

Public Transportation Service

October 22, 2021

Johnson County, Indiana
86 West Court Street
Franklin, IN 46131
(317)346-4300

General Guidelines:

This document is intended to assist prospective proposers in successfully making a proposal for the work contemplated herein. Proposers are strongly encouraged to read the entire document very carefully.

- ∞ All attachments must be filled out completely. Federal and state regulations mandate that all attachments be submitted.
- ∞ If an attachment does not apply to your business or proposal, mark the form “Not Applicable”. Sign and date such attachments.
- ∞ Johnson County ensures that the Disadvantage Business Enterprises (DBEs), as outlined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of FTA-funded contracts. Therefore, it is imperative that you read the DBE Section and complete the necessary paperwork in its entirety.
- ∞ Johnson County reserves the right to waive any irregularities and/or reject any and all responses to this solicitation.
- ∞ Johnson County is under no obligation to award a contract to any firm responding to this solicitation and reserves the right to withdraw any award notification made before entering into a contract.

When in doubt contact Johnson County at sjohnson@co.johnson.in.us.

PROCUREMENT SCHEDULE

Johnson County Public Transportation Service

Solicitation Release	October 22, 2021
Written Questions Due	November 3, 2021 10:00am EST
RFP Due Date	November 8, 2021 10:00am EST

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SECTION 1
INTRODUCTION & STATEMENT OF WORK

Section 1.1 History and Overview:

Johnson County provides public transportation service throughout the county to the general public. In 2022, the county will begin to expend FTA Section 5307 funding on public transit as a new federal funding subrecipient of the Indianapolis Public Transportation Corporation (IPTC). Section 5307-funded transportation services must be provided by vendors selected through open procurement as specified in FTA Circular 9030.1E, Urbanized Area Formula Program: Program Guidance and Application Instructions. Previously, public transportation in Johnson County was funded through the FTA Section 5311 grant program for transit in rural areas. The outward expansion of the Indianapolis Urbanized Area (UZA) boundary due to population growth in the county has resulted in the reclassification of significant county land area as urbanized instead of rural. This growth has resulted in the need for Johnson County to transition from Section 5311 to Section 5307 funding for public transportation.

Section 1.2 Project Overview:

The Johnson County Council and Board of Commissioners seeks a vendor to provide public transportation in Johnson County. The County is seeking responsive countywide curb-to-curb transportation, shared-ride transportation, and connection services to IndyGo bus stop locations, with exact locations to be determined later. The County is searching for a Contractor to provide reliable public transportation, using a fleet of county-owned vehicles, that is in compliance with all state and Federal regulations.

In this RFP, Johnson County is seeking that combination of expertise, customer sensitivity, delivery of quality transportation service, and price that is the most advantageous to Johnson County. To be considered, potential Contractors must submit a full response to the RFP, using the format prescribed herein.

Section 1.3 Term of Engagement:

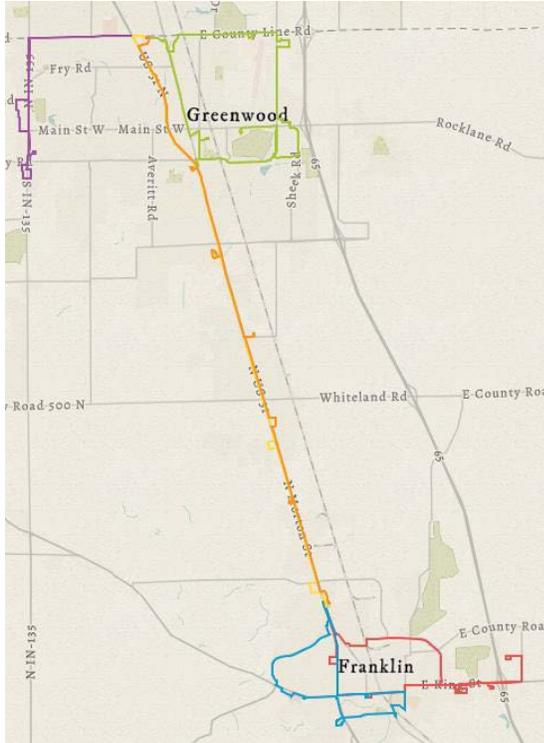
The term of the contract will be for one (1) year, with three (3) optional one-year extensions.

Section 1.4 Scope of Services:

SERVICE AREA:

Johnson County Service:

The selected Contractor will provide advanced reservation, origin to destination transportation (also referred to as “demand response”) to the entirety of Johnson County (321.79 square miles) and southern Marion County as far north as Stop 11 Road. The selected Contractor will also operate deviated fixed route service in Franklin, Greenwood, and along U.S. 31. A map of the existing deviated route network is provided below.



Connecting Service to IndyGo

The selected Contractor will provide demand response and deviated fixed route transportation to IndyGo bus stops or stations located in Johnson and Marion Counties close to the county line, depending (on the demand response side) on daily trip schedule capacity. Key IndyGo bus stops for transfers include Greenwood Park Mall (1251 U.S. Hwy 31 N, Greenwood, IN 46142) and Walmart (1133 N Emerson Ave, Greenwood, IN 46143).

ADA ACCESS:

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

SERVICE HOURS AND STATISTICS:

The service will operate Monday through Friday, 6:15 AM to 7:30 PM. The Contractor will provide the service at levels commensurate with the following 2019 service statistics:

- In 2019, 43,405 total unlinked, one-way passenger trips were provided on the demand response service. 44,572 one-way passenger trips were provided on the deviated fixed route service.
- In 2019, the demand response service operated 307,619 total vehicle miles; the deviated fixed route service operated 228,524 total vehicle miles.
- In 2019, the demand response service operated 17,996 total vehicle hours; the deviated fixed route service operated 17,495 total vehicle hours.
- In 2010, weekday productivity on the demand response service was 2.4 passengers per revenue vehicle hour. Weekday productivity on the deviated fixed route service was 2.5 passengers per revenue vehicle hour.
- Subscription rides (standing reservations) comprised approximately 50% of the total demand response trip count for 2019.

Exhibit A displays more information for the service in its current form as of August 2021. It is expected that the service will operate similarly to how it is depicted in Exhibit A although there is the potential for reduced hours of service or other changes due to available levels of funding in 2022.

The County owns a fleet of 19 public transit vehicles (primarily wheelchair-accessible cutaway buses and vans) which will be leased to the Contractor at no cost to operate the service. One of these vehicles require a Commercial Driver's License to operate; otherwise, drivers must have a driver's license for-hire endorsement.

GENERAL SCOPE OF WORK PROVISIONS

Johnson County is seeking to procure a transportation solution for the provision of public transportation services in Johnson County. Proposals will be reviewed based on the following criteria.

This RFP is looking for a Contractor to:

- Provide the outlined services, specifically, to receive, process, and accept ride requests via telephone and dispatch, and schedule and successfully complete rides for customers;
- Provide a strong customer experience and deliver upon the basic civil rights principles of equity and accessibility inherent in public transportation;
- House secure data and personal information of customers;
- Employ trained and qualified operators;
- Maintain insurance coverage by meeting all local, state and federal laws applicable to the type of transportation provided;
- Follow Title VI requirements for customer information;
- Utilize all ADA-required accessibility features in the fleet, such as wheelchair lifts, ramps, and securement systems, and accept service animals;
- Document all trip refusals; and,
- Keep clean and well-maintained vehicles meeting federal safety requirements.

DRUG AND ALCOHOL PROGRAM

(1) General Requirements - The Contractor agrees to:

- a) Establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655 and 49 CFR Part 40, as amended for covered employees;
- b) Produce any documentation necessary to establish its compliance with 49 CFR Part 655 and 49 CFR Part 40, as amended; and

- c) Permit any authorized representative of the United States Department of Transportation or its operating administrations, Johnson County, IPTC, or any other agency or grantee required to certify compliance to FTA to inspect the facilities, records, and information associated with implementation of the drug and alcohol testing program as required under 49 CFR Part 655 or 49 CFR Part 40, as amended, and review the testing process.
- d) For the purposes of complying with the drug & alcohol requirements of 49 CFR Part 40, as amended and 49 CFR Part 655, an “employee” is defined as:
 - 1. Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations (including individuals who are self-employed) and applicants for employment subject to pre-employment testing. For purposes of drug testing under USDOT-FTA regulations, the term employee has the same meaning as the term “donor” as found on the Federal Custody and Control Form (CCF) and related guidance materials produced by the Department of Health and Human Services.
- e) A safety sensitive function is defined as:
 - 1. Operating a revenue service vehicle, including when not in revenue service;
 - 2. Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver’s license;
 - 3. Controlling dispatch or movement of a revenue service vehicle;
 - 4. Maintenance (including repairs, over-hauling, and rebuilding) of a revenue service vehicle or equipment used in revenue service;
 - 5. Carrying a firearm for security purposes.

(2) Drug & Alcohol Policy

- a) The Contractor must have a Drug and Alcohol policy for positive results or refusals to test.
- b) Employees with a verified positive drug test, alcohol test result of 0.04 BAC or higher, or a refusal to test shall not be used to perform work under this contract.
- c) The Contractor agrees further to submit for review and approval before notice to proceed (NTP) a copy of its Drug & Alcohol Policy Statement developed to implement its drug and alcohol testing program.

(3) Drug & Alcohol Testing

- a) The Contractor shall ensure that all safety sensitive employees pass a USDOT pre-employment drug test with negative results verified by the Medical Review Officer prior to the first performance of any safety-sensitive function.
- b) The Contractor shall ensure that all safety-sensitive employees participate (as a condition of employment) in all other required drug & alcohol testing (including random, post-accident, reasonable suspicion, and others as required by 49 CFR Part 40, as amended, 49 CFR Part 655, or by Johnson County).
- c) The Contractor shall not allow any individual to perform, or continue to perform, a safety-sensitive function if the Contractor has knowledge that the individual has had a previous USDOT verified positive drug test result, alcohol test result of 0.04 BAC or higher, or a refusal to test (for any USDOT covered employer) unless the individual has fully completed all return to duty requirements of 49 CFR Part 40, as amended and 49 CFR Part 655.

(4) Compliance Certifications, Reporting, and Administrative Items

- a) The Contractor agrees further to certify annually its compliance with Part 655 before March 1st and to submit the Management Information System (MIS) reports before February 28th to Johnson County.
 - 1. To certify compliance, the Contractor shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register.

- b) In addition, the Contractor agrees to consult with Johnson County at the initiation of the contract and in the event of a service agent change related to the selection of a DHHS certified laboratory, substance abuse professional, Medical Review Officer, or the use of a third-party administrator (TPA)/consortium.
 - 1. The Contractor must provide and document ongoing oversight of all of its service agents (Breath Alcohol Technicians, Screening Test Technicians, Urine Specimen Collectors, Medical Review Officer(s), Substance Abuse Professional(s)) throughout the life of the contract to ensure their compliance with 49 CFR Part 40, as amended.
- c) The Contractor is responsible for the costs of establishing and maintaining (including costs of defending related claims and actions) the required drug and alcohol prevention program under this Contract. Such costs shall be included as part of this Contract.

(5) Training

- a) The Contractor must ensure it fully meets all training requirements listed in this agreement as well as 49 CFR Part 655.
- b) Drug and Alcohol Program Manager (DAPM) Training –
 - 1. The Contractor must ensure that its DAPM undergoes a formalized training covering the requirements of USDOT-FTA drug and alcohol program management and compliance.
 - 2. This training course must specifically cover the requirements of 49 CFR Part 655 and 49 CFR Part 40, as amended.
 - 3. This training must be completed within 90 days after the Notice to Proceed, or as soon as practical thereafter, based upon the availability of the course.
 - 4. The Contractor must ensure that any subsequent DAPMs also receive this training for the life of the contract.
- c) Reasonable Suspicion Determination Training –
 - 1. The Contractor must ensure that a sufficient number of authorized representatives of the agency undergo Reasonable Suspicion Determination training in accordance with 49 CFR Part 655.14(b)(2).
 - 2. This training must be initially completed prior to the beginning of operations.
 - 3. The Contractor must then maintain a sufficient number of employees trained in Reasonable Suspicion Determination throughout the life of the contract.
 - 4. The Contractor must maintain documentation of completion of said training for all employees in accordance with 49 CFR Part 655 and Part 40, as amended.
 - 5. IPTC can provide referral to training resources to complete this training.
- d) Employee Drug Awareness Training –
 - 1. The Contractor must ensure that all safety-sensitive employees undergo at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the workplace. This training must meet all requirements of 49 CFR Part 655.14(b)(1)
 - 2. This training must be completed within 30 days of hire for all safety-sensitive employees throughout the life of the contract.
 - 3. The Contractor must maintain documentation of completion of said training for all employees in accordance with 49 CFR Part 655 and Part 40, as amended.

