

CHRISTOPHER B. BURKE ENGINEERING, LLC

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April 27, 2012

The Honorable Kristen Brown Mayor City of Columbus 123 Washington Street Columbus, Indiana 47201

Subject:

Columbus Flood Management Plan

Professional Services Proposal

Dear Mayor Brown:

Christopher B. Burke Engineering, LLC (CBBEL) is pleased to provide this proposal to provide professional engineering services in support of the City's efforts to develop and implement a comprehensive plan to mitigate and manage flood risks within the City's riverine corridors. The following is our proposed scope of services, study schedule, and estimated fee in support of the project.

UNDERSTANDING OF THE ASSIGNMENT

In June 2008, the residents, businesses, and municipal assets along the Haw Creek corridor and several other areas in Columbus, Indiana sustained enormous economic damage as a result of significant rainfall and subsequent flooding. In response to that flooding and analysis of flood risk for the Haw Creek watershed done since that flood, the City has been seeking to improve their ability to prepare for and respond to flooding, prevent increases in flood damages and vulnerability, and reduce the level of vulnerability as possible. The City has requested the assistance of CBBEL in creating a comprehensive Flood Risk Management Plan to reach these goals.

SCOPE OF SERVICES

Services to be provided by CBBEL are described in the following tasks. These tasks and the order in which they are listed follow the logic and thought pattern summarized earlier by CBBEL and presented to the City in a document entitled: "A Vision for a Flood Resilient and Sustainable Columbus", dated January 2012.

Task 1 - Work Plan Development:

CBBEL will develop a project work plan that defines the project approach, including the planning process, schedule, and scale of analysis; roles and responsibilities of the Project Team; communication plan for decision-making and distribution of information; involvement of various City Departments or standing committees, and public/stakeholders; and deliverables, progress reporting, and invoicing process. CBBEL will meet with the Project Team to officially kick-off the project, review the work plan, and agree on its contents. The deliverable for this task includes a copy of the final project work plan.

Task 2 - Evaluate the Accuracy of Existing Flood Risk Data

CBBEL will investigate each of the existing FIS study models within the Columbus planning jurisdiction for evidences of errors or outdated information that would lead to predicted flood depth inaccuracles. Included in this analysis would be comparisons with historic flood elevation and discharge information along with a review of the model input data compared to available topography and bridge/culvert data. Based on this investigation, CBBEL will identify the estimated cost and priority associated with correcting each of the stream reaches determined to have significant erroneous results and also identify which stream reaches currently have accurate data for use in other parts of the Flood Risk Management Plan.

Task 3 - Develop Flood Depth Maps for Selected Stream Reaches and Locations

CBBEL will use best available flood elevation data to create flood depth mapping of the more developed reaches of streams for up to 4 flood frequencies and associate each depth map with a USGS gauge stage as possible. It is assumed that this depth mapping will be created for no more than 23 miles of stream. (Due to the extent of work being proposed, this mapping will not likely be detailed enough to meet the requirements for placing as "Inundation Maps" on the USGS/AHPS gauging station web site. It could. however, be provided on the City web site in addition to FEMA regulatory products.) This mapping would be for use in evaluating Flood Response Plan needs. The proposed stream reaches to include are: Flatrock River from CR 400 North downstream to the confluence with Driftwood River, Driftwood River from Wolf Creek downstream to the confluence with Flatrock River, East Fork White River from Flatrock River downstream to CR 200 South, and Clifty Creek between Gladstone Avenue and Sloan Branch confluence. Efforts are already currently underway with USGS funding to have Haw Creek depth mapping connected with and displayed on the USGS/AHPS gauging stations as "Inundation Maps". This task assumes that available terrain data will be adequate for creating the files necessary to create the depth mapping in ArcGiS.

In addition to the reaches identified above, CBBEL will determine and provide expected flood depth information at up to 50 significant road crossings in the City planning jurisdiction for use in the Flood Response and Evacuation Plan.

As part of this task, a brief discussion of dams that could impact the City along with a summary of at-risk areas determined based on any available dam breach inundation mapping will be presented.

<u>Task 4 – Coordinate Future Development of Flood Forecast Models</u>

CBBEL will initiate detailed discussions with the National Weather Service (NWS) Ohio River Forecast Center to select potential sites and outline the steps as well as costs for development of flood forecast models for major streams affecting Columbus and for incorporation of the results into existing NOAA AHPS stations which are collocated with the USGS gauging stations. In addition, CBBEL will provide recommendations for additional stream gauging stations or rainfall gauges that would be useful for elements of the Plan and identify how they can be used.

