

**PORT OF INDIANA, JEFFERSONVILLE**

**CLARK COUNTY, INDIANA**

**REQUEST FOR PROPOSALS PACKAGE**

**FOR**

**CONTRACT JF-2022-C1**

**CRANE RAIL DEMOLITION / REMOVAL AND  
LAYDOWN YARD CONSTRUCTION PROJECT**

**AUGUST 2022**

**STATE OF INDIANA**

---

---

**THE HONORABLE ERIC HOLCOMB**

**GOVERNOR OF THE STATE OF INDIANA**

**Prepared for the PORTS OF INDIANA**

**BY: Jeffrey D. Schaffer, PE  
Abonmarche Consultants Inc.  
315 West Jefferson Boulevard  
South Bend, Indiana 46601  
(574) 232-8700 x 240  
jschaffer@abonmarche.com**

TABLE OF CONTENTS

PART I INSTRUCTIONS TO PROPOSERS

ITB-01	Project Description and Location.....	I-2
ITB-02	Prequalification .....	I-2
ITB-03	Pre-Proposal, Proposal, and Post-Proposal Requirements .....	I-2
ITB-04	Notice of Award and Completion .....	I-4
ITB-05	Insurance .....	I-4
ITB-06	Plan Quantities .....	I-5
ITB-07	Substitutions .....	I-5
ITB-08	Minority & Women’s Business Enterprise Goals .....	I-5
ITB-09	Compliance with Laws and Certifications .....	I-5
ITB-A	List of Project Work Type Categories.....	I-6

FORMS TO BE COMPLETED AND INCLUDED WITH CONTRACTOR’S PROPOSAL

Contractor’s Proposal.....	I-9
MBE/WBE Subcontractor Commitment Form .....	I-17
Non-Collusion Statement .....	I-20
E-Verify Affidavit.....	I-21
Drug-Free Workplace Certification .....	I-22

FORMS TO BE SUBMITTED BY LOW PROPOSER

Performance and Payment Bond .....	I-25
------------------------------------	------

---

PART II  
FORM OF CONTRACT AND GENERAL CONDITIONS

FORM OF CONTRACT

Ports of Indiana Standard Form of Construction Agreement for Small Projects..... C-2

GENERAL CONDITIONS

GC-1	Execution, Correlation and Intent of Documents.....	GC-2
GC-2	Owner Responsibilities .....	GC-2
GC-3	Separate Contracts.....	GC-2
GC-4	Scheduling and Progress of the Work .....	GC-2
GC-5	Shop Drawings .....	GC-3
GC-6	Materials, Appliances, and Employees.....	GC-3
GC-7	Prequalification of Contractor and Subcontractors .....	GC-3
GC-8	Subcontracts .....	GC-4
GC-9	Access to and Inspection of Work.....	GC-4
GC-10	Use of Premises.....	GC-4
GC-11	Project Safety and Protection of Work and Property .....	GC-5
GC-12	Changes in the Work .....	GC-6
GC-13	Owner's Right to do Work .....	GC-6
GC-14	Owner's Right to Stop Work and Terminate Contract.....	GC-6
GC-15	Deductions for Uncorrected Work .....	GC-7
GC-16	Claims for Extra Work .....	GC-7
GC-17	Delays and Extension of Time .....	GC-8
GC-18	Allowances .....	GC-9
GC-19	Payment.....	GC-10
GC-20	Payment Withheld.....	GC-11
GC-21	Use of Completed Portions of the Work .....	GC-12
GC-22	Substantial Completion .....	GC-12
GC-23	Correction of Work after Final Payment.....	GC-12
GC-24	Project Records and Owner Audit.....	GC-13
GC-25	Disputes.....	GC-13
GC-26	Project Closeout .....	GC-14
GC-27	Insurance.....	GC-14
GC-28	Indemnification .....	GC-16
GC-29	Performance and Payment Bond.....	GC-17
GC-30	Ownership of Drawings and Specifications .....	GC-17
GC-31	Confidential Information .....	GC-17
GC-32	Definitions .....	GC-18

PART III  
TECHNICAL SPECIFICATIONS

Technical Specifications .....	TS-1
Drawing No. C1.0 - Laydown Yard Plan .....	Attached

**PART I**  
**INSTRUCTIONS TO PROPOSERS**

## INSTRUCTIONS TO PROPOSERS

### ITB-01      PROJECT DESCRIPTION AND LOCATION

- a. This Request for Proposals (“RFP”) is issued by the Ports of Indiana (“POI”) to certain invited proposers to provide a proposal for the **Crane Rail Demolition / Removal and Laydown Yard Construction Project**, Contract JF-2022-C1 (“Project”) at the Port of Indiana-Jeffersonville, Clark County, Indiana (the “Port”).
- b. The Project includes demolition, removal, and salvaging of crane rail steel and other materials; project also includes import, placement, and grading of borrow and aggregate materials in order to construct a laydown yard; all in accordance with POI and State of Indiana requirements.
- c. Proposals are due August 24, 2022 at 10:00 AM Eastern Time.
- d. A non-mandatory pre-bid meeting will be held at the Port of Indiana-Jeffersonville offices (1402 Port Road, Jeffersonville, Indiana) on August 17, 2022, at 10:00 AM Eastern Time. Contractors may visit the site and view the work at that time. Site visits at any other time will not be permitted.
- e. The Anticipated Date of Commencement is October 1, 2022.
- f. The Contract Time is anticipated to be 120 days.

