

PROFESSIONAL SERVICES CONTRACT

Contract #000000000000000000062829

This Contract ("Contract"), entered into by and between the Indiana Utility Regulatory Commission (the "State") and the Indiana State Fair Commission (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor. The Contractor shall provide the services as outlined in EXHIBIT A pursuant to this Contract:

2. Consideration. Total remuneration under this Contract shall not exceed \$215,000 as outlined in EXHIBIT A, hereby attached and incorporated by reference. This contract shall be funded through the Indiana Utility Regulatory Commission's Underground Plant Protection Account Fund.

3. Term. This Contract shall commence on July 01, 2022 and shall remain in effect through September 30, 2022.

4. Access to Records. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors.

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State 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. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

6. Assignment of Antitrust Claims. As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

7. Audits. The Contractor 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 IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.331 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

8. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all

necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

9. Changes in Work. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws.

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

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

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work

activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

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

H. As required by IC § 5-22-3-7:

- (1) The Contractor and any principals of the Contractor certify that:
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
 - (B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
- (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

11. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State 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 Contractor and the State 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 Contractor, Contractor 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.

13. Continuity of Services.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. 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 Contractor.

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

15. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

16. Disputes.

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor 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 Contractor fail to continue to perform its responsibilities regarding all non-disputed

work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

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

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

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

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

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

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

20. 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 natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is

reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation. As required by Financial Management Circular 3.3 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

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

23. HIPAA Compliance. If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

24. Independent Contractor; Workers' Compensation Insurance. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and Contractor shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

25. Indiana Veteran Owned Small Business Enterprise Compliance. Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's Division of Supplier Diversity and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: **[Add additional IVOSBs using the same format.]**

IVOSB	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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____ N/A _____

Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to

IndianaVeteransPreference@idoa.IN.gov, or mailed to IDOA, 402 W. Washington Street, Room W-462, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to IndianaVeteransPreference@idoa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/idoa/mwbe/payaudit.htm. The Contractor may also be required to report IVOSB certified subcontractor payments directly to the Division of Supplier Diversity, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

26. Information Technology Enterprise Architecture Requirements. If this Contract involves information technology-related products or services, the Contractor agrees that all such products or services are compatible with any of the technology standards found at <https://www.in.gov/iot/2394.htm> that are applicable, including the assistive technology standard. The State may terminate this Contract for default if the terms of this paragraph are breached.

27. Key Person(s).

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are N/A.

28. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

29. Merger & 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, except by written agreement signed by all necessary parties.

30. Minority and Women's Business Enterprises Compliance.

Award of this Contract was based, in part, on the Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") participation plan as detailed in the Minority and Women's Business Enterprises Subcontractor Commitment Form, commonly referred to as "Attachment A" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by Division of Supplier Diversity and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term.

The following Division of Supplier Diversity certified MBE and/or WBE subcontractors will be participating in this Contract: **[Add additional MBEs and WBEs using the same format.]**

MBE or WBE	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
N/A _____				

Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:

N/A _____

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to MWBECompliance@idoa.IN.gov, or mailed to Division of Supplier Diversity, 402 W. Washington Street, Room W-462, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to MWBECompliance@idoa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to Division of Supplier Diversity certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/idoa/mwbe/payaudit.htm. The Contractor may also be required to report Division of Supplier Diversity certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

31. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting

discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, the Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

32. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

For payment notices and invoices

Attn: Business Manager
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500E
Indianapolis, Indiana 46204

For legal notices

Beth E. Heline, General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500E
Indianapolis, Indiana 46204
email: generalcounsel@urc.in.gov

B. Notices to the Contractor shall be sent to:

Cynthia C. Hoye, Executive Director
Indiana State Fair Commission
1202 E. 38th Street
Indianapolis, IN 46205
E-mail: choye@indianastatefair.com

As required by IC § 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

33. 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, (2) attachments prepared by the State, and (3) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

34. Ownership of Documents and Materials.

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

35. Payments.

A. All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20.

B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

36. Penalties/Interest/Attorney's Fees. The State 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 permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

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

37. Progress Reports. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

38. Public Record. The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and the State will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

39. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.