Task 5 - Develop a Citywide Flood Response and Evacuation Plan

The purpose of the Flood Response Plan (FRP) is to reduce the risk of human life loss, injury, and damage to property during a flood event. Due to its intended use, the FRP will be presented in a stand-alone document. To prepare a FRP that meets the needs of the City of Columbus, the following subtasks have been identified.

- a) Review Flood & Past Flood Fight Efforts: CBBEL will assemble data on past flood events including: the NWS AHPS, USGS stream gage records, and observational data. CBBEL will also map the areas that have been impacted and the magnitude of flood-related loss. As part of this subtask, CBBEL will also meet with key representatives from the City of Columbus to understand the successes and failures from past flood fight efforts.
- b) Prepare Flood Response Plan: CBBEL will prepare a plan that will detail the 4 steps that must be followed anytime a flood event has been detected. These include: 1) flood event detection and severity level determination, 2) notification and communication procedures, 3) expected actions as part of flood response, and 4) termination of the flood response effort and follow-up. Integral to the FRP is inundation mapping that shows the areas expected to flood at various flood elevations. The inundation mapping recently completed for Haw Creek along with inundation mapping to be created as outlined in Task 3 described above will be used within the plan. Where inundation mapping associated with various flood events is not available, CBBEL will use the current regulatory floodplain boundaries as guidance for warning and evacuation efforts. Also included in the plan will be the identification of areas with sufficient warning time to warrant the use of sandbags and an evaluation of areas where sandbags can be used without causing increased flooding on adjacent properties.
- c) Warning and Evacuation Annex: CBBEL will prepare an annex to the FRP that establishes procedures for warning, evacuating, and sheltering individuals that would be endangered by a flood event. Flood depth

mapping prepared as part of Task 3 and supplemental inundation information will be used to determine the limits of warning and evacuation areas. CBBEL will also identify bridges and roads that may be flooded and not available as evacuation or emergency routes.

d) Training Exercises: Conduct a half-day training exercise with local decision-makers and flood fight team members that includes a table top exercise to go through the FRP step by step and simulate the response to a flood event.

Task 6 - Develop a Comprehensive Post-Flood Damage Assessment Protocol

CBBEL will establish a comprehensive protocol to be applied within the City's planning jurisdiction after every major flood. After a flood, the primary activity for a community is assessing the damage and recovering. However, a Post-Flood Damage Assessment Protocol gives the community a way to take advantage of the opportunity to gather data that will improve the tools for evaluating future flood risks and possible alternatives to reduce these risks. Potential data to collect includes aerial mapping of the flood near its peak crest, high water marks, rainfall distribution data, and comparisons of high water marks and inundated areas with risk areas for a similar event level on existing regulatory flood maps.

Task 7 - Identify and Recommend Education/Outreach Material

In coordination with City representatives, CBBEL will identify existing education/public outreach material related to what to do before, during, and after a major flood. CBBEL will also make a recommendation as to any specific needs for additional material.

Task 8 - Evaluate the Adequacy of Floodplain and Stormwater Ordinances

CBBEL will review and evaluate City's flood hazard areas ordinance as well as Stormwater Ordinance and technical standards to see if the existing codes contain adequate safeguards to prevent existing flooding problems to get worse. Based on a preliminary knowledge of the City's existing regulations, it appears that measures such as requiring compensatory floodplain storage, prohibiting any developments within regulatory floodway, combining various stormwater-related ordinances into a single ordinance. establishing maximum allowable release rates development/redevelopment, higher standards for locating and protecting critical infrastructure, requiring Channel Protection Volume, and allowing and encouraging utilization of LID/Green Infrastructure may need to be considered. As part of this task, CBBEL will review and evaluate existing floodplain and stormwater regulations and will recommend specific needed improvements.

Task 9 - Identify and Catalog Flood Prone Areas

CBBEL will inventory, evaluate, and catalogue flood prone areas and structures and flood prone road infrastructure. This will be done through GIS desktop analysis, location of

repetitive loss properties, interview with City and County staff, and historical data. Based on this evaluation, the flooding problem areas will be categorized and prioritized based on the problem severity and extent.