### ITB-02      PREQUALIFICATION

- a. All contractors and subcontractors of any tier, prior to performing work on the Project, must be prequalified as provided herein and in accordance with Indiana law. For purposes of this RFP and Project, this means that the successful proposer and subcontractors are required to be prequalified by the Anticipated Date of Commencement. If the successful proposer fails to provide documentation that it is prequalified as required herein, POI may reject its proposal, award to the next lowest and best bidder, and enforce all rights against the successful bidder and, if applicable, its bid bond.
- b. POI recognizes prequalification by INDOT as its primary determination of the contractor prequalification requirement under I.C. 5-16-13-10(c). INDOT prequalifies contractors based on specific work categories. All contractors and subcontractors, of any tier, including proposers, performing work on the Project must be prequalified in the appropriate work type category which corresponds to the work such contractor or subcontractor performs on the Project. The categories are identified in Exhibit ITB-A. POI requires that prime contractors self-perform a minimum of fifteen percent (15%) of the proposed work on its projects as defined in I.C. 5-16-13-10. Therefore, proposers must be prequalified in INDOT work categories which total 15% of the Contract Sum. If there are work categories that are not covered by INDOT’s prequalification program, contractors (or subcontractors as the case may be) may submit a prequalification certificate from IDOA for these categories or as otherwise required herein. However, in order to perform work on the work categories, for which INDOT prequalifies, INDOT prequalification is required and IDOA prequalification only will not be acceptable.
- c. Proposers may obtain more information about INDOT’s prequalification process by accessing INDOT’s website at <https://www.in.gov/indot/2740.htm>. Please note that INDOT administers its own program. POI does not have the ability to change or expedite the processing of any prequalification submission, which can take a minimum of 30 days. Any proposer anticipating submission of a proposal in response to this RFP is urged to secure this prequalification as soon as possible.
- d. The low proposer must provide copies of the Certificate(s) of Qualification issued by INDOT or IDOA, where applicable, for itself prior to the anticipated Date of Commencement and for all subcontractors of any tier prior to their performing any Work on the Project.

PRE-PROPOSAL, PROPOSAL, AND POST-PROPOSAL REQUIREMENTS

- a. The "Proposal Documents" include the Notice to Proposers, Instructions to Proposers, Bid Form, including attachments, Sample Contract and General Conditions, Technical Specifications, and all other documents included, attached, or incorporated herein. Proposers shall comply with all requirements of the Proposal Documents.
- b. All proposals shall be submitted on Indiana Bid Form 96 ("Bid Form"), a copy of which is included in these Proposal Documents. The Bid Form shall be properly completed, including, the List of Unit Prices and Contract Pricing Summary and, for all proposals regardless of estimated cost, the experience and financial data section, shall be properly executed by a person with authority to bind proposer to the obligations contained herein, and shall have the MBE/WBE Subcontractor Commitment Form, Non-Collusion Statement, E-Verify Affidavit, and all other certificates required by these Instructions to Proposers properly signed, notarized, seal affixed and attached to the Bid Form. Proposer must provide all unit prices, alternates, allowances, and any other pricing identified in the Bid Form. Failure to submit a complete, properly filled out proposal on the proper form may result in rejection of the proposal at POI's discretion in accordance with Indiana law.
- c. Submission of a proposal constitutes an affirmative statement that the proposer, and each member of its team accepts the terms and conditions of the form of Contract, General and Special Conditions, plans, specifications, and all other Contract Documents, including completion of the Work within the Contract Time, and that the proposer will execute the Contract without change. Any exclusions, exceptions, or clarifications included in proposer's Bid Form are null and void and will not be considered.
- d. Execution of a proposal is an affirmative statement by such individual, that he or she has the authority to bind the proposer to the obligations contained herein.
- e. Proposals must be submitted in one of the following forms by the deadline identified in the Notice to Proposers. It is the proposer's responsibility to ensure that its proposal is in the possession of the person to whom bids are to be submitted by the deadline identified in the Notice to Proposers.
  - i. For proposals mailed, sent by commercial delivery service, or submitted in person, such proposal shall be submitted in a sealed envelope to which shall be affixed a special label identified as follows:

FROM:

\_\_\_\_\_

PORT OF INDIANA, JEFFERSONVILLE  
JEFFERSONVILLE, INDIANA  
ATTN: PORT DIRECTOR

This envelope contains a proposal due the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, at \_\_\_\_ for the \_\_\_\_\_ Project, \_\_\_\_\_(contract number).

- ii. For e-mailed proposals, the proposal shall be in a PDF attachment to the e-mail with the subject line, "Proposal for \_\_\_\_\_ Project, \_\_\_\_\_(contract number)" and in the body of the e-mail shall be stated, "Attached is a Proposal due the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, at \_\_\_\_ for the \_\_\_\_\_ Project, \_\_\_\_\_(contract number) from \_\_\_\_\_(Proposer)."

The e-mail shall be sent to the e-mail address of the person identified in the Notice to Proposers as the person to whom proposals are to be submitted with a delivery receipt request which shall be determinative as to whether the proposal was submitted by the proposal deadline.