(6) If the Contractor subcontracts any safety-sensitive element of its service (to include maintenance), the Contractor shall first inform Johnson County of this decision prior to initiation and use of the subcontractor. Johnson County reserves the right to disallow the use of any subcontractor or third-party operator/provider.

- a) Additionally, the Contractor shall ensure and document that all subcontractors - or any other third-party operator/provider that is performing a safety-sensitive function on behalf of the Contractor - is fully compliant with the following:

1. All requirements of 49 CFR Part 655 and 49 CFR Part 40, as amended, as applicable;
2. All requirements of this agreement related to the drug and alcohol program (as applicable); and
3. The Contractor will be responsible for the regular and ongoing oversight of all elements of its use of a subcontractor or other third-party operator/provider that is performing a safety-sensitive function on behalf of the Contractor.

OVERSIGHT

Johnson County will provide oversight of the vendor to ensure that the service meets expectations for service quality and regulatory compliance. Some potential metrics include:

- Miles of service operated
- Per-trip Cost
- Number of trips; Requested Pick Up/Drop Off times; Actual Pick Up/Drop off times
- On-Time Performance (OTP)
- Appointment On-Time Performance (AOTP)
- Drop-Off On-Time Performance
- Trips Per Revenue Hour (TPRH)

CONTRACTOR REPORTING

The Contractor will be required to submit month-end reporting to determine revenue service hours and miles, deadhead hours and miles, unlinked passenger trip counts, no-shows, trip denials, and other key statistics. The Contractor will be required to record, through the use of mobile data devices or pen-and-paper, the time, location, odometer readings of vehicle pull-out, first passenger pick up, driver breaks, last passenger drop-off, and garage pull-in. The Contractor will also be required to record time, location, and odometer reading of each passenger pick-up and drop-off made during the operation of demand response services or, if applicable, deviated route service (deviations only). The Contractor will be required to provide documentation of the methodology used to generate all required statistics, such as reports generated by scheduling/dispatching software or copies of driver's manifests displaying time and mileage information; the RFP response should include the Contractor's proposed methodology for data collection.

Revenue service is defined by the National Transit Database as when a vehicle is available to the general public and there is an expectation of carrying passengers. These passengers either:

- Directly pay fares;
- Are subsidized by public policy; or
- Provide payment through some contractual arrangement.

Revenue service excludes:

- Deadhead;
- Vehicle maintenance testing;
- School bus service; and
- Charter service.

Unlinked passenger trips are defined as the number of passengers who board public transportation vehicles. Passengers are counted each time they board vehicles no matter how many vehicles they use to travel from their origin to their destination.

MANAGEMENT STRUCTURE AND KEY PERSONNEL:

The Contractor should describe their planned management approach, key personnel for the services, including an organizational chart/relationship, and staffing plan. Please include responses on the following topics:

- Managing a small public transportation operation;
- Improving or turning around employee morale;
- Working with a local government entity in a cooperative and team-oriented manner;
- Establishing a program of good community relations;
- Conducting background checks;
- Implementing employee performance and training standards;
- Examples of efficiency programs that either streamlined service resulting in cost improvements, or a material cost reduction in service rates;
- An explanation of the relationship of the proposer's management team for this project to the entity's overall corporate structure.
- A description of the project team's experience in working together on similar work.
- A commitment that the key personnel identified in the Proposal shall be present during the transition and at the start-up of work under the Contract, as well as during the entire term of the Contract.

The Contractor must also provide three references who can attest to the Contractor's ability to provide the services described in this RFP. Reference information must include each reference's name, organization/company, address, phone number, and email address.

1.5 Evaluation Process

This is a Best Value Procurement where Johnson County reserves the right to select the most advantageous offer by evaluating and comparing all factors as listed in evaluation criteria below. Johnson County will appoint an evaluation team consisting of County employees. IPTC employees may be invited to participate. Each member of the team will be given a copy of each proposal and the RFP and will evaluate each proposal against the RFP evaluation criteria. The anticipated project cost will be evaluated by the evaluation team using an independent cost estimate and then added to the evaluation team technical scores. The top-rated Contractors may be asked to present their proposals in person at a later date. After the presentations, the firms will be evaluated and ranked again.

Phase I

Preliminary Proposal Assessment – Proposals will be checked for compliance with and adherences to all submittal requirements requested by the county. Proposals which are incomplete and/or missing key components necessary to fully evaluate the Proposal will be rejected from further consideration due to non-responsiveness.

The County will not contact/inform vendors of missing documentation nor allow vendors to submit documentation after the proposal due date and time.

It is the Contractor's sole responsibility to check its proposal for completeness before submitting it.

Proposals found to be responsive and responsible will proceed to Phase II.

Phase II

Proposal Evaluation – Proposals found to be responsive and responsible will be forwarded to the Evaluation Committee (EC). The EC will evaluate the extent to which the Contractor's proposal meets the project requirements set forth in the RFP. Phase II will include a detailed analysis of the proposals based upon the evaluation criteria as listed below.

As part of the evaluation process, the EC will review the information required by Scope of Services for each proposal. The EC may also review any other information that is available to it, including but not limited to information gained by checking references and by investigating the respondent's financial condition.

Johnson County reserves the right to seek clarification of any information that is submitted by any respondent in any portion of its proposal and/or to request additional information at any time during the

evaluation process. Any material misrepresentation made by a respondent may void the proposal and eliminate the respondent from further consideration.

Phase III

If needed, separate interviews, at Johnson County's discretion, will be arranged with the top Contractors identified in Phase II Proposal Evaluation. Upon completion of the interview process, the Contractors will be evaluated again utilizing new information gained, if any (Final Evaluation). The top ranked Contractor will be selected for contract award.

1.6 Solicitation Evaluation Criteria

The following are the complete criteria by which proposals from responsive and responsible proposers will be evaluated and ranked for the purposes of determining any competitive range and to make any selection of a proposal for a potential award. Submission requirements below have been listed in order of relative importance from top (high importance) to bottom (lower importance).

Submission Requirement/Scoring Criteria	Technical/Cost
Ability to Meet RFP Specifications - drug/alcohol testing, background checks, and experience of organization. Evaluate three professional references (name, organization/company, address, phone number and email address).	Technical
Cost: per hour and all other costs requested on the Bid Cost Form	Cost
Customer Service Approach - demonstration of driver and reservationist/dispatcher services; provide evidence of high employee standards including training procedures.	Technical
Ability to meet all reporting needs requested in the specifications as evidenced through the description of the methodology used to generate all required statistics.	Technical

1.7 Evaluation Methodology

Each criterion listed in Section 1.6 shall be evaluated as follows:

- Exceeds Expectations - The proposal meets all requirements and goes above and beyond what was requested to address the specific factor.
- Acceptable - The proposal is adequately responsive with no weaknesses or only minor weaknesses to diminish the quality of the offeror's performance. No major weaknesses noted.
- Marginal - Fails to meet evaluation standard, however, any noted weakness is correctable, lacks essential information to support proposal.

*Several marginal ratings may result in an overall rating of unacceptable

- *Unacceptable - The proposal is not adequately responsive or does not address the specific factor. The offerors interpretation of IPTC requirements is superficial, incomplete, vague, not comprehensive, or incorrect and therefore deemed unsatisfactory.

*A rating of unacceptable indicates that an evaluator feels that mandatory corrective action would be required to prevent significant weaknesses from affecting the overall contract effort. In essence a complete rewrite of the offeror's proposal would be required.

Section 1.8 Bonds, Insurance, and Special Requirements

Contractor shall not commence work under this Contract until it has obtained all certificates of insurance required under this Contract, and such insurance has been approved by the Owner.

The following requirements apply to Contractor, all subcontractors, and suppliers:

1. LIMIT OF COVERAGE

Commercial General Liability

a. Each Occurrence	\$1,000,000
b. Damage to Rented Premises	\$ 50,000
c. Medical Expenses (any one person)	\$ 5,000
d. Personal and Adv Injury	\$1,000,000
e. General Aggregate	\$2,000,000
f. Product-Comp. Op. Aggregate	\$2,000,000

Automobile Liability

a. Combined Single Limit	\$1,000,000
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Umbrella Liability	
a. Each Occurrence	\$1,000,000
b. Aggregate	\$3,000,000
Workers Compensation and Employers Liability	
a. Each Accident	\$ 100,000
b. Each Disease-Each Employee	\$ 100,000
c. Each Disease-Policy Limit	\$ 500,000
Professional Liability	\$1,000,000

2. **CARRIER FINANCIAL RATINGS** Coverage may be written with either a licensed or non-admitted company so long as the non-admitted company is: (a) listed as approved by the Indiana Department of Insurance to do business in Indiana; or (2) a carrier with a financial rating of A-, FSC VII, or better by A.M. Best.
3. **CANCELLATION NOTICE** No revision of the standard certificate form may be made to allow any less than thirty (30) days prior written notice for cancellation of any of the aforementioned insurance policies or to process a request to delete certificate holder as described in Item 8 below as an additional insured.
4. **CERTIFICATE HOLDER** The following address must always be shown regardless of where the work is to be performed:
 Johnson County Board of Commissioners
 Johnson County West Annex
 86 West Court Street
 Franklin, IN 46131
5. **Additional Insured; Waiver of Subrogation:** Contractor shall furnish an acceptable certificate of insurance and all endorsements to Owner prior to the commencement of the Contract. The certificate shall state that the Owner has been added as additional insured under general liability, auto liability, and umbrella liability, that waiver of subrogation applies to all policies listed in favor of certificate holder, and that Contractor's insurance is primary and noncontributory as concerns work for certificate holder. Proof of insurance must be submitted on the ISO forms CG 2010 and CG 2037, or their equivalents. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of Contractor. Failure to provide insurance satisfactory to Owner as required in these Project Specifications is a material breach of contract entitling the Owner to terminate the Contract immediately.
 - **Expiration:** Should any coverage approach expiration during the contract period, it shall be renewed prior to its expiration date and certificates again filed with the Owner. Failure to renew and file new certificates with the Owner shall be just cause to withhold any payment until these requirements are met.

Section 1.9 Federal Participation

Johnson County is a subrecipient of Federal Funding through the Federal Transit Administration of the United States Department of Transportation.

Section 1.10 Reserved Right

Johnson County reserves the right to withdraw this solicitation at any time in the process prior to contracting upon notification to all vendors in receipt of the solicitation documents by fax, letter or email to their last know business address. If such action is taken by Johnson County, no Contractor will have claim for recompense.

Section 1.11 Access to Public Records Act (APRA)

Respondents are advised that materials contained in proposals are subject to the Access to Public Records Act (APRA), IC 5-14-3 et seq., and, after the contract award, the entire RFP file may be viewed and copied by any member of the public, including news agencies and competitors. It is the Respondent's responsibility to identify any information that may fall under a statutory exemption to the APRA and clearly mark that information as Confidential. Any information marked Confidential must also identify the APRA exemption that applies (please refer to IC 5-14-3-4 for the primary list of exemptions). If the Respondent does not identify the statutory exemption, Johnson County will not consider the submission confidential. In the event the Respondent takes any legal or protective action and directs Johnson County not to disclose the Confidential Information, the Respondent shall indemnify Johnson County against any losses, including reasonable attorney fees and costs, arising from the non-disclosure of the Confidential Information.

Section 1.12 Disadvantaged Business Enterprises

This procurement is subject to the requirements of 49 CFR part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate DBE participation goal of 6% has been established for this procurement.