40. 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.

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

42. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

43. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

44. Termination for Default.

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

45. Travel. No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the *Indiana Department of Administration Travel Policy and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Travel Policy* guidelines.

46. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State'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 Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

47. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

48. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the *2022 SCM Template*) in any way except as follows:

35. Order of Precedence; Incorporation by Reference was modified to remove references to an RFP.

24. Indemnification. Was removed.

28. Insurance. Was removed.

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Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **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 Contractor attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: <https://secure.in.gov/apps/idoa/contractsearch/>

In Witness Whereof, the Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Indiana State Fair Commission

Indiana Utility Regulatory Commission

By:

By:

Title:

Title:

Date:

Date:

Electronically Approved by: Department of Administration By: (for) Rebecca Holwerda, Commissioner	
Electronically Approved by: State Budget Agency By: (for) Zachary Q. Jackson, Director	Electronically Approved as to Form and Legality by: Office of the Attorney General By: (for) Theodore E Rokita, Attorney General

EXHIBIT A

ATTACHMENT B

FOR THE SPONSORSHIP EVENT, THE COMMISSION AGREES TO PROVIDE THE SPONSOR WITH THE FOLLOWING:

MIDWAY & SKYRIDE CART SPONSORSHIP:

1. **Presenting sponsor of the “Midway”** to be branded and promoted as: *“Midway presented by Indiana 811”* during the 2022 Indiana State Fair. *(Note: This deal point includes Sponsor of “Fast Pass” and “Wristbands.” Final details to be mutually agreed upon between the Commission, Midway Company, and Sponsor.)*
2. **Signage** for the *“Midway presented by Indiana 811”* during the 2022 Indiana State Fair:
 - a) Two (2) large signs – one sign placed at each entrance of the venue.
 - b) Inclusion on *“Indiana 811 Midway”* flags located throughout the venue.
 - c) Concrete graphic adhesive images located throughout the venue footprint.
 - d) Logo inclusion on all Midway ride signs.
 - e) Commission, Midway Company, and Sponsor to mutually agree on all artwork designs.
 - f) Commission and Midway Company to determine final specs, material, and location of all signage located throughout the venue.
3. **Forty (40) Skyride carts** to be branded with Sponsor branding:
 - a) Sponsor branding to be located on the back of each cart.
 - b) Artwork specifications are as follows:
 - i. Artwork Size: 18” H x 36” L
 - ii. Artwork File: .ai or .pdf format
 - c) Commission and Sponsor to mutually agree on all final artwork design.
 - d) Commission reserves the right to brand all other carts with other Sponsor branding.
 - e) Sponsor to provide artwork to the Commission by the requested date.

HAND SANITIZER UNIT & SHUTTLE SPONSORSHIP:

1. **“Hand Sanitizer Stations”** during the 2022 Indiana State Fair:
 - a) Final quantity and location of hand sanitizer stations is to be determined by the Commission.
 - b) Commission to send the Sponsor final artwork specifications.
 - c) Sponsor to provide artwork to the Commission by the requested date.

2. **Title sponsorship one (1) “Indiana State Fair Shuttle”** during the 2022 Indiana State Fair:
 - a) Shuttle to be in rotation every day of the Fair.
 - b) The shuttle will include: one (1) three-cart shuttle for a total of **six (6) promotional advertising signs.**
 - c) Commission will receive three-and-a-half-feet feet of space for promotional advertising.
 - d) Final artwork specifications are to be determined by the Commission.
 - e) Sponsor to send artwork to the Commission in an .eps or .ai format.
 - f) Artwork is due to the Commission by the requested date.
 - g) Commission is responsible for all costs associated with production and installation of signage.