- iii. For faxed proposals, the proposal shall be preceded by a cover page which states, "Following is a Proposal due the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, at \_\_\_\_\_ for the \_\_\_\_\_ Project, \_\_\_\_\_(contract number) from \_\_\_\_\_(Proposer)." The fax shall be sent to the fax number of the person identified in the Notice to Proposers as the person to who proposals are to be submitted.
- f. A proposer may withdraw its proposal at any time prior to the scheduled deadline for receipt of the proposals. Proposals received after the designated due time, for any reason, will not be accepted and will be returned unopened.
- g. POI reserves the right to reject any and all proposals or to waive any minor variances or technicalities at its discretion in accordance with Indiana law. Proposals containing alterations or erasures may be rejected at POI's discretion in accordance with Indiana law.
- h. Should any questions arise as to the interpretation of any part of the plans, specifications, or other proposal documents, the proposer shall submit a written request by e-mail to the person identified in the Notice to Proposers or Instructions to Proposers as the person to whom such questions should be sent, requesting an interpretation at least 48 hours prior to the proposal submission deadline. Only interpretations made by written addendum shall have any force or effect. POI will not address any request received after forty-eight (48) hours prior to the deadline for submissions of proposals.

ITB-04            NOTICE OF AWARD AND COMPLETION

- a. Within five (5) days of the proposal opening date, the low proposer shall submit a list of subcontractors which proposer intends to subcontract, a completed and fully executed W-9 form, a completed and fully executed Performance and Payment Bond, and all certificates of insurance, all in accordance with the requirements herein.
- b. As a condition precedent to the formation of any contract between POI and any proposer, the Contract must be approved by either the Chief Executive of POI or, for contracts requiring its approval, the Indiana Port Commission (the "Commission"). As soon as practicable after approval by the CEO or the Commission, as applicable, and after submission of documents required by ITB-04(a) above, the successful proposer will be notified in writing of POI's approval of the Contract and will be furnished the Contract Documents for execution. The successful proposer must execute these documents within ten (10) days after notification. Failure to do so may result in damages including forfeiture of the penal sum of the proposer's bid bond.
- c. Unless otherwise provided in the Contract Documents, the successful proposer shall proceed with the Work upon receipt of a Notice to Proceed from Owner and it shall commence equipment mobilization and other preliminary work required to complete the Work within the Contract Time, as soon as practicable thereafter.

ITB-05            INSURANCE

The successful proposer will be required to furnish and maintain insurance in connection with this Contract, at its expense, the detailed provisions of which are set forth in Section GC-27 of the General Conditions of the Contract. The Contractor shall furnish evidence satisfactory to POI that it has the coverage required under Section GC-27 as provided in the Proposal Documents, the submission of which is a condition

precedent to the formation of a contract between POI and the successful proposer.

ITB-06            PLAN QUANTITIES

Proposers shall estimate the quantities necessary to complete the Work based on the information contained in the bid documents, plans, and technical specifications. If required on the bid form, Proposers shall identify the quantities estimated and the unit price for each line item based on the quantities estimated by the proposer. Proposer's total base bid shall be the sum total of all line items. Proposers must include all costs required for the performance of the entire Work, including overhead and profit. Notwithstanding the foregoing, the Contract Sum, as defined in the Contract form, shall be the total amount payable to the successful proposer for the Work on the Project.

ITB-07            SUBSTITUTIONS

Whenever in the Contract Documents, an item of material, equipment, or service is specified in a proprietary manner by a manufacturer's or supplier's name or trade name, the proposal shall be calculated using the product or service of the specified name.

ITB-08            MINORITY AND WOMEN'S BUSINESS ENTERPRISE GOALS

POI has established a goal of ten percent (10%) participation by Minority and Women Owned Business Enterprises (M/WBE) in contracts which it awards. M/WBE participation goals include prime contractors, subcontractors, and material suppliers. M/WBE shall mean those firms certified by with the Indiana Department of Administration as such. Proposers are encouraged to seek at least 10% MBE/WBE participation and must make a good faith effort to comply with such goal. Proposers shall submit certifications and other documentation regarding this goal as provided elsewhere in the Proposal Documents.

ITB-9             COMPLIANCE WITH LAWS AND CERTIFICATIONS

- a. Applicable Federal, State, and Local Laws - Contractor and its subcontractors shall be required to comply with all applicable federal, state, and local laws, rules, regulations, guidelines, and ordinances. Furthermore, submission of a proposal constitutes an affirmative statement and certification to incorporate into all of the Contractor's subcontracts explicit references to and requirement to compliance with the applicable Equal Opportunity and Non-Discrimination Laws.
- b. Equal Opportunity - Title VI and DBE Requirements and Non-Discrimination - POI, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all proposers that it will affirmatively ensure that for any contract entered into pursuant to this RFP, disadvantaged business enterprises bidders that it will affirmatively ensure that for any contract entered into pursuant to this Request, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this Request and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- c. Employer's Drug Testing Program - Each proposer must submit a written plan for a program to test the proposer's employees for drugs. The proposer's drug testing program must comply with I.C. 4-13-18 et.al.
- d. Indiana Buy American Act - Pursuant to Indiana's Buy American Act (I.C. 5-16-8 et.al.), if any steel or foundry products are to be used or supplied in the performance of this Project (including through any



subcontract or sub-subcontract of any tier), only steel or foundry products made in the United States shall be used or supplied in the performance of the Work. POI may, at its discretion, reject any proposal which includes non- domestic construction material which is not exempted from the requirements of the Act.