Section 1.13 Liquidated Damages

The Contractor shall pay to Johnson County the sum of \$500 per day per vehicle for each and every calendar day that the Contractor fails to provide the required services pursuant to the Contract and within the time periods mutually agreed upon. Extensions of time may be requested and granted pursuant to 11.2.1 "Compensable Delays" of the attached Professional Services Agreement. Contractor will not be assessed liquidated damages for excusable delays. Excusable delays will be determined at the sole discretion of Johnson County. Contractor agrees that liquidated damages amount is a reasonable estimate of the actual damages Johnson County would incur upon Contractor's failure to perform as described herein.

Section 1.14 OSHA Compliance Requirements

Contractor shall comply with all state and federal safety laws, including those of the Federal Occupational Safety and Health Administration ("OSHA") and its Hazardous Communication Standard. Contractor shall also comply with the Indiana Occupational Safety and Health Administration ("IOSHA") Hazard Communication Standard. Contractor shall have in place, and be conforming to, a written Hazard Communication Program ("HAZCOM") meeting the Federal OSHA Standard 29 CFR 1926.59 or 29 CFR 1910.1200. This program must include provisions for conducting a chemical inventory and developing a list of materials to be used on the Project in the performance of the Work, inspecting and maintaining container labels for use at the Project, providing and maintaining onsite safety data sheets ("SDS") for all materials to be used on the Project, employee training, furnishing of personal protection equipment, and provide for emergency responses, hazards of non-routine tasks, multi-contractor sites, and posting. Contractor must submit a copy of the chemical inventory data and a copy of its safety plan to IPTC's Safety and Security Department before the Work may begin. Contractor shall be responsible to Owner for the payment of any and all penalty fees incurred by Owner as a result of Contractor's violation of the laws set forth herein.

SECTION 2
Contractor Instructions

2.1 Notice to Contractors

Contractors are furnished the following instructions to clarify conditions for work, development and presentation of offers, clarification of contents, review of concerns, and other pertinent information from which knowledge of preparing and offering a responsible and responsive offer may be developed.

2.2 Written Questions/Answers

Please submit questions regarding this solicitation to sjohnson@co.johnson.in.us. Questions may be submitted at any time prior to the Proposal submission date. An addendum with responses to questions received in writing by November 3, 2021 will be posted on November 5, 2021 by end of day and will become part of the solicitation. Any questions submitted after the posted addendum may not be answered and therefore may not be included in the solicitation.

2.3 Required Responses

Proposals are due no later than 10:00 a.m. (local time) on November 8, 2021. Sealed proposals must be delivered to the Johnson County West Annex, 86 West Court Street, Franklin, IN 46131.

Under no circumstance will any Proposal be accepted later than the time or date detailed or at any other location than that specified. This restriction is absolute.

The following items are listed as required. Failure to include them in your submission will cause your proposal to be ruled non-responsive.

- ∞ All certifications contained in the package
- ∞ Certificate of Liability Insurance (*see section 1.8 Bonds, Insurance, and Special Requirements*)
- ∞ Responses to all requests laid out in Section 1

2.4 Limitation of Responsibility

Johnson County is not responsible, and will not accept any responsibility, for the cost incurred by any vendor in the specific preparation or the associated activities aiding in the preparation of any offer.

Johnson County is not responsible to return to any vendor the offer submitted to it as a response to this solicitation.

2.5 Contractor Warrants and Subcontractor Restrictions

Contractor will warrant that all information provided by it in connection with this offer is true and accurate, and that the Contractor by virtue of its submission is capable of supplying all work requested herein without brokering or delegating to a third party.

Contractor will warrant that it will not delegate or subcontract its responsibilities under the Agreement beyond the level revealed in the solicitation without the prior written permission of Johnson County.

2.6 Responsiveness and Responsibility Definitions

All offers must be responsible and responsive.

Responsive means that all certifications and forms blanks must be filled in, all offered goods and/or services must conform with the Statement of Work requested, unless an alternate but equal request has been submitted for approval; and all information required in the request for submissions documents must have been completed and submitted in a sealed envelope to conform with the definition of the term, responsiveness. Any alteration, erasure, or interlineations of the document may cause the submission to be determined as non-responsive. However, Johnson County reserves the right to accept any offer or to reject any and all offers, or to waive any defect or irregularity found in any offer.

Responsible means that Johnson County may consider among other factors, the Contractor's record of integrity, experience, and past performance, its financial status, the capability to perform the project as

stated, or whether the vendor is in default of any contract or other obligation to Johnson County, the Federal, State or other Local Government(s). In arriving at a determination, Johnson County institute a pre-award survey on any or all vendors. Contractors will be required to cooperate with the pre-award survey team. Failure to cooperate may result in a finding of non-responsibility.

2.7 Taxes

Johnson County is tax exempt from Federal and State excise, use, and sales taxes.

2.8 Independent Contractor

The successful Contractor shall be considered and shall accept status as being that of an "Independent Contractor" to Johnson County and shall recognize that they are not an employee or officer of Johnson County.

2.9 Contract Required

Johnson County's drafted Professional Services Agreement has been included as Section 4. **The Contractor MUST include notification with their response of any exception taken to the contract provisions.** Failure to provide exceptions shall result in the mandatory acceptance of the contract provisions as submitted herein by default.

**Johnson County is aware that all clauses contained in the attachment may not be applicable to this solicitation. They are provided to give potential vendors an idea of the types of legal State and Federal clauses that are required in Johnson County FTA-funded contracts.*

2.10 Federal Regulations

Federal Procurement Regulations establish certain submissions that are required in any third-party contract Johnson County enters into with any Contractor. In order that Johnson County may be compliant with the requirements of FTA Circular 4220.1F, each Contractor is required to complete and submit as a part of the offer package, completed certifications as defined in this section.

2.11 Failure to Supply

Failure to supply the required certifications shall result in the determination of the offer as "Non-Responsive."

2.12 Bid and Contract Procedures

Johnson County reserves the right, when necessary, to postpone the times at which Proposals are scheduled to be received and opened, and to amend the Solicitation scope of work. Prompt notification of such postponement or amendment shall be given by Johnson County to all prospective bidders who have requested or received the solicitation documents.

If the work is amended, any respondent from whom an offer had been received prior to the giving notice of amendment will be entitled to withdraw the submission and resubmit their response in conformance with the changed work.

2.13 Protest Policy

Protest(s) will only be accepted by Johnson County from officers of a business whose direct economic interest would be affected by the award of a contract or the refusal to award a contract. If oral objections are raised and the matter cannot be resolved to the satisfaction of the objector, a written protest shall be required before any further consideration is given. Protest(s) submissions should be concise, logically arranged, and state clearly the grounds for protest.

2.131 Pre-Proposal Protests

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/company letterhead or by electronic mail) to Johnson County as specified below not later than one business day prior to the deadline for submission of bids/proposals.

Johnson County
86 West Court Street
Franklin, IN 46131
sjohnson@co.johnson.in.us

Johnson County, within its discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the County as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by Johnson County shall be the final County decision on the matter but shall be subject to judicial review as set forth by IPTC below.

2.132 Pre-Award Protests

With respect to protests made after the deadline for submission of bids/proposals but before contract award by Johnson County, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, Johnson County's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/company letterhead or by electronic mail) to Johnson County as specified below not later than five business days after the Recommendation for Award announcement by Johnson County.

Johnson County may, within its discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three business days prior to the date that Johnson County shall announce the contract award.

The decision by the Johnson County shall be the final County decision on the matter but shall be subject to judicial review as set forth or review by IPTC as specified below.

2.133 Requirements for Protests

All protests must be submitted to Johnson County in writing (defined as being sent or received via letter or facsimile on official firm/company letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor, and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by Johnson County.

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/company letterhead or by electronic mail) to Johnson County at the address shown in the solicitation documents.

2.134 Protest Response

Johnson County shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, Johnson County will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official Johnson County

response to the protest and Johnson County will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

2.135 Review of Protests by IPTC

All protests involving contracts financed with Federal assistance shall be disclosed to IPTC. Protesters shall exhaust all administrative remedies with Johnson County prior to pursuing protests with IPTC. IPTC limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to IPTC must be received within five working days of the date the Protester has received actual or constructive notice of Johnson County final decision or within five working days of the date the Protester has identified other grounds for appeal to IPTC.

2.14 Required Certifications

The following pages of certifications must be completed and returned with your offer. Some portion of these required certifications may/will not be applicable to the contents of the statement of work that is attached to and made a part of this solicitation. However, the offer submitted must contain completed, signed, and sealed (if required) documents. If the document is not applicable, write "N/A" on the face of the document and sign in the appropriate area.

CERTIFICATION OF RESTRICTIONS ON LOBBYING
(MUST BE RETURNED WITH PROPOSAL)

I, _____, hereby certify on behalf of _____:

No appropriated Federal funds have been paid or will be paid, by or on behalf of the undersigned to any person influencing or attempting to influence an officer or employee of any 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 contract, 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.

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 agency, a Member of Congress, an officer or employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the awards documents for any and all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is prerequisite for making or entering into this transaction as imposed by Section 1352, Title 31 USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Executed this _____ day of _____, 20__

By: _____
(Signature of Authorized Official)

(Title of Authorized Official)

**CERTIFICATION REGARDING DEBARMENT
(MUST BE RETURNED WITH PROPOSAL)**

To be submitted on all contracts reasonably anticipated exceeding \$25,000.00 in value.
THE UNDERSIGNED PROPOSER, OFFORER, OR SUBCONTRACTOR (“ATTESTER”) CERTIFIES, TO THE BEST OF ITS KNOWLEDGE AND BELIEF THAT:

The attester and/or any of its principals or subcontractor:

Are not presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any Federal Agency.

Have not for a three (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offences in connection with obtaining, or attempting to obtain, or performing a public (Federal, State, or Local) contract or subcontract: violation of Federal or State antitrust status relating to the submission of offers, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

Are not presently indicted for, or otherwise criminally or charged in any civil action by a government entity with commission of any of these offenses enumerated above.

The Attester has not, within a three (3) year period preceding this offer, had one (1) or more contracts terminated for default by any governmental agency.

“Principals”, for the purpose of this certification, means officers, directors, owners, partners, and persons having a primary management or supervisory responsibilities within a business entity.

This certification concerns a matter that may be within the jurisdiction of an agency of the United States and the making of false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, USC.

The Attester shall immediately notify Johnson County at any time the attester learns that its certification was erroneous when submitted or has become erroneous.

A certification in which any of the items detailed above exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Attester’s responsibility. Failure of the Attester to furnish a certificate or provide such additional information as requested by Johnson County may render the Attester non-responsive.

Nothing contained in the forgoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If it is later determined that the Attester knowingly rendered an erroneous certification, in addition to other remedies available to Johnson County, the County may terminate the contract resulting from this solicitation for default.

If Attester is unable to certify to any of the statements in this certification, attach an explanation to this certification.

(Signature of Authorized Company Official)

Company Name TYPED

(Title of Official, Including Name, Typed)

AFFIDAVIT OF NON-COLLUSION
(MUST BE RETURNED WITH PROPOSAL)

The undersigned, having submitted a bid, quote, or proposal for Johnson County Public Transportation Service in accordance with notice given by Johnson County for the purposes or support of the transit services in and for Johnson County, for and behalf of him/her self, or themselves, first being duly sworn says:

That said bidder, quoting party, or proposer has not directly or indirectly entered into any combination, collusion, undertaking, or agreement relative to price to be bid by any person, or to prevent any person, or persons, or company from submitting pricing: or to entice any bidder, quoting party, or proposer to refrain from pricing for such supplies, merchandise, service, or contract, and that said bid so made is without reference or regard to any other bid or bids, and without agreement, understanding or combination, either directly or indirectly, with any person or persons, with reference to such bidding in any way or manner whatsoever.

Signed: _____
Proposer or Agent

State of _____

SS:

County of _____

Subscribed and sworn before me this _____ day of _____ 20__.