Task 10 - Identify and Evaluate Potential Feasible Flood Mitigation Projects

CBBEL will identify the most promising and appropriate mitigation strategy for each flood prone area identified in Task 9 (to the extent possible using existing computer modeling and related data). These potential mitigation strategies may include both structural and non-structural measures. Such strategy will depend on: the type of structure (residential, commercial, industrial, critical facility, etc.), whether a flood prone structure is within the regulatory floodway, and the expected depth and duration of flooding. CBBEL will screen alternative measures for each flood prone area and will recommend the most appropriate measure(s) for each area and provide an estimated cost along with pros and cons of each measure. Other alternatives considered but not recommended will also be briefly discussed in order to document reasons for not pursuing those alternatives.

Task 11 - Prepare a Comprehensive Report

CBBEL will compile the results of its work into a comprehensive report. Besides documenting the work performed for each task, the report will contain an implementation plan that will summarize the priority, time frame, and estimated cost of recommended further actions. The report will be first presented to the City in draft form (hard copy and pdf) for posting by the City on its website for public review. Following the conclusion of the comment period, CBBEL will incorporate the received comments as appropriate and will issue a final report in both hard copy and digital (PDF) formats.

Task 12 - Prepare Progress Reports, Attend Meetings, and Make Presentations.

CBBEL will issue monthly progress reports as part of its monthly invoices and will also attend up to 2 progress meetings with City staff, as needed after the kickoff meeting. CBBEL will also develop a PowerPoint and present the results of its work in up to two public meetings, as needed and directed by the City.

<u>Alternate Addition to Task 3 – Develop Flood Depth Maps for Additional Selected Stream Reaches</u>

If desired, CBBEL will perform additional analysis to develop flood depth mapping products as described under Task 3 for approximately an additional 20 miles of stream reaches. These additional reaches are (1) Sloan Branch from County Road 350 North to Clifty Creek, (2) Opossum Creek from the base of the dam upstream of Terrace Lake Road to East Fork White River, and (3) Denois Creek from I-65 to East Fork White River. Since hydraulic modeling exists for less than a mile of the desired reach for Sloan Branch, additional detailed hydraulic and hydrologic modeling to obtain BFEs at the additional locations along the stream has also been included in this task.

PROPOSED SCEDULE

We estimate needing a minimum of 7 months to complete our work through the development of draft reports. We will need an additional month to finalize the reports following the completion of the review period.

ESTIMATED FEE

CBBEL will undertake the above tasks for a fixed fee of \$147,600. A breakdown of the approximate value of each task follows. This breakdown was based on the assumption that efforts within some tasks would be coincident with efforts in other tasks. Therefore, the fee for each task is not completely applicable as the fee for a standalone product:

- Task 1: Work Plan Development \$3,600
- Task 2: Evaluate the Accuracy of Existing Flood Risk Data \$14,700
- Task 3: Develop flood Depth Maps \$42,100
- Task 4: Coordinate Flood Forecast Model Development \$6,700
- Task 5: Flood Response & Evacuation Plan \$42,600
- Task 6: Post Flood Damage Assessment Protocol \$1,300
- Task 7: Education/Outreach Material \$2,500
- Task 8: Ordinance Evaluation \$2.600
- Task 9: Identify and Catalog Flood Prone Areas \$4,400
- Task 10: Flood Mitigation Projects \$14,000
- Task 11: Comprehensive Report \$5,800
- Task 12: Progress Reports, Meetings, & Presentations \$7,300

Our fee for performing the Alternate addition to Task 3 is \$23,800. With the addition of this alternate, the total fixed fee for CBBEL services will be \$171,400.

We will bill you monthly, based on percent of each task completed at the end of each month. Our contract will be established in accordance with the attached General Terms and Conditions. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. In addition to these General Terms and Conditions, CBBEL also agrees to abide by the provisions of the attached Federal and State Third-Party Contract Provisions.

If this proposal meets with your approval, please sign where indicated and return an executed original to us as our Notice to Proceed. The executed Proposal, along with the Estimated Fee, the attached General Terms and Conditions, and the attached Federal and State Third-Party Contract Provisions constitute the whole of our Agreement. Any modification to any part of this Agreement without prior acknowledgement and consent by CBBEL will make null and void this Agreement.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please contact me or Siavash Beik, P.E. at the number listed above if you have questions regarding this matter.