EXHIBIT ITB-A

LIST OF PROJECT WORK TYPE CATEGORIES

Note: Proposing contractors shall identify which categories in which they are prequalified and intend to self- perform. The successful proposer must self-perform a minimum of 15% of the proposed work. The low proposer shall submit a list of all subcontractors and which work type categories they intend to perform in its supplemental submission as described in ITB-04(a).

Prequalification Work Type Categories for Port of Indiana, Jeffersonville, Crane Rail Demolition / Removal and Laydown Yard Construction Project, JF-2022-C1 (*contract number*) are:

- IDOA Classifications:
- 1541.01 (Industrial Buildings – Plants and Warehouses)
  - 1541.03 (Industrial Buildings – Additions, Alterations, Remodeling, and Repair)
  - 1622.01 (General Contractors engaged in projects such as bridges, viaducts, elevated highways, and highway, pedestrian, railway tunnels, and earth retention structures)
  - 1791.01 (Structural Steel Erection – Erection of Building Structural Steel)

- INDOT Work Type:
- C(b) Light Grading
  - E(t) Demolition

**FORMS TO BE COMPLETED BY CONTRACTOR AND INCLUDED WITH PROPOSAL**



## CONTRACTOR'S BID FOR PUBLIC WORK - FORM 96

State Form 52414 (R2 / 2-13) / Form 96 (Revised 2013)  
Prescribed by State Board of Accounts

### PART I

(To be completed for all bids. Please type or print)

Date (month, day, year): \_\_\_\_\_

1. Governmental Unit (Owner): \_\_\_\_\_

2. County : \_\_\_\_\_

3. Bidder (Firm): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/ZIPcode: \_\_\_\_\_

4. Telephone Number: \_\_\_\_\_

5. Agent of Bidder (if applicable): \_\_\_\_\_

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of \_\_\_\_\_

(Governmental Unit) in accordance with plans and specifications prepared by \_\_\_\_\_

\_\_\_\_\_ and dated \_\_\_\_\_ for the sum of

\_\_\_\_\_ \$ \_\_\_\_\_

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

If additional units of material included in the contract are needed, the cost of units must be the same as that shown in the original contract if accepted by the governmental unit. If the bid is to be awarded on a unit basis, the itemization of the units shall be shown on a separate attachment.

The contractor and his subcontractors, if any, shall not discriminate against or intimidate any employee, or applicant for employment, to be employed in the performance of this contract, with respect to any matter directly or indirectly related to employment because of race, religion, color, sex, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

#### CERTIFICATION OF USE OF UNITED STATES STEEL PRODUCTS

(If applicable)

I, the undersigned bidder or agent as a contractor on a public works project, understand my statutory obligation to use steel products made in the United States (I.C. 5-16-8-2). I hereby certify that I and all subcontractors employed by me for this project will use U.S. steel products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

**ACCEPTANCE**

The above bid is accepted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, subject to the following conditions: \_\_\_\_\_

Contracting Authority Members:


**PART II**  
*(For projects of \$150,000 or more – IC 36-1-12-4)*

Governmental Unit: \_\_\_\_\_

Bidder (Firm) \_\_\_\_\_

Date (month, day, year): \_\_\_\_\_

These statements to be submitted under oath by each bidder with and as a part of his bid. Attach additional pages for each section as needed.

**SECTION I EXPERIENCE QUESTIONNAIRE**

1. What public works projects has your organization completed for the period of one (1) year prior to the date of the current bid?

Contract Amount	Class of Work	Completion Date	Name and Address of Owner

2. What public works projects are now in process of construction by your organization?

Contract Amount	Class of Work	Expected Completion Date	Name and Address of Owner

3. Have you ever failed to complete any work awarded to you? \_\_\_\_\_ If so, where and why?

---

---

---

4. List references from private firms for which you have performed work.

---

---

---

---

---

**SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE**

1. Explain your plan or layout for performing proposed work. *(Examples could include a narrative of when you could begin work, complete the project, number of workers, etc. and any other information which you believe would enable the governmental unit to consider your bid.)*

---

---

---

---

---

2. Please list the names and addresses of all subcontractors *(i.e. persons or firms outside your own firm who have performed part of the work)* that you have used on public works projects during the past five (5) years along with a brief description of the work done by each subcontractor.

---

---

---

---

---

3. If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you will require a bond. However, if you are unable to currently provide a listing, please understand a listing must be provided prior to contract approval. Until the completion of the proposed project, you are under a continuing obligation to immediately notify the governmental unit in the event that you subsequently determine that you will use a subcontractor on the proposed project.

---

---

---

---

---

4. What equipment do you have available to use for the proposed project? Any equipment to be used by subcontractors may also be required to be listed by the governmental unit.

---

---

---

---

---

5. Have you entered into contracts or received offers for all materials which substantiate the prices used in preparing your proposal? If not, please explain the rationale used which would corroborate the prices listed.