My commission expires: _____

Notary Public

SEAL

Dated at _____
City

State

Date

Failure to Properly Notarize and Return This Form Will Invalidate the Proposal

Johnson County
ACKNOWLEDGMENT OF ADDENDUM
(MUST BE RETURNED WITH PROPOSAL)

The undersigned acknowledges receipt of the following amendment(s) to the Bid and supporting documentation.

ADDENDUM NUMBER ____ DATED: _____

Note: Failure to acknowledge receipt of all addenda that may have been issued may cause the Proposal offer to be considered non-responsive to the solicitation. No further consideration will be given to non-responsive offers. Acknowledged receipt of each addendum must be clearly established and included with the bid response.

(Proposing Company Name)

(Street Address)

(City, State, and Zip Code)

Signature of Authorized Company Official

Date

DOT ASSISTED CONTRACTS BIDDERS LIST
(MUST BE RETURNED WITH PROPOSAL)

[49 CFR, Part 26]

49 CFR, Part 26 requires that all recipients of Federal Funds collect certain information from all bidders submitting responses to solicitations. To assist in the building of demographics for the area upon which reasonable and effective expectations of DBE/MBE/WBE opportunities may be based, all bidders are required to return this certificate with their offer. Any offer submitted that does not contain a completed copy of this form will be ruled as non-responsive and dropped from further consideration in the procurement process for the solicitation.

Firm Name: _____

Firm Address: _____

Firm Phone: (____) _____ Firm Fax: (____) _____

General Classification of firm by quantity of employees

Less Than 10 11 - 50 51 - 100 101 - 500

501 - 1000 1001 - 5000 More than 5000

General Classification of Firm in Years in Business

0 - 5 years 6 - 10 years 11 - 50 years Over 50 years

General Classification by Type

Firm is a Small Business Firm is a certified DBE Firm is a certified MBE

Firm is a certified WBE Firm is none of the above.

General Classification by Annual Gross Income

The approximate annual gross income for this firm is less than \$100,000

The approximate annual gross income for this firm is \$100,000 - \$250,000

The approximate annual gross income for this firm is \$250,001 - \$500,000

The approximate annual gross income for this firm is \$500,001 - \$1M

The approximate annual gross income for this firm is \$1M - \$5M

The approximate annual gross income for this firm is greater than \$5M

I certify this information is accurate to the best of my knowledge.

Signature

Printed Name

Date

DBE PARTICIPATION FORM

Johnson County has set the following DBE goal for this Solicitation: 6%

Bidder must check the appropriate box, provide the information requested, sign and submit this form with its Proposal. Failure to complete and submit this form may result in rejection of the Proposal as non-responsive.

Bidder will meet the DBE goal for this contract. Bidder is certified according to requirements of DOT 49C.F.R. Part 26 as a DBE eligible for participation in DOT assisted contracts and will be performing ___percent (%) of the contract work. Further, Bidder is State of Indiana DOT (INDOT) certified DBE.

Bidder will meet the DBE goal for this contract. If awarded this contract, Bidder will subcontract with the DBE(s) listed below which will be performing ___ percent (%) of the total dollar amount of contract work. Each DBE listed below is INDOT certified according to requirements of DOT 49 C.F.R. Part 26 for participation in DOT assisted contracts.

DBE Name	DBE Address	Scope of Services	Total Dollar	Percent of Total

Bidder does not meet the DBE goal for this contract. Bidder certifies that it has made good faith efforts in accordance with the Invitation for Bid to meet the DBE goal but, despite those efforts, has been unable to meet the goal. Bidder has completed The Good Faith Efforts Documentation Form attached to this Participation Form.

Please note: A Letter of Commitment (LOC) from each DBE listed above shall be submitted with the proposal. The LOC is a signed letter, on the DBE’s letterhead, that shall serve as acknowledgment from the DBE of their level of participation in this solicitation. The dollar amount of the commitment, the scope of service or product to be provided and the applicable NAICS code(s) shall be included in the letter.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

DBE GOOD FAITH EFFORTS DOCUMENTATION FORM

DBE GOAL: 6%

If Bidder has indicated on the DBE Participation Form that it does not meet the DBE goal, Bidder must submit this form with its DBE Participation Form as documentation of its good faith efforts to meet the goal pursuant to 49 C.F.R. Part 26.53. **Failure to submit this form and supporting documentation with the Bid may render this Proposal non-responsive.**

Good faith efforts include, but are not limited to:

- 1) Soliciting DBEs through all reasonable and available means (e.g. – conducting market research, attendance at pre-bid meetings, advertising and/or written notices) and following up on initial solicitations. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- 2) Selecting portions of work to be performed by DBEs in order to increase the likelihood of DBE goal achievement (e.g. – breaking out contract work items into economically feasible units, even when the performance of work with vendor’s own forces might otherwise be preferred).
- 3) Providing interested DBEs with adequate information about the plans, specifications and requirements of the proposal in a **timely manner** to facilitate their response to the solicitation. Please allow more than five business days for communication.
- 4) Negotiating in good faith with interested DBEs. It is the bidder’s responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Bidders must provide evidence as to why agreements could not be reached for DBEs to perform the work.
- 5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- 6) Making efforts to assist DBEs in obtaining bonding, lines of credit or insurance.
- 7) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

The fact that a bidder can self-perform 100% of the work with its own workforce is not sufficient justification to fail to negotiate with DBEs or not to meet the DBE participation goal. Note the fact that there may be some additional costs involved in finding and utilizing DBEs is not in itself sufficient reason for a bidder’s failure to meet the contract DBE goal, as long as such costs are reasonable. Prime contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

I. A Bidder representative attended the pre-bid meeting: Yes _____ No _____

II. Advertisement Log: (Attach copies of ads):

Newspaper/Publication	Type of Publication	Date(s) of Advertisement

III. Selected Portions of the Work to be Performed by DBEs:

Work Categories	Type of Bid	Bidder's Estimated	Additional Comments

IV. Made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies and materials, etc. List any specific offers made by Bidder:

V. Solicited the following DBEs:

DBE Firm and Address	Type of Contact	Date of Initial	Goods or Services

Johnson County only accepts DBE firms that are certified by the Indiana Department of Transportation (INDOT). A current listing of certified firms with contact information is available online. For more information about DBE firms and certification requirements, please see <http://www.in.gov/indot/2748.htm>.

As a recipient of federal funds, Johnson County has the responsibility to make a fair and reasonable judgment as to whether a bidder that did not meet the goal made adequate good faith efforts.

Johnson County will consider the quality, quantity and intensity of the different kinds of efforts that the bidder has made, based on federal regulations and guidance.

Johnson County will review and compare the performance of other bidders in meeting the contract goal. The good faith efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation for the proposal.

A verbal or written “promise” to utilize DBEs after contract award is considered non-responsive to the contract solicitation and does not constitute good faith efforts.

If you have further questions, please contact:

Shena Johnson
Johnson County Attorney
86 West Court Street
Franklin, IN 46131
(317) 346-4392
sjohnson@co.johnson.in.us

SECTION 3
Federal Funding Compliance Requirements

FEDERAL FUNDING COMPLIANCE REQUIREMENTS

- 1. Government Access to Records and Reports.** In accordance with 49 CFR §18.36(i), Contractor agrees to provide Johnson County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Contractor which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR §633.17, to provide the FTA Administrator or his/her authorized representatives, including any Project Management Oversight Provider (“PMOC”), access to Contractor’s records and work sites pertaining to a major capital project, defined at 49 U.S.C. §5302(a)1, which is receiving Federal financial assistance through the programs defined at 49 U.S.C §5307, 5309 or 5339.

 - a. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - b. Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Contractor agrees to maintain same until Johnson County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- 2. Government-Wide Debarment and Suspension.** In accordance with Executive Order 12549, as implemented by 49 CFR Part 29, a person (as defined in 49 CFR Part 49.105) who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities. As a participant in a federally assisted primary covered transaction (grant recipient), the IPTC is required to obtain a certification entitled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions” from all lower tier participants including Johnson County on this Agreement whose Agreement or agreement will exceed \$25,000. Contractor will submit for itself and obtain and submit from all consultants and subcontractors whose Agreements will exceed \$25,000 the certification entitled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions” Any Agreement or sub-Agreement executed without such certification will be voidable by Johnson County.

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

 - a. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U. S. C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans With Disabilities Act of 1990, 42 U.S.C. §12132, and the Federal law at 49 U.S.C. §5332, Contractor agrees that it will not discriminate on the basis of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 - b. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Agreement:

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

so comply shall constitute a material breach of this Agreement.

- 8. Anti-Lobbying.** In accordance with the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. §1601, *et seq.*], Contractors who apply or propose for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. §1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Agreement, grant or award covered by 31 U.S.C. §1352. Such disclosures are forwarded from tier to tier up to the recipient.
- a. Contractor will submit for itself the form entitled "Certification of Restrictions on Lobbying" and if applicable, the form entitled "Disclosure of Lobbying", and obtain and retain from all consultants and subcontractors whose Agreements will exceed \$100,000 the certification entitled "Certification of Restrictions on Lobbying", and obtain from all consultants and subcontractors, at any tier, whose agreements will exceed \$100,000, and submit to Johnson County, if applicable, the form entitled "Disclosure of Lobbying".
 - b. Contractor and its consultants and subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such Contractor, consultants and subcontractors under ¶7.1. An event that materially affects the accuracy of the information reported includes:
 - c. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - d. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - e. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
 - f. Contractor will ensure that certifications completed by lower tier consultants and subcontractors are attached to and incorporated into their Agreements or agreements.
- 9. False Statements or Claims.** Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 *et seq* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA-assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- a. Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate. Contractor also agrees to include the terms of ¶8 and ¶8.1 in each

consultant agreement and subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the consultants and subcontractors who will be subject to the provisions.

- 10. Fly America.** Contractor agrees to comply with 49 U.S.C. §40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in each consultant agreement and subcontract that may involve international air transportation.
- 11. Energy Conservation.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act. To the extent that Contractor discovers or becomes aware of a violation of these requirements during the course of performing this Agreement, Contractor agrees to report immediately such violation to Johnson County. Contractor also agrees to ensure that its Services performed under the Agreement, including all portions of the Services performed by subcontractors or consultants, shall be in compliance with the energy efficient standards required in the Contract Documents.
- 12. No Federal Government Obligation to Third Parties.** Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to Johnson County, IPTC, Contractor, or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the Agreement. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- 13. Agreements Involving Federal Privacy Act Requirements.** The following requirements apply to Contractor and its employees that administer any system of records on behalf of the Federal Government under the Agreement: (1) Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement. (2) Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
- 14. Disadvantaged Business Enterprise Participation**

 - a. **DBE Program.** This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is ten percent (10%). The DBE commitment for this Agreement is as stated on the DBE Commitment Form executed by Contractor and on file with Johnson County. If the total Agreement price is increased as a result of change orders (modifications), the Contractor shall make a good faith effort to achieve a commensurate increase in DBE participation.
 - b. **DBE Obligation.** Contractor shall not discriminate on the basis of race, color, national origin or

sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Johnson County deems appropriate, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the Contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph.

- c. **DBE Modifications or Substitutions.** In the event that Contractor wishes to modify its DBE subcontractor commitments, the Contractor must notify Johnson County in writing and request approval for the modification. Contractor may not, without Johnson County's prior written consent, terminate for convenience any DBE subcontractor approved by Johnson County under this Agreement and then perform the work of the subcontract with its own forces. This includes any changes to items of work, material, services or DBE firms which differ from those identified on the DBE Commitment Form on file with Johnson County. When a DBE subcontractor is terminated or fails to complete its work for any reason, Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE firm. These good faith efforts must be directed at finding another DBE firm to perform at least the same amount of work under this Agreement as the DBE firm that was terminated or failed to complete its work. Contractor must provide Johnson County with any and all documents and information as may be requested with respect to the requested substitution. If Johnson County determines that Contractor failed to make good faith efforts, IPTC will provide the opportunity for administrative reconsideration pursuant to 49 CFR 26.53. As part of this reconsideration, Contractor will have the opportunity to provide written documentation or argument and to meet with a designated Johnson County official concerning the issue of whether it met the goal or made adequate good faith efforts to do so. A written decision will be sent to Contractor explaining the basis for finding that Contractor did or did not meet the goal or make adequate good faith efforts to do so.