Jon D. Stolz, P.E. Manager, Indiana

THIS PROPOSAL, ESTIMATED FEE, STANDARD CHARGES FOR PROFESSIONAL SERVICE AND GENERAL TERMS AND CONDITIONS ARE ACCEPTED BY THE CITY OF COLUMBUS:

Authorized Option	n (please mark one):	Base OptionWith Alter	mate
Signature:	King SB		
Name (Printed):	Kristen S	-Brown	
Title: Mayo	•		
/	25,201a	·	

Enclosures: General Terms and Conditions

Federal and State Third-Party Contract Provisions

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CHRISTOPHER B. BURKE ENGINEERING, LLC GENERAL TERMS AND CONDITIONS

1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, LLC (Engineer) shall serve as Client's professional engineer consultant. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations will commence to run either on the date of substantial completion of the project (for acts or failures to act occurring prior to substantial completion), or, in the event of an act or failure to act occurring after the date of substantial completion, the date the act or failure becomes known or reasonably should have been known.

2. Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities.

- 3. <u>Changes</u>: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
- 4. <u>Suspension of Services</u>: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumptions of the services upon expiration of the Suspension of Services Order.

Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. <u>Termination</u>: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that

termination is in its best interests. The Engineer shall be paid as compensation in full for services performed to the date of that termination, an amount calculated in accordance with paragraph of this Agreement. Such amount shall be paid by the City upon the Engineer's delivering or otherwise making available to the City, all data, drawings, specifications, reports, estimates, summaries, and other information and materials as may have been accumulated by the Engineer in performing the services included in this Agreement, whether completed or in progress, and as set forth in paragraph 6.

6. <u>Documents Delivered to Client</u>: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities. losses, damages, and costs, including but not limited to attorney's fees arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its Instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law. to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. Any reuse by Client or others on extensions of the Project or any other project without specific written verification or adaptation by Engineer shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting there from. The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client

has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

- 8. <u>Standard of Practice</u>: The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
- 9. Compliance With Laws: The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement. With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim ansing from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. <u>Indemnification</u>: Engineer shall indemnify and hold harmless Client and its respective officials, officers, employees, agents, assigns and legal representatives from any and all claims, liabilities, demands of any nature whatsoever, losses, cause of action (including death and personal injury), damage, lawsuits, judgments, including reasonable attorney's fees and costs, arising out of or relating to any sole intentional or negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer and its respective officials, officers, employees, agents, assigns and legal representatives from any and all claims, liabilities, demands of any nature whatsoever, losses, cause of action (including death and personal injury), damage, lawsuits, judgments, including reasonable attorney's fees and costs, arising out of or relating to any sole intentional or negligent act, error or omission of Client.

When and in the event of joint or concurrent liability, loss, cost, expense, damage or negligence of Engineer or Client, each shall bear its own liability, loss, cost, expense or damage in connection with the investigation and defense of such claims, and each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence which caused the personal injury or property damage.

11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgment as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by

him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.

12. <u>Governing Law & Dispute Resolutions</u>: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the State of Indiana.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which cannot be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project Is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- 13. <u>Successors and Assigns</u>: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
- 14. <u>Waiver of Contract Breach</u>: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
- Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
- 16. <u>Amendment</u>: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".

- 17. <u>Severability of Invalid Provisions</u>: If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
- 18. <u>Force Majeure</u>: Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
- 19. <u>Subcontracts</u>: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
- 20. Access and Permits: Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer performs such services.
- 21. <u>Designation of Authorized Representative</u>: Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project The persons designated shall review and respond promptly to all communications received from the other party.
- 22. <u>Notices</u>: Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
- 23. <u>Client's Responsibilities</u>: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

24. <u>Information Provided by Others</u>: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's sub-consultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury

or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.

25. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

May 4, 2012-INDIANA Modified Columbus

FEDERAL AND STATE THIRD-PARTY CONTRACT PROVISIONS

CDBG-ASSISTED NON-CONSTRUCTION CONTRACTS

(Required by Title 24 of the Code of the Federal Register as well as other selected contract provisions required by the Indiana Office of Community and Rural Affairs for CDBG-assisted grants/activities)

The following Federal Regulations, Contract Provisions and Clauses are incorporated into this agreement in their entirety, and made an integral part hereof.