---

---

---

---

---

**SECTION III CONTRACTOR'S FINANCIAL STATEMENT**

Attachment of bidder's financial statement is mandatory. Any bid submitted without said financial statement as required by statute shall thereby be rendered invalid. The financial statement provided hereunder to the governing body awarding the contract must be specific enough in detail so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.





---

**BID OF**

---

*(Contractor)*

---

*(Address)*

---

**FOR  
PUBLIC WORKS PROJECTS  
OF**

---

---

---

---

**Filed** \_\_\_\_\_

---

**Action taken** \_\_\_\_\_

---

---

**PORT OF INDIANA**  
**JEFFERSONVILLE (Port)**  
**JF-2022-C1 (Contract Number)**  
**CRANEWAY RAIL DEMOLITION / REMOVAL AND LAYDOWN YARD CONSTRUCTION PROJECT**  
**(Project Name)**  
**LIST OF UNIT PRICES AND CONTRACT PRICING SUMMARY**

**CONTRACTOR:** \_\_\_\_\_

The Total Base Bid below is based on the following Contractor estimated units and corresponding unit prices. The contract amount will be a stipulated sum.

**SUMMARY OF ESTIMATED QUANTITIES**

ITEM	DESCRIPTION	ESTIM QUANT	UNIT	UNIT PRICE	TOTAL PRICE
1	Mobilization and demobilization (10% maximum)	1	LS	_____	_____
2	Remove Overhead Crane Machine; Haul from Site and Salvage	1	LS	_____	_____
3	Cut and Remove Crane Rail; Haul from Site and Salvage	1216	LFT	_____	_____
4	Cut and Removal Vertical Rail Support Frames; Haul from Site and Salvage	46	EA	_____	_____
5	Removal Safety Cages and Catwalk, Haul from Site and Salvage	1	LS	_____	_____
6	Disconnect Electrical Feeds and Remove Electrical Conduit, Wiring, Switches, and Controls	1	LS	_____	_____
7	Demolish, Excavate, and Remove Concrete Mass Footings	46	EA	_____	_____
8	Import, Place, and Compact INDOT B Borrow (98% Standard Proctor)	360	CYS	_____	_____
9	Safety Measures for Work in Railroad Right-of-Way (MG Rail) and Post-Construction Track Testing	1	LS	_____	_____
10	Removal of Railroad Overhead Signal Gantry Currently Stored on Port of Indiana – Jeffersonville Parking Lot	1	LS	_____	_____

				_____	_____
11	Credit for Value of Salvaged Materials	1	LS	(            )	(            )
12	Clear and Grub, Import Material and Construct Laydown Yard, Area "A" See Drawing C1.0	8900	SYS	_____	_____
13	Clear and Grub, Import Material, and Construct Laydown Yard Area "B" See Drawing C1.0	2100	SYS	_____	_____

**TOTAL BID** \_\_\_\_\_

**PROPOSED CONTRACT TIME (DAYS)** \_\_\_\_\_

**MINORITY & WOMEN'S BUSINESS ENTERPRISES SUBCONTRACTOR  
COMMITMENT FORM**

Bidder shall submit with its Bid a Minority & Women’s Business Enterprises Subcontractor Commitment Form. The Form must show that there are, participating in the proposed contract, Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) listed in the Minority and Women’s Business Enterprises Division (MWBED) directory of certified firms located at <http://www.in.gov/idoa/2352.htm>.

If MBE/WBE participation will be met through use of vendors who supply products and/or services directly to the Bidder, the Bidder must provide a description of such products and/or services to be provided that are directly related to the scope of work in the Bid. Bidder must complete the Subcontractor Commitment Form in its entirety. The amount entered in “TOTAL BID AMOUNT” should match the amount entered in the Bid.

Failure to meet the goals identified in the Instructions to Bidders may affect the evaluation of a Bid. The Ports reserves the right to verify all information included on the MWBE Subcontractor Commitment Form.

Bidders are encouraged to contact and work with MWBED at 317-232-3061 to design a subcontractor commitment to meet established goals as referenced in this solicitation.

**Bidders must ensure that the proposed subcontractors meet the following criteria:**

- Must be listed on the IDOA Directory of Certified Firms, on or before the date Bids are due
- Bidder must include with their Bid the subcontractor’s M/WBE Certification Letter provided by IDOA, to show current status of certification.
- Each firm may only serve as one classification – MBE, WBE, or IVBE
- A Bidder who is an MBE or WBE must meet subcontractor goals by using other listed certified firms. Certified Prime Contractors cannot count their own workforce or companies to meet this requirement.
- The MBE or WBE must serve a commercially useful function. The firm must serve a value-added purpose on the Project, as confirmed by the Ports.
- Must provide goods or service only in the industry area for which it is certified as listed in the directory at <http://www.in.gov/idoa/2352.htm>
- Must be used to provide the goods or services specific to the contract
- National Diversity Plans are generally not acceptable

**MINORITY & WOMEN’S BUSINESS ENTERPRISES RFP SUBCONTRACTOR LETTER OF COMMITMENT (MWBE)**

A signed letter(s), on company letterhead, from the MBE and/or WBE must accompany the MWBE Subcontractor Commitment Form. Each letter shall state and will serve as acknowledgement from the MBE and/or WBE of its subcontract amount, a description of products and/or services to be provided on the Project, and approximate date the subcontractor will perform work on this contract. The Ports may deny evaluation points if the letter(s) is not attached, not on company letterhead, not signed and/or does not reference and match the subcontract amount, subcontract amount as a percentage of the “TOTAL BID AMOUNT” and the anticipated period that the Subcontractor will perform work for this solicitation.