- d. **Reporting and Recordkeeping.** Contractor shall submit documentation concerning Contractor's performance in meeting the DBE commitment during the period of the Agreement. Contractor shall enter into written agreements with the DBEs listed in its DBE Commitment Form or with substitutes which have been approved by Johnson County. Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which it is listed unless the Contractor obtains written consent from Johnson County as provided in paragraph (c) above. Unless consent is provided, Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. Copies of all executed DBE agreements shall be provided to Johnson County by Contractor immediately upon execution with a duplicate copy furnished to Johnson County. In addition, thereto, Contractor shall meet the following requirements:
 - i. Submit a work schedule outlining when the DBE subcontractors and material suppliers will commence and complete their services or work under the Agreement within 30 days of Agreement execution.
 - ii. Submit monthly reports in a format approved by Johnson County detailing progress toward meeting the DBE commitment for this project and proofs of payment to Johnson County. Monthly claims for payment from Contractor will not be processed without submission of these reports and documentation.
 - iii. Promptly notify Johnson County of any situation in which any regularly scheduled progress payment is not made to a DBE.
 - iv. Not willfully make any false statements or provide incorrect information as part of its reporting and recordkeeping duties and obligations hereunder. The willful making of false

statements or providing of incorrect information is considered a material breach of Agreement and shall entitle IPTC to all remedies and relief as otherwise provided in the case of a contractual breach in accordance with Article XI of the Agreement.

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

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

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

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

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

19. Contract Work Hours and Safety Standards Act

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:
 - i. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - ii. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
 - iii. Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
 - iv. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

20. Public Transportation Employee Protective Arrangements. The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- b. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- c. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

21. Safe Operation of Motor Vehicles

- a. **Seat Belt Use.** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.
- b. **Distracted Driving.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

22. School Bus Operations. The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
- c. Any other Federal School Bus regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

- a. Bar the Contractor from receiving Federal assistance for public transportation; or
- b. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities. The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

23. Charter Service. The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
- c. Any other federal Charter Service regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
- c. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

24. Procurement of Recovered Materials. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- a. Competitively within a timeframe providing for compliance with the contract performance schedule;
- b. Meeting contract performance requirements; or
- c. At a reasonable price

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

- 25. Notice of Legal Matters.** The Contractor must give notice to Johnson County and FTA of any current or prospective legal matters that may affect the Federal government. This requirement is applicable to all procurement transactions expected to equal or exceed \$25,000.

- 26. Substance Abuse Requirements.** The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

Exhibit A

- The information on this page describes how a customer reserves a demand response ride with the service.
- The next page displays a map of the demand response service area and deviated route network.
- Following the map, the schedules for the six deviated fixed routes are provided.

WHO DO I CALL?

Trip Requests / Cancellations / Complaints – 317-738-5523 or 317-738-3951 TDD (for the hearing impaired)

HOURS TO CALL FOR RIDES

Monday – Friday 9:00 AM – 4:00 PM + Closed for lunch from 12:00 PM – 12:30 PM
After hours leave message on voice mail at 317-738-5523. During business hours voice mail is checked frequently Monday – Friday. It is very important that you leave a message when calling **ACCESS**.

PLEASE REMEMBER:

- . **ACCESS is a Curb to Curb service.**
- . You may ride from any origin in the **ACCESS** service area for any legal purpose as long as a reservation has been made.
- . No assistance can be provided beyond the curb. Due to the safety of our passengers, drivers cannot leave the vehicle. If you require further assistance you should be accompanied by a personal care attendant or traveling companion. This must be arranged in advance when you schedule your trip.
- . The driver is required to collect the fare or a ticket from you and any companions **before** departure. **Please have exact change ready, or your trip ticket ready.**
- . Prior to departure:
 - the driver will ask you to fasten your seat belt/shoulder strap.
 - If you are in a three-wheeled mobility device you may be asked to transfer to a seat in the vehicle. (Note: the choice to transfer to a seat is yours.)

HOW TO CHANGE A RIDE

NOTE: changes to a ride request should be made the day before your trip. There is no guarantee that changes after this time can be accommodated. Drivers cannot change your schedule for you.

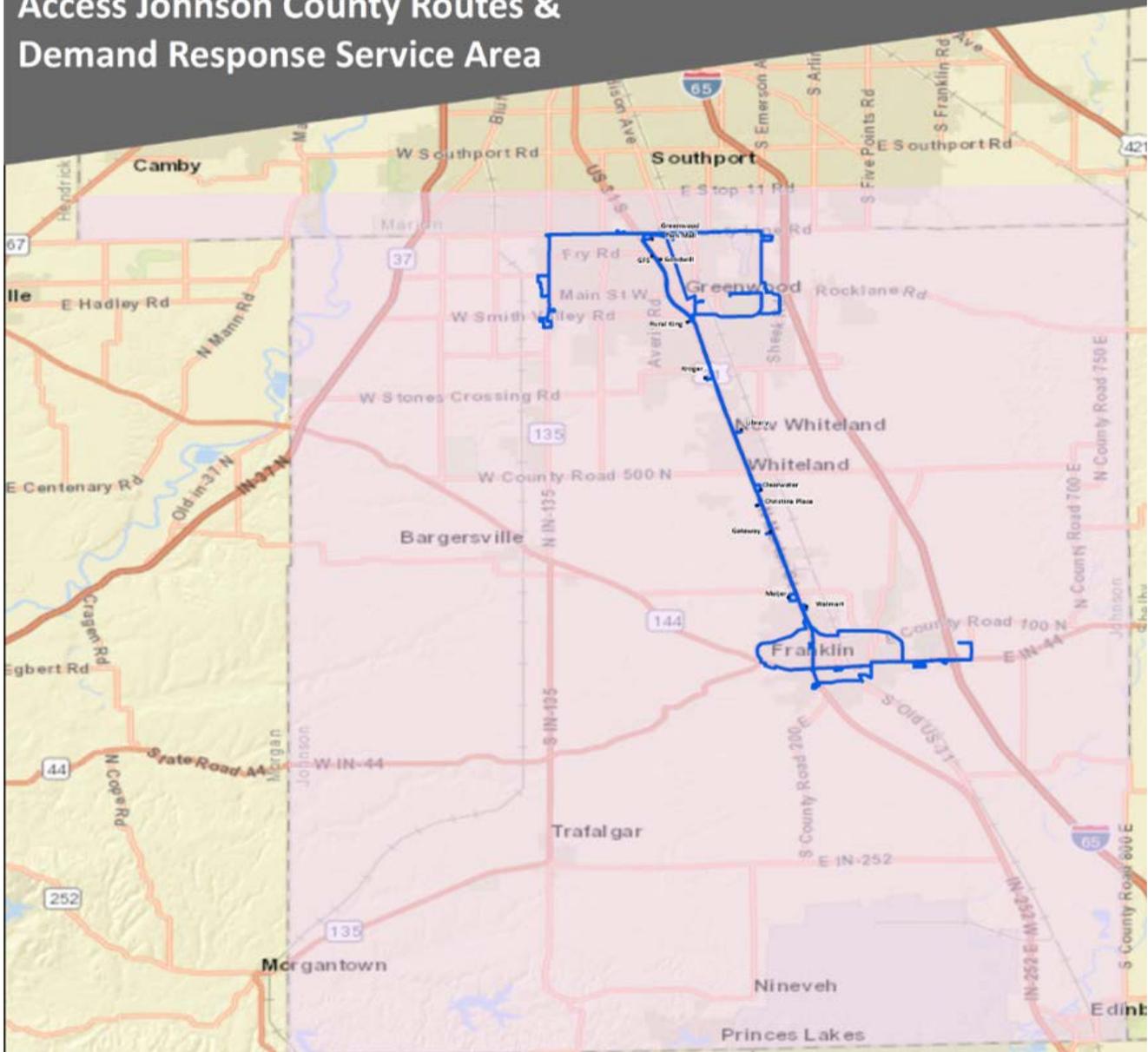
To cancel a ride, please call 317-738-5523 (317-738-3951 TDD for the hearing impaired). If you follow the prompts this will call a pager, or **After hours** please call pager number 317-562-7241 to cancel a ride.

Cancellations should be made as soon as possible, but no later than 2 hours before your scheduled pick up time. This policy allows for illness or other events beyond your control that require last minute changes in plans without penalty. However, if your trip request is not canceled before the driver is dispatched, you must unfortunately be charged for the unnecessary trip. Passengers repeatedly canceling without a 2 hour notice may risk losing future trip scheduling privileges. Please be courteous to our other passengers and cancel as soon as possible so someone who is waiting for a trip can be scheduled in your place.

EMERGENCY NUMBER

Please call 317-738-5523 and follow the prompts for cancellations or if there is an **immediate problem** with your scheduled transportation.

Access Johnson County Routes & Demand Response Service Area



Franklin West

Walmart	Northwood Plaza	Johnson Memorial Hospital	Walgreens	United Way Service Center	Franklin Library	Franklin College	Johnson County Courthouse
***7:45a	7:50	8:00	8:05	8:10	8:14	8:22	8:24
***8:45a	8:50	9:00	9:05	9:10	9:14	9:22	9:24
***9:45a	9:50	10:00	10:05	10:10	10:14	10:22	10:24
***10:45a	10:50	11:00	11:05	11:10	11:14	11:22	11:24
***11:45a	11:50	12:00	12:05	12:10	12:14	12:22	12:24
***12:45p	12:50	1:00	1:05	1:10	1:14	1:22	1:24
***1:45p	1:50	2:00	2:05	2:10	2:14	2:22	2:24
***2:45p	2:50	3:00	3:05	3:10	3:14	3:22	3:24
***3:45p	3:50	4:00	4:05	4:10	4:14	4:22	4:24
***4:45p	ENDS						

Franklin East

Walmart	Kroger /Kohl's	Johnson County Courthouse	Indiana Department Children Resources	Windrose Health Network	Work One	IVY TECH	Traditions Apartment
***9:45a	9:50	9:54	10:04	10:06	10:11	10:16	10:21
***10:45a	10:50	10:54	11:04	11:06	11:11	11:16	11:21
***11:45a	11:50	11:54	12:04	12:06	12:11	12:16	12:21
***12:45p	12:50	12:54	1:04	1:06	1:11	1:16	1:21
***1:45p	1:50	1:54	2:04	2:06	2:11	2:16	2:21
***2:45p	ENDS						

Greenwood West

Greenwood Park Mall	Community South	Walgreens	Meijer's	Walmart	Target	White River Library
**8:30a	*8:32	8:44	8:55	9:05	9:07	9:13
**9:30a	*9:32	9:44	9:55	10:05	10:07	10:13
**10:30a	*10:32	10:44	10:55	11:05	11:07	11:13
**11:30a	*11:32	11:44	11:55	12:05	12:07	12:13
**12:30p	*12:32	12:44	12:55	1:05	1:07	1:13
**1:30p	*1:32	1:44	1:55	2:05	2:07	2:13
**2:30p	*2:32	2:44	2:55	3:05	3:07	3:13
**3:30p	*3:32	3:44	3:55	4:05	4:07	4:13
**4:30p	ENDS					

Greenwood East

Greenwood Park Mall	Cambridge Square Apts	Indiana Internal Medicine	Walmart	Sam's Club	Grassy Creek Lane	Main Street Commons	Rural King	Greenwood Community Center
**8:30a	8:35	8:40	*8:45	8:50	8:55	9:00	9:13	9:18
**9:30a	9:35	9:40	*9:45	9:50	9:55	10:00	10:13	10:18
**10:30a	10:35	10:40	*10:45	10:50	10:55	11:00	11:13	11:18
**11:30a	11:35	11:40	*11:45	11:50	11:55	12:00	12:13	12:18
**12:30p	12:35	12:40	*12:45	12:50	12:55	1:00	1:13	1:18
**1:30p	1:35	1:40	*1:45	1:50	1:55	2:00	2:13	2:18
**2:30p	2:35	2:40	*2:45	2:50	2:55	3:00	3:13	3:18
**3:30p	3:35	3:40	*3:45	3:50	3:55	4:00	4:13	4:18
**4:30p	ENDS							