PROMOTIONAL BOOTH SPONSORSHIP:

1. Option to **staff one (1) ten-foot by twenty-foot (10' x 20') promotional display on State Fair Boulevard:**
 - a) Sponsor to staff promotional display on Thursday, August 11th.
 - b) Sponsor to staff booth display during event hours.
 - c) *(Note: Vehicles must be off the roads by 9:00am. Vehicles are not allowed to access the roads until 10:00pm. The Commission reserves the right to change road hours if need or security purposes.)*
 - d) Commission reserves the right to pre-approve all promotional items.
 - e) Sponsor to be responsible for all costs associated with booth space which includes, but is not limited to, electricity, internet, Pepsi products, tent rental, tables, chairs, etc.
 - f) Logistic orders are due directly to the Commission’s vendors by the requested dates.
 - g) Sponsor representatives must confine all promotional activities to within the limits of the space allotted to them.
 - h) Sponsor representatives are prohibited from operating in the aisles or street in such a way as to be a nuisance or interference to the public or to other sponsors and concessionaires.
 - i) Exhibit cannot obstruct the flow of people through aisles or other passageways.
 - j) No roving, solicitor, or distributor of information, including those acting for a profit or non-profit organization, may be allowed to operate on the Fairgrounds unless otherwise approved by Commission.

MARKETING ASSETS:

1. Inclusion on the 2022 **Indiana State Fair Website:**
 - a) On the Corporate Sponsors' Logo Section with scroll-over script and Sponsor URL.
 - b) On the Indiana State Fair Map.
 - c) On all relevant sections mentioning the "*Midway presented by Indiana 811.*"

2. Inclusion on the 2022 **Indiana State Fair Programs:**
 - a) On the Corporate Sponsors' Logo Page.
 - b) On the Indiana State Fair Map.
 - c) On all relevant sections mentioning the "*Midway presented by Indiana 811.*"

3. Inclusion on the 2022 **Indiana State Fair Daily Gate Sheets:**
 - a) On the Indiana State Fair Map.
 - b) On all relevant sheets promoting "*Midway presented by Indiana 811.*"

4. Option to use the 2022 **Indiana State Fair Logo** on advertising and publicity materials (excluding any sales materials). Sponsor must send artwork, that includes Fair logo, to Commission for final approval.

5. Option to participate in all **relevant social media content** in accordance with the Commission's social media guidelines as listed below:
 - a) Sponsor is free to tag the Indiana State Fair on Facebook @indystatefair (<https://www.facebook.com/IndianaStateFair>). These posts should pertain specifically to the Indiana State Fair. The Indiana State Fair holds the right to remove any tag that does not align with the Indiana State Fair Commission Brand Standards.
 - b) Sponsor is encouraged to include #instatefair or @indystatefair in their posts on Twitter (<https://twitter.com/indystatefair>) and Instagram (<https://www.instagram.com/indystatefair/>).
 - c) Commission to approve all Sponsor produced content before it is posted on any social media platform.
 - d) Contact your Indiana State Fair representative to discuss further social media engagement opportunities.

6. **Hospitality Package:**
- a) Three Hundred (300) Indiana State Fair Admission Tickets:
 - i. Sponsor 1 (IURC) will receive (250) admission tickets.
 - ii. Sponsor 2 (Indiana 811) will receive (50) admission tickets.
 - b) Eight (8) Indiana State Fair Infield Parking Passes:
 - i. Sponsor 1 (IURC) will receive (6) Infield Parking Passes.
 - ii. Sponsor 2 (Indiana 811) will receive (2) Infield Parking Passes.
 - c) Sponsor has the option to order additional admission tickets and parking passes at the discounted rate if needed. (**Note: Deadline to order additional tickets and parking passes is Friday, July 15, 2022.**)

NOTE: *The Sponsor is responsible for sending all tickets and parking passes to the appropriate on-site representatives prior to the first day of the Fair or on-site staffing dates. All on-site booth workers must have an admission ticket and parking pass to enter the Fairgrounds each day. If tickets and/or parking passes are not distributed by the Sponsor, they can be purchased at the gates.*

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ATTACHMENT C

FOR THE SPONSORSHIP EVENT, SPONSOR AGREES TO PARTICIPATE AND ADHERE TO ALL DEAL POINTS LISTED AS FOLLOWS:

MIDWAY & SKYDRIDE CART SPONSORSHIP:

1. Participate as the **presenting sponsor of the “Midway”** to be branded and promoted as: *“Midway presented by Indiana 811”* during the 2022 Indiana State Fair. *(Note: This deal point includes Sponsor of “Fast Pass” and “Wristbands.” Final details to be mutually agreed upon between the Commission, Mid Company, and Sponsor.)*
2. Participate as the sponsor of **forty (40) Skyride carts** to be branded with Sponsor branding:
 - a) Sponsor branding to be located on the back of each cart.
 - b) Artwork specifications are as follows:
 - i. Artwork Size: 18” H x 36” L
 - ii. Artwork File: .ai or .pdf format
 - c) Commission and Sponsor to mutually agree on all final artwork design.
 - d) Commission reserves the right to brand all other carts with other Sponsor branding.
 - e) Sponsor to provide artwork to the Commission by the requested date.

HAND SANITIZER & SHUTTLE SPONSORSHIP:

1. Participate as the sponsor of **“Hand Sanitizer Stations”** during the 2022 Indiana State Fair:
 - a) Final quantity and location of hand sanitizer stations is to be determined by the Commission.
 - b) Commission to send the Sponsor final artwork specifications.
 - c) Sponsor to provide updated artwork to the Commission by the requested date.
2. Participate as the **title sponsor one (1) “Indiana State Fair Shuttle”** during the 2022 Indiana State Fair:
 - a) Shuttle to be in rotation every day of the Fair.
 - b) The shuttle will include: one (1) three-cart shuttle for a total of **six (6) promotional advertising signs.**
 - c) Commission will receive three-and-a-half-feet feet of space for promotional advertising.
 - d) Final specifications are to be determined by the Commission.
 - e) Sponsor to send artwork to the Commission in an .eps or .ai format.
 - f) Artwork is due to the Commission by the requested date.

- g) Commission is responsible for all costs associated with production and installation of signage.

PROMOTIONAL BOOTH SPONSORSHIP:

- 1. Option to **staff one (1) ten-foot by twenty-foot (10' x 20') promotional display on State Fair Boulevard:**
 - a) Sponsor to staff promotional display on Thursday, August 11th.
 - b) Sponsor to staff booth display during event hours.
 - c) *(Note: Vehicles must be off the roads by 9:00am. Vehicles are not allowed to access the roads until 10:00pm. The Commission reserves the right to change road hours if need or security purposes.)*
 - d) Commission reserves the right to pre-approve all promotional items.
 - e) Sponsor to be responsible for all costs associated with booth space which includes, but is not limited to, electricity, internet, Pepsi products, tent rental, tables, chairs, etc.
 - f) Logistic orders are due directly to the Commission's vendors by the requested dates.
 - g) Sponsor representatives must confine all promotional activities to within the limits of the space allotted to them.
 - h) Sponsor representatives are prohibited from operating in the aisles or street in such a way as to be a nuisance or interference to the public or to other sponsors and concessionaires.
 - i) Exhibit cannot obstruct the flow of people through aisles or other passageways.
 - j) No roving, solicitor, or distributor of information, including those acting for a profit or non-profit organization, may be allowed to operate on the Fairgrounds unless otherwise approved by Commission.

SPONSORSHIP FEE:

- 1. Pay a total fee ("**Sponsorship Fee**") of \$215,000:
 - a) Sponsorship pricing breakdown is as follows:
 - i. Presenting Midway Sponsorship - \$70,000
 - ii. Skyride Cart Sponsorship - \$40,000
 - iii. Hand Sanitizer Station Sponsorship - \$90,000
 - iv. Shuttle Sponsorship - \$5,000
 - v. Promotional Booth Sponsorship - \$10,000
 - b) Commission to invoice Indiana Utility Regulatory Commission for \$175,000 of total sponsorship fee.
 - c) Commission to invoice Indiana 811 for \$40,000 of total sponsorship fee.
 - d) Full sponsorship payment is due September 30, 2022.