By submission of its Bid, Bidder acknowledges and agrees to be bound by the regulatory processes involving the State’s M/WBE Program. Questions involving the regulations governing the MWBE Subcontractor Commitment Form should be directed to: Minority and Women’s Business Enterprises Division at (317) 232-3061 or <http://www.in.gov/idoa/2352.htm>.

**STATE OF INDIANA MBE/WBE SUBCONTRACTOR COMMITMENT FORM**

**CONTRACT #** \_\_\_\_\_

**DUE DATE:** \_\_\_\_\_

**TOTAL BID AMOUNT:** \_\_\_\_\_

<input type="checkbox"/> MBE Firm <input type="checkbox"/> WBE Firm			
Company Name:		Contact Person:	
Address:		E-mail:	
		Telephone Number: (   )	Fax Number: (   )
Subcontract Amount:		Describe service/product to be provided and <u>how this is a Commercially Useful Function of the Contract:</u>	
Subcontract Percentage of Total Bid:			
Provide approximate dates when Subcontractor will perform on this project:			

<input type="checkbox"/> MBE Firm <input type="checkbox"/> WBE Firm			
Company Name:		Contact Person:	
Address:		E-mail:	
		Telephone Number: (   )	Fax Number: (   )
Subcontract Amount:		Describe service/product to be provided and <u>how this is a Commercially Useful Function of the Contract:</u>	
Subcontract Percentage of Total Bid:			
Provide approximate dates when Subcontractor will perform on this project:			

\_\_\_\_\_  
Bidder

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
City/State/Zip Code

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Authorizing Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

Please check if additional forms are attached

FORM MUST BE COMPLETED IN ITS ENTIRETY WITH COMPLETED LETTERS OF COMMITMENT. ADD ADDITIONAL PAGES AS NECESSARY.

PORTS OF INDIANA  
GOOD FAITH EFFORTS WORKSHEET

BIDDER \_\_\_\_\_ CONTRACT NUMBER \_\_\_\_\_

CONTRACT GOALS      10% MBE/WBE

List the MBE/WBEs contacted and complete the following information for each. Copies of all communications to and from each vendor should be maintained.

Company Name and Address	MBE	WBE	Type of Contact	Date of Contact	Date Response Due	Goods Or Services Requested	Result (Include Price Quote)
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					

Bidders who do not meet the MBE/WBE goal must indicate good faith efforts made to utilize MBE/WBEs. Check and explain all that apply or should be considered. Please provide evidence of the efforts that you want to be considered.

MBE and WBE Barrier Assistance	Describe
Advertisement	Describe
Agency Assistance	Describe
Other Criteria	Describe

NON-COLLUSION STATEMENT

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date

**E-Verify Affidavit**

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with Ports of Indiana, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): \_\_\_\_\_

By (Written Signature): \_\_\_\_\_

(Printed Name): \_\_\_\_\_

(Title): \_\_\_\_\_

*Important - Notary Signature and Seal Required in the Space Below*

STATE OF \_\_\_\_\_

SS:

COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My commission expires: \_\_\_\_\_ (Signed) \_\_\_\_\_

Residing in \_\_\_\_\_ County, State of \_\_\_\_\_



**DRUG-FREE WORKPLACE CERTIFICATION**

The Bidder hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Bidder will give written notice to POI within ten (10) days after receiving actual notice that the Bidder or an employee of the Bidder in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

The Bidder certifies and agrees that it will provide a drug-free workplace by:

- (a) Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacturer, distribution, dispensing, possession or use of a controlled substance is prohibited in the Bidder’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- (b) Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the Bidder’s policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and
- (c) Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and
- (d) Notifying in writing POI within ten (10) days after receiving notice from an employee under subdivision(c) (2) above, or otherwise receiving actual notice of such conviction; and
- (e) Within thirty (30) days after receiving notice under subdivision (c) (2) above of conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- (f) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

THE UNDERSIGNED AFFIRMS, UNDER PENALTIES OF PERJURY, THAT HE OR SHE IS AUTHORIZED TO EXECUTE THIS CERTIFICATION ON BEHALF OF THE DESIGNATED ORGANIZATION.

\_\_\_\_\_  
Printed Name of Organization

\_\_\_\_\_  
Contract/Grant ID Number

\_\_\_\_\_  
Signature of Authorized

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

Subscribed and sworn to before me this \_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

SIGNED: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

State Form 44260

**FORMS TO BE SUBMITTED BY LOW PROPOSER**

**PERFORMANCE AND PAYMENT  
BOND**

KNOW ALL MEN BY THESE PRESENTS, THAT \_\_\_\_\_  
\_\_\_\_\_ as Principal and \_\_\_\_\_  
\_\_\_\_\_ as Surety, are firmly bound unto the PORTS OF  
INDIANA in the penal sum of an amount equal to One Hundred Percent (100%) of the amount of  
its proposal or the Contract Sum, for the payment of which, well and truly to be made, we bind  
ourselves, jointly and severally, and our joint and several heirs, executors, administrators and  
assigns, firmly by these presents, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE SUCH THAT, WHEREAS,  
the Ports of Indiana has entered into a Contract with the principal dated  
\_\_\_\_\_ for the erection, construction and completion of Contract \_\_\_\_\_; \_\_\_\_\_  
\_\_\_\_\_, at \_\_\_\_\_,  
\_\_\_\_\_, situated in \_\_\_\_\_ County, Indiana, in accordance with the  
plans and specifications approved and adopted by said Commission, which are made a part of this  
bond:

NOW THEREFORE, if the said Principal shall well and faithfully do and perform the same  
in all respects according to the plans and specifications adopted by said Commission, and according  
to the time, terms, and conditions specified in said Contract, and in accordance with all requirements  
of law, and shall promptly pay all debts incurred by it or any subcontractor in the construction of  
said work, including labor, service, and materials furnished, then this obligation shall be void;  
otherwise to remain in full force, virtue and effect; in any case, however, the obligation shall  
continue for a period of one year from the date of final acceptance of the work or as otherwise  
provided by law.

IT IS AGREED that no modifications, omissions, or additions in or to the terms of such Contract  
or in or to the plans or specifications therefore shall in any wise affects the obligation of its bond.

IN WITNESS WHEREOF, we hereunto set our hands and seals this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Principal

State of \_\_\_\_\_, County of \_\_\_\_\_ ss:

Personally appeared before me, \_\_\_\_\_

\_\_\_\_\_ as Principal and acknowledged the execution of the above bond

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand and \_\_\_\_\_ seal the said last named date.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Resident of \_\_\_\_\_ County \_\_\_\_\_

IN WITNESS WHEREOF, we hereunto set our hands and seals this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Surety

State of \_\_\_\_\_, County of \_\_\_\_\_ ss:

Personally appeared before me, \_\_\_\_\_

\_\_\_\_\_ as Surety and acknowledged the execution of the above bond

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand and \_\_\_\_\_ seal the said last named date.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Resident of \_\_\_\_\_ County \_\_\_\_\_

Accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_

Ports of Indiana

ATTEST:

\_\_\_\_\_  
Ports of Indiana

**PART II**  
**FORM OF CONTRACT AND GENERAL CONDITIONS**

PORTS OF INDIANA  
STANDARD FORM OF CONSTRUCTION AGREEMENT  
FOR SMALL PROJECTS

THIS CONSTRUCTION AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 2020 by and between the PORTS OF INDIANA (hereafter "Owner"), a body corporate and politic; and \_\_\_\_\_ (hereafter "Contractor"), a corporation duly organized and existing under the laws of the State of \_\_\_\_\_ concerning the \_\_\_\_\_ project at the Port of Indiana—\_\_\_\_\_, Contract \_\_\_\_\_. Owner and Contractor are referred to individually as "Party" and jointly as "the Parties. In consideration of the mutual undertakings set forth herein, and other good and valuable consideration, the Parties hereby agree as follows:

ARTICLE 1. The Contract Documents

1.1 The Contract Documents are incorporated into each other and when read together shall constitute the entire and integrated Agreement of the Parties ("Agreement"). The Agreement supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents consist of, this Construction Agreement, including all exhibits, attachments, and documents incorporated by reference therein, the General Conditions of the Contract, the Technical Specifications, all addenda issued prior to execution of this Agreement, and all written modifications, amendments, and change orders to this Agreement ("Contract Documents").

1.2 List of Exhibits

- Exhibit "A" Project Description and Summary of Work for Project
- Exhibit "B" Contract Pricing Summary
- Exhibit "C" Non-Collusion Statement (From Contractor's Bid)
- Exhibit "D" MBE/WBE Subcontractor Commitment Form (From Contractor's Bid)
- Exhibit "E" E-Verify Affidavit (From Contractor's Bid)
- Exhibit "F" State Drug-Free Workplace Certification (From Contractor's Bid)
- Exhibit "G" Performance and Payment Bond (From Contractor's Supplemental Submission)

ARTICLE 2. Scope of Work

2.1 Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Work shall include all labor, materials, equipment, rigging, storage, general conditions, supervision, management, administration, and professional and other services required by or reasonably inferable from the Contract Documents to fulfill Contractor's obligations (the "Work"). Contractor shall perform the Work in strict accordance with the Contract Documents and in accordance with all applicable laws, rules, regulations, and standards applicable to the Work.

2.2 The Contractor shall perform not less than fifteen percent (15%) of the Work with its own forces, measured in dollar volume. Contractor and all subcontractors of every tier performing any part of the Work shall have been qualified by the State of Indiana and shall have a valid Certificate of Qualification.

ARTICLE 3. Time of Completion - The Work shall be commenced upon the receipt by Contractor of a Notice to Proceed from Owner and full execution of the Agreement by both Parties ("Date of Commencement"). Contractor shall achieve Substantial Completion of the entire Work within \_\_\_\_\_ days from the Date of Commencement ("Contract Time") and shall achieve final completion within 14 days after the Substantial Completion date. The Contractor agrees that any Work performed prior to full execution of the Agreement and any other conditions precedent contained in the Contract Documents to commencement of the Work is done at the sole risk of the Contractor and without recourse against the Owner, the State of Indiana, its employees, or agents.