Franklin	Northbound	Greenwood
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Franklin Walmart	Gateway	Clearwater	C. P Library	Kroger	Rural King	Goodwill	Mall
6:15	6:23	6:26	6:31	6:37	6:43	6:48	*7:00
7:15	7:23	7:26	7:31	7:37	7:43	7:48	*8:00
***7:45	7:53	7:56	8:01	8:07	8:13	8:18	**8:30
***8:45	8:53	8:56	9:01	9:07	9:13	9:18	**9:30
9:15	9:23	9:26	9:31	9:37	9:43	9:48	*10:00
10:15	10:23	10:26	10:31	10:37	10:43	10:48	*11:00
***10:45	10:53	10:56	11:01	11:07	11:13	11:18	**11:30
***11:45	11:53	11:56	12:01	12:07	12:13	12:18	**12:30
12:15	12:23	12:26	12:31	12:37	12:43	12:48	*1:00
1:15	1:23	1:26	1:31	1:37	1:43	1:48	*2:00
***1:45	1:53	1:56	2:01	2:07	2:13	2:18	**2:30
***2:45	2:53	2:56	3:01	3:07	3:13	3:18	**3:30
3:15	3:23	3:26	3:31	3:37	3:43	3:48	*4:00

Greenwood	Southbound	Franklin
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Mall	GFS	Rural King	Kroger	CP Library	Christina Place	Gateway	Meijers	Franklin Walmart
7:00	7:04	7:08	7:14	7:19	7:25	7:28	7:34	***7:45
*8:00	8:04	8:08	8:14	8:19	8:25	8:28	8:34	***8:45
**8:30	8:34	8:38	8:44	8:49	8:55	8:58	9:04	9:15
**9:30	9:34	9:38	9:44	9:49	9:55	9:58	10:04	10:15
*10:00	10:04	10:08	10:14	10:19	10:25	10:28	10:34	***10:45
*11:00	11:04	11:08	11:14	11:19	11:25	11:28	11:34	***11:45
**11:30	11:34	11:38	11:44	11:49	11:55	11:58	12:04	12:15
**12:30	12:34	12:38	12:44	12:49	12:55	12:58	1:04	1:15
*1:00	1:04	1:08	1:14	1:19	1:25	1:28	1:34	***1:45
*2:00	2:04	2:08	2:14	2:19	2:25	2:28	2:34	***2:45
**2:30	2:34	2:38	2:44	2:49	2:55	2:58	3:04	3:15
**3:30	3:34	3:38	3:44	3:49	3:55	3:58	4:04	4:15
*4:00	4:04	4:08	4:14	4:19	4:25	4:28	4:34	4:45
								ENDS

SECTION 4
SAMPLE PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is made and entered into as of the ____ day of _____, 2021, by and between Johnson County, Indiana by and through its Board of Commissioners and its successors and assigns, an Indiana political subdivision ("Johnson County" or "Owner") and _____ ("Provider"), concerning the following:

OWNER: **Johnson County Board of Commissioners**
86 West Court Street
Franklin, IN 46131

PROJECT: **Johnson County Public Transportation Service**

PROFESSIONAL SERVICES PROVIDER: _____

SCOPE OF SERVICES: Provide all professional services set forth and described in Johnson County RFP, and Provider's Response thereto and described in the Scope of Services set forth in Article II hereof and in accordance with the terms and conditions set forth herein ("Services").

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

CONTRACT TERM: The duration of this Agreement is for 1 year, commencing with the date of this Agreement and ending on December 31, 2022.

The Contract Term may be extended by Johnson County's acceptance of any options as provided in the Johnson County RFP and notification to Provider.

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

CONTRACT DOCUMENTS: The Contract Documents consist of (1) this Contract and the Attachments attached hereto; (2) Johnson County RFP, including all required Vendor Certifications and Affidavits, and all Addenda issued prior to the execution of this Contract; and (3) Vendor's Proposal in response to Johnson County RFP. The Contract Documents form the Contract and are as fully a part of this Contract as if repeated herein.

ATTACHMENTS: Attachment 1 RFP Johnson County Public Transportation Service
Attachment 2 Vendor's Proposal

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

**ARTICLE I
INITIAL INFORMATION**

- 1.1.1 Subject to amendment by Johnson County as the performance of this Agreement is undertaken, the date for commencement of the Services hereunder is the 1st day of January, 2022 and the date for completion of the Services hereunder is the 31st day of December, 2022.
- 1.1.2 Provider shall perform and complete the Services referenced in the Contract Documents.
- 1.1.3 The term “day” as used in the Agreement shall mean calendar day and not business or work day. If business day or work day is intended to be used herein in lieu of calendar day, it shall be specifically designated as such. Any reference to “business day” or “work day” shall mean Monday through Friday of a given week, and be exclusive of Johnson County observed holidays.
- 1.1.4 Provider represents that it is financially solvent, able to perform the services being undertaken under this Agreement, able to pay its debts as they become due, and possesses sufficient working capital to complete the professional services and perform its obligations under this Agreement.
- 1.1.5 Provider represents that it possesses the experience, skill, ability and expertise in providing the services hereunder as service providers on similar scope of services engagements or projects of similar or like type, nature, complexity and size as the Scope of Services hereunder. Provider will assign to the services to be performed similarly qualified individual professional providers and manage them as needed to meet this quality of performance.
- 1.1.6 Provider represents that the compensation amount provided for in this Agreement is adequate compensation for the timely and complete performance of the Scope of Services, including all normal professional services provided hereunder, whether those services are performed by Provider or by consultants engaged by Provider.
- 1.1.7 Johnson County is the intended end user and beneficiary of the Services being provided hereunder.
- 1.1.8 Johnson County may at its sole option assign one or more full or part time project managers, inspectors or other representatives to observe the performance of the Services. The duties, responsibilities and limitations of authority of any such representatives will be as provided herein or as otherwise stated to Provider in writing by Johnson County.
- 1.1.9 Johnson County shall identify the Owner’s Project Team members (“Owner’s Project Team”) and furnish their contact information to Provider. Owner’s Designated Representative hereunder is the individual identified in ¶11.19 (“Owner’s Representative”). If required, Owner’s Representative shall examine the Deliverables, as hereinafter defined in ¶2.1.6, ¶2.1.6.1 and ¶6.1, submitted by Provider and shall render decisions and approvals in a timely manner on which Provider may rely. Owner Representative may be changed and Johnson County may modify the scope of authority of the Owner Representative.
- 1.1.10 Provider shall identify the Provider’s consultants (“Provider’s Consultants”) and furnish their identification and scope of services to Johnson County. They collectively, together with Provider, shall

constitute the Provider Project Team (“Provider Project Team”). Provider shall furnish to Owner the contact person and contact information for each of the Provider Project Team. Provider’s Designated Representative hereunder is the individual identified in ¶11.19 (“Provider’s Representative”).

1.1.11 Intentionally Omitted.

1.1.12 Subject to Indiana’s Access to Public Records Act, if Johnson County or Provider receives information specifically designated by the transmitting party as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services solely and exclusively for this Agreement, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

1.1.13 As set forth in the Johnson County RFP, and as acknowledged by Provider herein, the Services being provided under this Agreement may be subject to federal funding and related federal compliance rules and regulations, including those of the United States Department of Federal Transit Administration (“FTA”), an agency of the United States Department of Transportation (“USDOT”). Funding for the Services being provided under this Agreement and any individual Task Orders may be derived from State Funds, including the Public Mass Transit Funds and State Sales Tax, Local Funds, and Passenger Fare Revenue.

1.1.14 Johnson County is exempt from sales and compensating use taxes on all tangible personal property (materials, equipment and components) pursuant to the law of the State of Indiana. Provider shall not include any charges representing such taxes on any invoices hereunder. Provider shall be responsible for all franchise fees and taxes of any kind whatsoever.

ARTICLE II PROVIDER'S SERVICES AND RESPONSIBILITIES

2.1 Scope of Services

2.1.1 Provider shall provide all planning, studies, reports, and professional services set forth and described in the Johnson County RFP, Provider’s Response thereto, this Agreement and any individual Task Orders issued to Provider by Owner, and will perform the Services in an expeditious fashion, in accordance with the terms and conditions set forth herein.

2.1.2 Provider acknowledges Owner's reliance upon Provider's special and unique abilities and skills to perform the services provided by this Agreement and accepts the relationship of trust and confidence established between it and Owner by this Agreement. Provider agrees to use its customary efforts, skill, judgment and abilities to perform the services hereunder and comply with the Owner’s requirements, program, budget, time schedule and procedures set forth in this Agreement, and that such services shall be performed in conformity with the professional and technical standards of reasonable care and skill ordinarily used and exercised by members of the Provider’s profession that are familiar with and providing such services for engagements or projects of the same type, nature, complexity and size as the Scope of Services covered by this Agreement.

2.1.3 Intentionally Omitted.

2.1.4 Intentionally Omitted.

- 2.1.5 Intentionally Omitted.
- 2.1.6 Intentionally Omitted.
- 2.1.6.1 Intentionally Omitted.
- 2.1.7 Provider shall comply with all applicable Federal, State and Local Laws, rules, codes, ordinances, regulations and orders in effect as of the date of execution of this Agreement governing the Services which it renders pursuant to this Agreement. Provider shall notify Owner of any changes or pending changes in applicable laws, rules, codes, ordinances, regulations and orders of which Provider is aware, the impact of such changes on the Services and recommendations for modifications to the Services which minimize these impacts.
- 2.1.8 If Provider performs its services contrary to applicable laws, rules, codes, ordinances, regulations and orders then in effect as of the date of this Agreement, then Provider shall assume responsibility for such services so provided and shall bear the costs attributable to any corrective measures.
- 2.1.9 If Provider is responsible for or the cause of any delays or hindrances in the Owner's overall schedule for providing services, then at no cost to Owner, Provider shall correct and expedite the performance of its services hereunder that may be causing or contributing to such delays or hindrances.
- 2.1.10 Provider recognizes and agrees that timely performance of the Services is required under the Agreement. Provider shall dedicate a sufficient number of qualified personnel and require the same of its consultants and to perform the Services with vigorous due diligence and expediency in accordance with sound professional practices and its commitments, obligations and duties hereunder. Such schedule may, if agreed to by Owner, be adjusted as required. Claims, if any, arising from delays in performance of the Services in accordance with such approved schedule shall be resolved in the same manner as other liability claims.
- 2.1.11 If the commencement, prosecution or completion of the Services, or of the undertaking or performance of services or work by others, is delayed, hindered, disrupted or interfered with by a breach of the standard of care in ¶2.1.2 or negligence, or the failure to perform any duty expressly assumed under this Agreement by Provider, or anyone for whom Provider is responsible, and if Owner incurs any damage, loss, cost, expense, assessment, fine or liability as a result or consequence thereof, Provider shall be liable to Owner for any and all such delay, hindrance, disruption and interference, and any resultant damage, loss, cost, expense, assessment, fine or liability actually and reasonably incurred or suffered by Owner.
- 2.1.12 Provider shall coordinate the Services with those services provided by Owner and Owner's representatives and consultants related to the engagements or projects identified in this Agreement.
- 2.1.13 Provider shall not make any substitutions or substantial changes to the Provider Project Team without the prior written approval of Owner. Should circumstances beyond the control of Provider require changes to the Provider Project Team, Provider shall submit the credentials of any proposed replacement team members to Owner for its approval, which shall not be unreasonably withheld.
- 2.1.14 Provider shall not engage in any activity, or accept any employment, interest, or contribution that would reasonably appear to compromise Provider's professional judgment with respect to this Agreement and its Services.