1. Equal Employment Opportunity (Executive Order 11246 dated 9/24/65, as amended by Executive Order 11375 dated 10/13/67):

The contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for professional services, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the federal government pursuant to a grant, contract, loan insurance or guarantee or undertaken pursuant to any federal program involving such grant, contract, loan insurance or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and with the rules, regulations and relevant orders of the Secretary of Labor.
- E. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as

provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The contractor will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 14, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- H. The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrument or subdivision of such government which does not participate in work on or under the contract.
- I. The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- J. The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate proceedings.

2. <u>Minority and Women Business Enterprise Policy (Indiana Office of Community and Rural</u> Affairs):

The contractor agrees to ensure that disadvantaged business enterprises as defined in 13 CFR 124.103 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 13 CFR 124.103 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The contractor shall establish and pursue a 10% goal for participation in the proceeds of this contract.

During the performance of this contract, the contractor agrees to comply with Executive Order 12138 entitled "Women Business Enterprise Policy" which includes, but is not limited to, creating or supporting new programs responsive to the special needs of women business enterprises, establishing incentives to promote business or business-related opportunities of women business enterprises, collecting and

disseminating information in support of women business enterprise in ensuring to women business enterprises knowledge of any ready access to business-related services and resources.

3. Compliance in the Provision of Training, Employment and Business Opportunities:

- A. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development through the Indiana Office of Community and Rural Affairs and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC, 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- C. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

4. Title VI Civil Rights Act of 1964:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- A. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
- B. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- C. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, their sources of information and its facilities as may be determined by the Indiana Office of Community and Rural Affairs or the United States Department of Housing and Urban Development to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information is required or a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the awarding agency, the Indiana Office of Community and Rural Affairs, or the United States Department of Housing and Urban Development, as appropriate, and shall set forth what efforts it has made to obtain the information.
- D. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Indiana Office of Community and Rural Affairs or the United States Department of Housing and Urban

Development shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the contractor under the contract until the contractor complies; and/or,
- (2) Cancellation, termination or suspension of the contract, in whole or in part.
- E. The contractor shall include the provisions of paragraph (A) through (E) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Indiana Office of Community and Rural Affairs or the United States Department of Housing and Urban Development may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Indiana Office of Community and Rural Affairs to enter into such litigation to protect the interests of the State of Indiana, and, in addition, the contractor may request the United States Department of Housing and Urban Development to enter into such litigation to protect the interests of the United States.

5. Title VIII Civil Rights Acts of 1968 (as applicable):

The contractor shall comply with Title VIII Civil Rights Acts of 1968 which prohibits discrimination in the sale or rental of dwellings (as defined), discrimination in the financing or housing, blockbusting, and discriminatory advertising; and makes it unlawful to deny any person access to, or membership or participation in, any multiple listing service or real estate broker organization for discriminatory reasons.

6. Section 109 Housing and Urban Development Act of 1974 (as applicable):

The contractor provides that no person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part under this title.

7. Section 504 Rehabilitation Act of 1973:

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all demotion or transfer, recruitment, advertising, layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Indiana Office of Community and Rural Affairs, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of

Section 504 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

F. The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 504 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

8. Fair Housing Amendments Act of 1988 (as applicable):

The contractor shall comply with Fair Housing Amendments Act of 1988 which Amends Title VIII of the Civil Rights Act of 1968 that prohibits discrimination on the basis of race, color, religion, sex or national origin in the sale, rental and financing of dwellings. The 1988 Amendments Act extends coverage of the 1968 Act to persons with disabilities and families with children. In addition, the 1988 Amendments establish certain design and construction requirements for new multi-family housing built for first occupancy on or after March 13, 1991.

9. Age Discrimination Act of 1975:

The contractor shall comply with the Age Discrimination Act of 1975 which provides that no person, on the basis of age shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

10. Americans With Disabilities Act of 1990:

The contractor shall comply with the Americans With Disabilities Act of 1990 which provides that no person, on the basis of handicap, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. Certification of Nonsegregated Facilities:

The contractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and those under his/her control. He/she certifies further that he/she will not maintain or provide for employment segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The contractor agrees that a breech of this certification is a violation of the Equal Opportunity Clause of the contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the awards of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will retain such certification in his/her files; and that he/she will forward this notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

12. Retention and Access Requirements For Records (24 CFR Part 85.42):

A. The contractor shall comply with Retention and Access Requirements For Records (24 CFR Part 85.42) and State of Indiana records access and retention requirements, to wit:

Financial records, supporting documents, statistical records and all other records pertinent to a grant shall be retained for a period of five (5) years, with the following qualifications:

- (1) If any litigation, claim, negotiation, audits or other action is started before the expiration of the five-year period, the records shall be retained until all litigation, claim or audit findings involving the records have been resolved, or the five-year period, whichever is later.
- (2) Records of nonexpendable property acquired with federal funds shall be retained for five years after final disposition of such property.
- (3) When records are transferred to or maintained by the federal sponsoring agency, the five-year retention required is not applicable to the grantee.
- B. The five-year retention period starts from the date of issuance of a "Certification of Completion" respective to the grant by the Indiana Office of Community and Rural Affairs.
- C. The Indiana Office of Community and Rural Affairs shall request transfer of certain records to its custody from grantees when it is determined that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, the Indiana Office of Community and Rural Affairs may make arrangements with grantees to retain any records that are continuously needed for joint uses.
- D. The Indiana Office of Community and Rural Affairs, the United States Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of grantee and sub-grantees to make audits, examinations, excerpts and transcripts.
- E. Unless otherwise required by law, Indiana Office of Community and Rural Affairs shall not place restrictions upon grantees that will limit public access to the records of grantees that are pertinent to a grant except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 USC 552) if the records had belonged to the grantor agency.

13. Conflict of Interest (24 CFR 85.36 and 24 CFR 570.611):

The contractor shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Persons covered under this section include any person who is:

- (a) An employee, agent, consultant, officer, or elected or appointed official of the grantee, any designated public agency or any subrecipient agency that is receiving CDBG funds from the Indiana Office of Community and Rural Affairs;
- (b) Any member of his/her immediate family;
- (c) His or her partner; or
- (d) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements funded with CDBG funds. To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents or by contractors or their agents.

No persons described in (a) through (d) above who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial

interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter.

14. Remedies/Sanctions or Breach of Contract Terms:

Upon written notice, the grantee may withhold payments to the contractor if the contractor shall fail to fulfill in a timely and proper manner its obligations to grantee under this contract, or if the contractor shall violate any of the conditions of this contract. The grantee shall in its written notice to contractor fully describe the nature of failure or violation by contractor, the corrective action required of contractor, and, the grantee shall allow the contractor thirty (30) days from the date of notification to correct such failure and/or violation. If such failure or violation is corrected by the contractor within thirty (30) days from the date of notification, then the grantee shall process payment(s) to the contractor. If such failure or violation is not corrected within thirty (30) days from the date of this notification, then the grantee may proceed to terminate this contract.

15. Termination of Contract for Cause - 24 CFR 85.43 (All Contracts in Excess of \$10,000):

If the contractor shall fail to fulfill in a timely and proper manner his/her obligations under this contract, or if the contractor shall continue to violate any of the covenants, agreements, or stipulations of this contract, following notices by the grantee and allowances for corrective actions specified in Paragraph 14 above, the grantee shall thereupon have the right to terminate this contract by giving written notice to the contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the contractor under this contract shall, at the option of the grantee, become the property of the grantee and the contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. In the event the contractor disputes grantee's election to terminate this contract for cause under this paragraph, contractor may pursue equitable relief or remedy.

16. Termination for Convenience - 24 CFR 85.44 (All Contracts in Excess of \$10,000):

The grantee may terminate this contract for its convenience, at any time, by giving at least thirty (30) days notice in writing to the contractor. If the contract is terminated by the grantee as provided herein, the grantee agrees to pay the contractor, no later than thirty (30) days following the date of the written notice of contract termination by grantee. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the contractor under this contract shall, at the option of the grantee, become the property of the grantee and the contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

17. Changes to Contract:

The terms and conditions of this contract may be changed at any time by mutual agreement of the parties. Such modification shall be effective upon the signing by both parties of an addendum to this contract encompassing those changes. Where the addendum changes the compensation or time of performance, it shall also describe the change in scope, character or complexity of the work that is the basis for the change.

18. Contractor to Furnish Necessary Personnel Resources:

A. The contractor represents that it has, or will secure at its own expense, all personnel required in performing the services specified in this contract. Such personnel shall not be employees of or have, as individuals, any contractual relationship with the grantee.

- B. All of the services required hereunder will be performed by the contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- C. With the exception of the work described as being subcontracted within the contract, if any, none of the work or services covered by this contract shall be subcontracted without the prior approval of the grantee. Any additional work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.

