by INDOT)	December 7, 2022

* CONSULTANT will submit all plan submittals to the LPA one month prior to submitting to INDOT

The CONSULTANT will be prepared to begin the work under this Agreement within five (5) days after a letter of notification to proceed is received from the Local Public Agency.

APPENDIX "D"

Methods of Payment for Services of CONSULTANT:

The CONSULTANT shall perform the services outlined herein for a total Not to Exceed (NTE) Fee of \$293,185.73 per the following breakdown.

Section	Item	Fee Type	Total Amount
1.0	Pre-Contract Coordination with HCSO	Lump Sum	\$ 6,800.00
1.1	Topographic Survey	Lump Sum	\$ 36,600.00
1.2	Environmental Document	Lump Sum	\$ 34,700.00
1.3	Geotechnical Investigation	NTE – Unit Rate	\$ 10,945.73
1.4	Utility Coordination	Lump Sum	\$ 15,900.00
1.5	Abstracting, ROW Engineering, and APAs	NTE – Unit Rate	\$ 6,140.00
1.6	Permits	Lump Sum	\$ 6,400.00
1.7	Traffic Analysis	Lump Sum	\$ 2,900.00
1.8	Design and Construction Documents (including lighting)	Lump Sum	\$167,800.00
1.9	Bid and Construction Phase Services	NTE – Hourly	\$ 5,000.00
	TOTAL NTE		\$293,185.73

For any Additional Services, LPA shall pay CONSULTANT as follows:

For services of CONSULTANT 's principals and employees engaged directly on the Project performed shall be paid an amount equal to CONSULTANT's Billing Rates or an agreed to lump sum amount.

For services of CONSULTANT's Subconsultants work performed or furnished shall be paid the amount billed to CONSULTANT therefore times a factor of 1.1, or an agreed to lump sum amount.

For services performed by CONSULTANT 's principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding CONSULTANT shall be paid at the rate of \$1,250 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration or proceeding). Compensation for CONSULTANT 's Subconsultants for such services will be on the basis provided above for CONSULTANT's Subconsultants.

LPA shall pay CONSULTANT for Reimbursable Expenses for Additional Services based on billing rates such as mileage, per diem, printing, photography, etc. The amount payable to CONSULTANT for Reimbursable Expenses will be the charge actually incurred or the imputed cost allocated by CONSULTANT therefore times a factor of 1.0.

For Section 1.9 the hourly rates shall be calculated using the CONSULTANT's staff labor times a 3.0 multiplier on the hours charged. The Unit Rates in the CONSULTANT's fee proposal letter dated January 15, 2020 shall be used for Sections 1.3 and 1.5.

The portion of the amount billed for CONSULTANT's services which is on account of the Lump Sum will be based upon CONSULTANT's estimate of the proportion of the total services actually completed at the time of billing.

In the event of termination during the work, CONSULTANT will be paid for services performed or furnished in accordance with this Agreement, on the basis of CONSULTANT's Billing Rates for services performed or furnished for the work to date of termination by CONSULTANT's principals and employees engaged directly on the Project.

Method of Payment

1. The CONSULTANT may submit a maximum of one claim voucher per calendar month for work covered under this Contract. The claim vouchers shall be submitted to:

Jason Taylor, PE
City Engineer
City of Fishers
1 Municipal Drive
Fishers, Indiana 46038
2. The claim vouchers shall represent the value to the Local Public Agency (LPA) of the partially completed work as of the date of the claim voucher.
3. If the LPA does not agree with the amount claimed by the CONSULTANT on a claim voucher, the LPA will send the CONSULTANT a letter by regular mail and list the differences between actual and claimed progress. The letter will be sent to the CONSULTANT's address on page 13 of this Contract or the CONSULTANT's last known address.