- 2.1.15 Provider shall manage the Provider Services, consult with Owner and Owner's Representative, conduct applicable research, attend Project meetings, communicate with members of the Owner's Project team, and report progress to Owner.
- 2.1.16 Intentionally Omitted.
- 2.1.17 In the event that any action is taken against Owner, including but not limited to assessments of fines or penalties, whether by any local, state or federal regulatory or administrative agencies or otherwise, due to any actual or alleged violation, act or omission of the duties, responsibilities and obligations set out herein that are caused or created by Provider or any other party for whom Provider is responsible relating to the Services, whether also caused in part but not solely caused by Owner, Provider shall indemnify and hold Owner harmless therefrom for any claim, including, but not limited to, any assessment of fines or penalties and incurrence of reasonable attorney fees incurred in the defense of or appeal from any such action, and any proceeding or hearing which may occur or be related thereto; provided, however, Provider shall not be responsible for any field rework or reconstruction arising from such claim unless it is caused by or attributable to any actual violation by Provider as described herein.
- 2.1.18 Owner shall require adequate time to secure any requisite Owner internal approvals, which time shall be taken into consideration by Provider in establishing its schedule of services under this Agreement. Provider shall establish submission deadlines with Owner that will facilitate Owner's securing of any requisite approvals. The failure of Provider to meet those submission deadlines may result in the delay or prevention of the requested approvals.

2.2 Additional Services

- 2.2.1 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Provider shall advise Owner in writing before performing those services if it believes that Owner requested services are outside of the Scope of Services being provided herein and as set forth in Attachment 1, RFP for Public Transportation Service.
- 2.2.2 Upon recognizing the need to perform Additional Services, Provider shall notify Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. Provider shall not proceed to provide Additional Services unless and until the Provider receives Owner's written authorization.
- 2.2.3 Services as determined by both parties to be beyond the Basic Services shall be performed by the Provider at the rates set forth in the Proposal Cost Form contained in Attachment 2, Vendor's Proposal, or as otherwise agreed upon.

ARTICLE III OWNER'S RESPONSIBILITIES

- 3.1 Unless otherwise provided for under this Agreement, Owner shall provide information regarding requirements for and limitations on the Scope of Services to be provided under this Agreement which shall set forth Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems, and site requirements. Owner and Provider agree and acknowledge that the information being provided by Owner is subject to reasonable change based on Services required hereunder, and that the Scope of Services compensation to be paid to Provider have taken such changes into account.

- 3.2 Owner shall establish and periodically update Owner's budget for this engagement or project. If Owner significantly increases or decreases Owner's budget, Owner shall notify Provider. Owner and Provider thereafter may agree to a corresponding change in the scope of services, as necessary, and shall determine whether an adjustment in the fee to be paid to Provider is fair and reasonable.
- 3.3 Provider shall coordinate the services of its own consultants with those services provided by Owner. Upon Provider's request, Owner shall furnish copies of the scope of services in the contracts between Owner and Owner's consultants.
- 3.4 If Owner observes or otherwise acquires actual knowledge of any fault or defect or non-conformance with the Scope of Services, prompt written notice thereof shall be given by Owner to Provider. However, nothing in this Agreement shall be construed so as to require Owner to determine the adequacy, accuracy or sufficiency of the Provider's Services.
- 3.5 Owner shall endeavor to furnish its required information and services and shall render approvals and decisions to facilitate in a timely manner so as to help maintain and to avoid unreasonable delay in the progress of the Provider services.

**ARTICLE IV
PAYMENTS TO THE PROVIDER**

4.1 Payments on Account of Basic Services

- 4.1.1 Payments for Services under this Agreement and any individual Task Orders issued to Provider by Owner shall be made monthly upon presentation of Provider's statement of services rendered and units charged, deducting passenger fares and program income not directly received by Johnson County, and shall be in proportion to services performed.
- 4.1.2 Invoices or statements for services are to be submitted to Owner monthly for services rendered through the end of the preceding month. Owner shall thereafter approve the amount as due, less any adjustments for amounts to be withheld or set-off by Owner pursuant to the terms and conditions of the Agreement, including Owner's right to withhold payment under ¶4.2.1 below, and otherwise shall make payment to Provider within thirty (30) days following the date that such invoice is received by Owner. Owner may only withhold amounts in good faith and shall pay all undisputed amounts within thirty (30) days following the date that such invoice is received by Owner.

4.2 Payments Withheld

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

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

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

4.3 Invoice Preparation

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

4.3.2 All invoices are to be addressed to Owner as follows: Johnson County
86 West Court Street
Franklin, IN 46131
Attn: County Coordinator

4.4 Intentionally Omitted.

4.5 Trust Fund.

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

4.6 Final Payment.

4.6.1 No payment to Provider shall operate as an approval of the Provider Services, or any part thereof, or as a release of Provider from any of its obligations under this Agreement or any individual Task Orders issued to Provider by Owner.

4.6.2 Acceptance by Provider of any sum tendered by Owner as final payment shall constitute a waiver of all claims existing and known at the time of final payment, including claims for payment for services performed, by Provider with respect to this Agreement issued to Provider by Owner, except those claims authorized by this Agreement, previously made in writing and submitted in a timely manner, and specifically identified and reserved by Provider as unresolved in the application for final payment.

ARTICLE V

PROVIDER'S ACCOUNTING AND PROJECT RECORDS

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

ARTICLE VI OWNERSHIP AND USE OF DOCUMENTS AND DATA

- 6.1 Any and all studies, reports, service data, plans, investigations, design, system and engineering analyses, calculations and assumptions serving as the basis of the work product, data, information and other documents, including those in electronic form, prepared, provided or procured by Provider during the course of furnishing services to Owner under this Agreement or any individual Task Order issued to Provider by Owner shall be and become the property of Owner upon payment for the applicable services, whether the end product or project are completed or not; accordingly, such materials may be used by Owner for information and reference and in connection with Owner's use of the end product or Deliverables for the Owner's operational activities and occupancy of the project; provided, however, Owner's reliance upon and use of any incomplete data, information and other documents shall be the sole risk of Owner, provided that Provider identifies and discloses to Owner in writing such incomplete data, information and other documents or if such documents, normally to be stamped and sealed if complete, are not stamped and sealed by the Provider. Provider shall have no liability to Owner arising from Owner's use of such incomplete data, information and other documents identified and disclosed by Provider to Owner. It is understood that Provider shall retain all of its pre-existing know-how and pre-existing intellectual property not related to or created for the Services under this Agreement or any individual Task Orders.
- 6.2 If this Agreement is terminated under the provisions of ¶9.1, ¶9.2 or ¶9.3 of Article IX of this Agreement, Owner shall have the right to use the Deliverables to complete the engagement or project upon termination of this Agreement by Owner and notification thereof to Provider as provided in Article IX hereof.
- 6.3 **Patents, Copyrights and Infringement Claims.**

- 6.3.1 All inventions, ideas, designs and methods contained in the Deliverables in which Owner has, or acquires patent, copyright or other intellectual property rights (“Intellectual Property”) shall remain reserved for the exclusive use of Owner and may not be utilized, reproduced or distributed by or on behalf of Provider, or any employee, consultant or agent of Provider without the prior written consent of Owner except to the extent necessarily required in connection with performance of the Provider Services.
- 6.3.2 If, pursuant to performance of the Provider Services, Provider or any of its agents, officers, employees or consultants shall produce any patentable or copyrightable subject matter as to which Owner does not gain ownership rights, Owner shall thereupon have, without cost or expense, an irrevocable, non-exclusive, royalty-free license to make, have made or use, either itself or by another contractor or other party on its behalf, such subject matter in connection with any work or any activity now or hereafter undertaken by or on behalf of Owner. The license herein granted shall not be transferable and shall not extend to contractors or other parties except to the extent of their work or activity on behalf of Owner.
- 6.3.3 Except to the extent that rights are held by Provider or others under existing valid patents or copyrights and are not given to Owner, Owner shall have the right to use or permit the use of all such Deliverables, and also any oral information of any nature whatsoever received by Owner, and any ideas or methods represented by such Intellectual Property, for any purposes and at any time without other compensation than that specifically provided herein, and no such Intellectual Property shall be deemed to have been given in confidence and any statement or legend to the contrary on any of said Deliverables shall be void and of no effect.
- 6.3.4 Provider warrants that all Services performed shall be free from any claims made against Owner or Indemnified Parties of Intellectual Property from any other person or entity, unless arising from information provided by or through or at the direction of Owner. Provider shall save harmless and indemnify the Indemnified Parties from and against all costs, expenses and damages, including attorney fees and legal costs, which any of them shall incur or be obligated to pay by reason of any such infringement or claim of infringement, and shall, at the election of Owner, defend at the Provider’s sole expense all such claims in connection with any alleged infringement.
- 6.3.5 If Owner is enjoined from using any portion of the Deliverables as to which the Provider is to indemnify Owner against Intellectual Property claims, Owner may at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Provider to supply at its own expense, temporarily or permanently, facilities not subject to such injunction and not infringing any Intellectual Property, and if the Provider shall fail to do so, the Provider shall, at its expense, remove such offending facilities and refund the cost thereof to Owner or take such steps as may be necessary to ensure compliance by Owner with such injunction, to the satisfaction of Owner.
- 6.3.6 Provider is responsible to determine whether a prospective consultant is a party to any litigation involving Intellectual Property infringement claims, including antitrust or other trade regulation claims, or is subject to any injunction which may prohibit it under certain circumstances from providing services or using any Deliverables to be used or furnished under this Agreement and any individual Task Order. Provider enters into any agreement with a party to such litigation at its own risk and Owner will not undertake to determine the merits of such litigation. Owner, however, reserves the right to reject any article which is the subject of such litigation or injunction, or in its judgment use of such article as a result of such circumstances, would delay the Provider Services or be unlawful.

**ARTICLE VII
INTENTIONALLY OMITTED**

**ARTICLE VIII
INSURANCE**

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

- 8.6 Provider's Commercial General Liability Insurance shall be written on an occurrence basis. Owner shall be named as Additional Insured on all insurance coverage required under the Agreement except on the worker's compensation policy, employer's liability policy and professional liability policy. Additional Insured coverage shall apply as primary insurance with respect to any other insurance afforded to Owner, and the Provider's policy will not seek contribution from any, and all, insurance afforded to Owner, whether as Additional Insured or otherwise. Amounts of insurance and coverage provided shall be as required as set forth in this Article VIII.
- 8.7 Provider shall, throughout the term of this Agreement, maintain professional liability insurance in the aggregate amount of coverage of not less than One Million Dollars (\$1,000,000.00) per claim and One Million Dollars (\$1,000,000.00) in the aggregate. In addition to its own professional liability insurance, Provider shall require of any consultant utilized by Provider in connection with this Project that each maintain, throughout the term of this Agreement, its own professional liability insurance satisfactory to Owner. Provider shall provide evidence of such insurance coverage of Provider and of its consultants by a certificate or certificates of insurance provided to Owner, which certifications shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to Owner by the insurance carrier or its agent, with the exception that coverage may be terminated upon ten (10) days written notice provided to Owner for non-payment of the premium by Provider. If Provider receives notice of a threatened cancellation of coverage for non-payment of premium it shall immediately advise Owner in writing prior to any such cancellation deadline so as to provide Owner the opportunity to advance such payment on behalf of Provider out of monies to be paid to Provider under this Agreement for the coverage required hereunder. This insurance shall be maintained at no additional cost to Owner.
- 8.8 Intentionally Omitted.
- 8.9 Intentionally Omitted.
- 8.10 Provider shall provide evidence of all insurance coverage of Provider and of its consultants as required in this Article, including professional liability or errors and omissions policies of insurance by a certificate or certificates of insurance provided to Owner, which certifications shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to Owner by the insurance carrier or its agent with the exception that coverage may be terminated upon ten (10) days written notice provided to Owner for non-payment of the premium by Provider.
- 8.11 Intentionally Omitted.
- 8.12 The insurance carriers for Provider shall have no right of subrogation against Owner and its officers, directors, consultants, agents and employees, and Provider shall obtain from each of its insurers a waiver of subrogation on all insurance coverage required in this Article, including, but not limited to, Commercial General Liability, Workers Compensation, Employer's Liability and Business Auto Liability, in favor of the parties identified herein with respect to losses arising out of or in connection with the Work on the Project under the Agreement. Provider shall require waivers of subrogation in favor of Owner from its consultants, if any, in their agreements with those entities.
- 8.13 Notwithstanding any other provision of this Agreement to the contrary, should any policy required by this Agreement be canceled or otherwise terminated before the completion of the services hereunder, Provider shall exert all reasonable efforts to procure and maintain in force similar

insurance from insurers satisfactory to Owner and provide certificates of such insurance to Owner upon Owner's written request.