19. Reports and Information:

The contractor, at such times and in such forms as the grantee or the Indiana Office of Community and Rural Affairs may require, shall furnish grantee and/or the Indiana Office of Community and Rural Affairs such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred by grantee in connection therewith, and any other matters covered by this contract.

20. Records and Audits:

The contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this contract and such other records as may be deemed necessary by the grantee to assure proper accounting for all funds applicable to this contract. These records will be made available for audit purposes to the grantee or any authorized representative, and will be retained for five years after the expiration of this contract unless permission to destroy them is granted.

21. Copyright and Patent Rights:

No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the contractor. The US Department of Housing and Urban Development, the Indiana Office of Community and Rural Affairs and the grantee shall possess all rights to invention or discovery, as well as rights in data which may arise as a result of the contractor's services.

22. Compliance with State and Local Laws:

The contractor specifically agrees that in performance of the services herein enumerated, contractor and his/her employees/agents will comply with any applicable State, and Local Statutes, ordinances and regulations at the time this agreement is executed.

23. Disclosure Reports (HUD Reform Act of 1989 - 24 CFR Part 4.9):

Section 2 of the HUD Reform Act of 1989 requires that if the grantee receives \$200,000 or more in federal CDBG funds during a federal fiscal year, (October 1 - September 30), a HUD disclosure report must be completed for each contract funded in whole or in part with federal CDBG funds. A copy of all such Disclosure Reports must be submitted by the grantee to the Grant Support Office of the Indiana Office of Community and Rural Affairs within ten (10) days after contract execution. In order for the grantee to comply with this federal requirement, the grantee will provide to the contractor the prescribed format of Part IV to the HUD Disclosure Report, and the contractor agrees to furnish the grantee a completed Part IV to the HUD Disclosure Report within seven (7) days of execution of the agreement between contractor and grantee. Within such Part IV of the prescribed HUD Disclosure Report, the contractor will provide the grantee with the following minimum information:

a. The name of all persons who are proprietors, partners, directors or officers of the contractor and thereby have a pecuniary interest in the proceeds of the CDBG-assisted contract;

- b. The social security account number of all proprietors listed in a above, or the federal identification number of the partnership or corporation which is subject to the CDBG-assisted contract, as applicable;
- c. The type of participation each individual named in a. above will have in the CDBG-assisted contract. Such participation may be listed in the Part IV of the HUD Disclosure Report as "direct", or "passive", whichever applies to such proprietor, partner, director or officer, as applicable; and,
- d. The financial interest of the named individual as set forth in a. above; such interest to be expressed in dollar terms or in terms of percentage of ownership of the proprietorship, partnership, or corporation which is to receive federal CDBG funding under this contract.

24. Compliance with Copeland "Anti-Kick Back" Act:

In carrying out this agreement, the contractor agrees to comply with the requirements of the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in US Department of Labor regulations 29 CFR Part 3, respective to all contracts and subgrants for construction or repair services.

25. Compliance with Davis-Bacon Act:

In carrying out this agreement, the contractor agrees to comply with the requirements of the Davis-Bacon Act (40 USC 276a to 276a-7) as supplemented in US Department of Labor regulations 29 CFR Part 5, respective to construction contracts in excess of \$2,000 awarded by grantees and subgrantees.

26. Compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act:

In carrying out this agreement, the contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act (40 USC 327-333) as supplemented in US Department of Labor regulations 29 CFR Part 5, respective to construction contracts in excess of \$2,000 awarded by grantees and subgrantees, and \$2,500 for other contracts which involve the employment of mechanics or laborers.

27. Compliance with Clean Air and Water Acts (applicable to all contracts over \$100,000):

In carrying out this agreement, the contractor agrees to comply with the requirements of the Federal Clean Air Act (42 USC 7401 et seq.), and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended. Such statutes and regulations prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the Environmental Protection Agency's List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the US Environmental Protection Agency.

28. Conservation:

In carrying out this agreement, the contractor agrees to comply with the requirements of mandatory standards and policies relating to energy efficiency which are contained in the State of Indiana's energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act (PL 94-163, 89 Statutes 871).

29. Drug-Free Workplace Requirements:

In carrying out this agreement, the contractor agrees to compty with the requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and to certify that contractor will comply with drug-free workplace requirements in accordance with the Act and with HUD rules found at 24 CFR part 24, subpart F.