ARTICLE IX TERMINATION OF AGREEMENT

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

- 9.5 For any written notice required under this Article, such notice shall be sent by certified mail, by hand delivery or by overnight courier service to the other party hereto in accordance with the provisions of ¶11.19 hereof.

ARTICLE X DISPUTE RESOLUTION

10.1 General

- 10.1.1 Owner and Provider are fully committed to working with each other throughout the term of the Agreement and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Owner and Provider each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Services.
- 10.1.2 Owner and Provider will first attempt to resolve disputes or disagreements through discussions between their Authorized Representatives as designated herein. If a dispute or disagreement cannot be resolved through discussions between the Owner's and Provider's Authorized Representatives, upon the request of either party, principals of Owner and Provider shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the principals of Owner and Provider, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. If after meeting the parties' principals determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement, if mutually agreed upon by Owner and Provider, to non-binding mediation as set forth hereinafter in ¶10.2.
- 10.1.3 Owner and Provider shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but if not otherwise specified by applicable law, within not more than five (5) years after the actual date of completion of the services engagement or project or any individual Task Order issued to Provider by Owner with respect to any warranty claim and cause of action by Owner against Provider, or if the Project is permanently abandoned, suspended or discontinued as provided by ¶9.2, then within not more than five (5) years of the Date of Project suspension or abandonment. If a third party commences a claim or cause of action against Owner, whether based in warranty, contract, tort or otherwise, and such claim and causes of action include claims, issues or disputes involving the Services furnished under this Agreement, then such claims and causes of action which Owner may seek to pursue against Provider shall survive the five (5) year limitation provided herein and shall not be time barred if commenced within the period specified by applicable law.

10.2 Litigation

- 10.2.1 Claims, disputes and other matters in controversy arising out of or related to this Agreement, not otherwise resolved in accordance with ¶10.2 above, shall be decided through litigation in an Indiana court of law.
- 10.2.2 Any litigation arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement as a party to the litigation provided that the claims and issues being litigated relate to or involve such additional person or party. The foregoing agreement to litigate and other agreements to litigate with an additional person

or entity shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

- 10.2.3 For any litigation undertaken pursuant to this ¶10.3, exclusive venue for such judicial proceedings shall be in Johnson County, Indiana, and any hearing, trial or conference shall take place in that locale. The judicial proceedings, and all claims, disputes and other matters in controversy arising out of or related to this Agreement or the performance or breach thereof shall be governed by the laws of the State of Indiana. Owner and Provider consent to the choice of law, the choice of dispute resolution designated by them, venue as provided herein, and to personal jurisdiction over each of them as provided herein, and waive any right to object to the exercise of personal jurisdiction by the court and to exclusive venue in this locale.
- 10.2.4 No dispute under this Article shall interfere with the progress of the Provider's Services, and Provider shall proceed with furnishing its Services, including disputed performance, despite the existence of, and without awaiting the resolution of, any such dispute. The failure or refusal of Provider to continue performing under such circumstances shall constitute a default under the Contract as provided in Article IX hereof.
- 10.2.5 In any instance or proceeding whereby any claim, dispute or other matter in controversy between Owner and Provider involves, arises from or gives rise to a similar claim, dispute or other matter in controversy as between Owner and another third party, Provider shall furnish and present to Owner evidence, documentation and other information to support its claim, defense or other position with respect thereto. It is expressly understood that as to any and all Provider Services performed or agreed to be performed by Provider and as to any and all actual or alleged damages or costs incurred by Provider in connection with the Project, Owner shall under no circumstances be liable to Provider to any greater extent than Provider is found liable to Owner.

ARTICLE XI MISCELLANEOUS PROVISIONS

- 11.1 **Governing Law.** Unless otherwise specified, this Agreement shall be governed by the laws of the State of Indiana without regard to its choice of law provisions.
- 11.2 **Force Majeure.** Any delay or failure of Provider in performing its required obligations hereunder shall be excused if and to the extent such delay or failure is caused by a Force Majeure Event. A "Force Majeure Event" means an event due to any acts of God, strike, labor dispute fire, storm, flood, windstorm, unusually severe weather, sabotage, embargo, terrorism, energy shortage, accidents or delay in transportation, accidents in the handling and rigging of heavy equipment, explosion, riot, war, court injunction or order, delays by acts or orders of any governmental body or changes in laws or government regulations or the interpretations or application thereof. In the event of a Force Majeure Event, Provider shall receive an equitable adjustment extending Provider's time for performance for such Services sufficient to overcome the effects of any delay.
- 11.2.1 **Compensable Delays.** Any delay or failure of Provider in performing its required obligations hereunder shall be excused if and to the extent such delay or failure is caused by the acts or omissions of Owner or Owner's other contractors, vendors or consultants, and which delay or failure is not due to any fault or neglect on Provider's part, and the risks of which are not otherwise assumed by Provider pursuant to the provisions of this Agreement. The time for completion of the portion or portions of the Services directly affected by such delay, shall upon timely request of Provider be extended by a period equivalent to the time lost by reason of any and all of the aforesaid causes. Any

claim for an extension in the Contract Time or for increased compensation under this Agreement or any individual Task Orders, in order to be considered by Owner, shall be based on written notice delivered to Owner in accordance with ¶11.19 within fourteen (14) days of Provider becoming aware of the event or occurrence giving rise to the claim. Failure to timely submit notice as required herein shall constitute a waiver of the right to seek a time extension or additional compensation. Provider's compensation for Basic Services may be adjusted as mutually agreed by Owner and Provider for any increased costs of performing the Services.

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

limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Provider under worker's compensation acts, disability benefit acts or other employee benefit acts.

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

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

the Confidential Information to perform their responsibilities in connection with this Agreement and the Provider Services. Provider shall be responsible for any disclosure of Confidential Information by its employees or contractors.

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

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

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

Owner:

Johnson County Board of
Commissioners
86 W. Court St.
Franklin, IN 46131

Provider:

Attention: _____

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

11.21 Pursuant to the requirements of existing laws of the State of Indiana and the United States of America, Provider and its consultants shall not discriminate against any employee or applicant for

employment to be employed in the performance of the Agreement, with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of his or her race, creed, religion, color, sex, pregnancy, national origin, ancestry, age, disability, genetic information, veteran status, or any other characteristic or status protected by law. Provider agrees to comply with all the provisions contained in the Equal Opportunity Clause quoted in Executive Orders No. 11246 and No. 113375. In addition, Provider shall cause this Equal Opportunity Clause to be included in the consultant agreements hereunder unless exempted by rules, regulations and orders of controlling local, state or federal agencies having jurisdiction over the Project, including but not limited to, the Secretary of Labor issued pursuant to Section 204 of the Executive Orders No. 11246 and No. 11375 as amended. Breach of this covenant may be regarded as a material breach of contract.

11.22 Provider and its consultants shall, in all solicitations or advertisements for employees placed by them or on their behalf, state all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, pregnancy, national origin, ancestry, age, disability, genetic information, veteran status, or any other characteristic or status protected by law. In the hiring of employees for the performance of work under the Agreement or any consultant agreement hereunder, neither Provider, its consultants, nor any person acting on behalf of Provider or its consultants, shall by reason of race, religion, color, sex, pregnancy, national origin, ancestry, age, disability, genetic information, veteran status, or any other characteristic or status protected by law discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.

11.23 **E-Verify Compliance.** As required by Ind. Code §22-5-1.7, Provider swears and affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien. Provider further agrees that:

- a. Provider shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in Ind. Code §22-5-1.7-3. Provider is not required to participate should the E-Verify program cease to exist. Additionally, Provider is not required to participate if Provider is self-employed and does not employ any employees.
- b. Provider shall not knowingly employ or contract with an unauthorized alien. Provider shall not retain an employee or contract with a person that Provider subsequently learns is an unauthorized alien.
- c. Provider shall require all of its consultants or subcontractors who perform work under this Agreement to certify to Provider that the consultant or subcontractor does not knowingly employ or contract with an unauthorized alien and that the consultant or subcontractor has enrolled and is participating in the E-Verify program. Provider agrees to maintain this certification throughout the duration of the term of its contract with its consultant or subcontractor.
- d. If Provider or any consultant or subcontractor violates the requirements of this ¶11.23 and its subparts, and it is brought to the attention of Owner, Owner shall require Provider to remedy the violation, or require the subcontractor or consultant to remedy the violation, not later than thirty (30) days after Owner notifies Provider. If Provider fails to remedy the violation, either directly or through its subcontractor or consultant, within the thirty (30) period, the failure of Provider to comply with this requirement may be treated by Owner as a default under the Agreement as provided in Article IX hereof. If Provider employs or

contracts with an unauthorized alien but Owner determines that terminating the Agreement would be detrimental to the public interest or public property, Owner may allow the Agreement to remain in effect.

- 11.24 **Drug Free Work Site.** Provider and its employees shall comply with all provisions of the Drug Free Workplace Act of 1988 as amended. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the workplace is prohibited. In all cases where Provider is permitted to employ a consultant, Provider is responsible for the consultant and consultant's employees being in compliance with the Substance Abuse Policy. This provision does not release the Provider from the obligation to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655 and 49 CFR Part 40, as amended for covered employees.
- 11.25 **Competing Laws.** As between inconsistent provisions among Federal, State and local laws, Provider should generally comply with the more stringent requirement, unless a Federal law, rule or regulation requires that the affected Federal provision be observed, notwithstanding the existence of a more stringent applicable State or local requirement.
- 11.26 **Differing Dates of Execution.** Notwithstanding differing dates of execution hereof, this Agreement shall be deemed to have been made and entered into on the year and date hereinabove described, and except as otherwise provided for herein with respect to effective dates for specific obligations, shall become binding and effective upon that date.
- 11.27 **Execution in Counterparts.** This Agreement may be executed in counterparts by each party signing a separate signature page which then shall be furnished to the other party hereto. Counterparts executed and distributed by email copy are acceptable and shall be considered as binding and effective as an original signature, and all of which together shall constitute one and the same instrument.

ARTICLE XII FEDERAL FUNDING COMPLIANCE REQUIREMENTS

- 12.1 **Federal Funding.** This Agreement and any individual Task Orders may be funded in part by grant monies supplied through the FTA of the USDOT. As such, federal funding terms are required to be included in the Agreement and shall be binding terms and conditions of this Agreement.
- 12.2 **Provider Compliance.** If Federal funding is utilized, Provider shall comply with each and every federal funding compliance requirement set forth in the Contract Documents.
- 12.3 **Incorporation of FTA Terms.** If Federal funding is utilized, in addition to the provisions of Attachment 1, all contractual provisions set forth in FTA Circular 4220.1F are incorporated herein by reference and made a part hereof. Provider shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests which would cause Owner to be in violation of the FTA terms and conditions.
- 12.4 **Flow Down of Obligations.** Provider shall require each and every vendor, consultant or services provider performing part of the Services under this Agreement or any individual Task Order issued to Provider by Owner, as a material term of performance, to comply with the terms and conditions of this Article. Provider shall furnish to Owner upon Owner's request copies of all subcontracts, agreements and purchase orders entered into by Provider for performance of part of the Provider

Services under this Agreement, demonstrating compliance with this provision.

ARTICLE XIII
PROVIDER REPRESENTATIONS
AND ACKNOWLEDGEMENTS

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

company in which Provider, or its employee or agent, or a family member of its employee or agent, has a pecuniary interest.

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

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

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

ARTICLE XIV SUCCESSORS AND ASSIGNS

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

acceptance by Owner, Owner's payment obligations to any subcontractor and consultant being limited to payment for services that may be provided to Owner thereafter by that subcontractor and consultant.

**ARTICLE XV
EXTENT OF AGREEMENT**

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

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

JOHNSON COUNTY BOARD OF COMMISSIONERS

SERVICE PROVIDER:

Brian P. Baird, Chair

Kevin M. Walls, Member

Ronald H. West, Member