ARTICLE 4. The Contract Sum – Owner shall pay Contractor the Contract Sum for Contractor’s proper performance of the Work. The Contract Sum shall be \_\_\_\_\_ (\$\_\_\_\_\_) (“Contract Sum”), subject to additions and deletions as provided in the Contract Documents. Except as otherwise provided in the Contract Documents, the Contract Sum shall be the entire amount payable to Contractor for proper performance of the Work and Contractor, hereby, accepts the risk of all costs it incurs in the performance of the Work, labor, material, or equipment overruns, material price escalation, taxes, tariffs, and fees, and any other condition or circumstance existing or arising, foreseeable or unforeseeable, expected or unexpected.

ARTICLE 5. – Payment – Owner shall pay Contractor the Contract Sum in accordance with the provisions of Section GC-19 of the General Conditions of the Contract and as elsewhere provided in the Contract Documents. Owner’s obligation to pay Contractor is subject to appropriations made and funds allotted as provided by the laws of the State of Indiana.

ARTICLE 6. Changes in the Work - Owner, without nullifying this Agreement, may at any time direct Contractor in writing to make changes to the Work in accordance with the Contract Documents. The Contract Sum shall only be adjusted as provided in the Contract Documents.

ARTICLE 7. Liquidated Damages - If Contractor does not achieve completion of the Work within the times or milestones established by the Contract Documents liquidated damages will be assessed and recovered by Owner to compensate Owner for such delay in completion. The parties agree that Owner will incur substantial economic damages and losses which are and will hereafter be difficult or impossible to quantify, ascertain and prove as actual damages for such delay. Such damages are foreseen to include, without limitation, extended or additional costs for observation or inspection, professional services by Engineer or other professionals, utilities, insurance, administration, and also indeterminate damages, hindrance, or inconvenience to Owner and its customers as well as members of the public, deprivation of use and operation, and impairment of financing. Accordingly, in lieu of actual damages, and not as a penalty, Contractor and its Surety shall be liable to Owner, and Owner shall be entitled to collect and recover from Contractor and its Surety, liquidated damages in the per diem of \_\_\_ dollars (\$\_\_\_\_.00) for each calendar day that Substantial Completion is delayed beyond the Contract Time, as adjusted for time extensions as provided in the Contract Documents.

ARTICLE 8. Compliance with Laws

8.1 Contractor shall comply with all applicable federal, state and local laws, rules, codes, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. Should Contractor violate any such federal, state, or local law, rule, code, regulation or ordinance, Contractor shall assume full responsibility for such violations and shall bear any and all costs attributable to such violation. Contractor acknowledges that the Project may be funded, in part, by federal grant funds which require that all services and work performed must be in compliance with those federal laws, regulations, executive orders, policies, guidelines and requirements referenced in the Exhibits and attached hereto and incorporated herein as express terms of this Agreement, to the extent applicable, and Contractor agrees to comply with such applicable federal laws, regulations, executive orders, policies, guidelines and requirements.

8.2 Pursuant to Indiana’s Buy American Act (I.C. 5-16-8 et.al.), if any steel or foundry products are to be used or supplied in the performance of this Agreement (including through any subcontract or sub-subcontract of any tier), only steel or foundry products made in the United States shall be used or supplied in the performance of the Work unless Owner determines, in writing, that the cost of such steel or foundry products is considered to be unreasonable or that such steel or foundry products are not produced in the United States in sufficient quantities to meet the requirements of the Agreement.

8.3 The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth the Indiana Administrative Code 42 IAC 1-5-1, *et. seq.*

8.4 The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Contractor shall have a comprehensive company policy in place addressing the issue of maintaining a drug-workplace.

8.5 Contractor shall maintain a drug testing program in accordance with I.C. 4-13-18 et.al. Contractor shall implement the employee drug testing program described in Contractor's plan. Owner may terminate this Agreement if the Contractor: (a) fails to implement its employee drug testing program during the term of this Agreement; (b) fails to provide information regarding implementation of Contractor's employee drug testing program at the request of Owner or any agency or other appropriate governmental entity; or (c) provides to Owner or any agency or other appropriate governmental entity false information regarding Contractor's employee drug testing program.

8.6 Pursuant to Indiana Code § 22-9-1-10, Contractor and its subcontractors of any tier shall not discriminate against any employee or applicant for employment to be employed in the performance of the Project, 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, religion, color, sex, disability, national origin, or ancestry. Breach of this term is a material breach of the Agreement.

8.7 Contractor and all subcontractors of any tier shall:

- a) Submit to Owner, before an individual who is required to be verified under Indiana Code § 22-5-1.7 begins work on the Project, the E-Verify case verification number for the individual. An individual who is required to be verified under Indiana Code § 22-5-1.7 whose final case result is final nonconfirmation may not be employed on the Project. Pursuant to Indiana Code § 22-5-1.7-11.1, Contractor is not required to verify the work eligibility status of all newly hired employees through the E-Verify program if the E-Verify program no longer exists.
- b) Not pay cash to any individual employed for work done by the individual on the Project.
- c) Be in compliance with the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209) and Indiana Code § 22-2-2-1 through § 22-2-2-8.
- d) Be in compliance with Indiana Code §§ 22-3-5-1 and 22-3-7-34.
- e) Be in compliance with Indiana Code §§ 22-4-1 through 22-4-39.5.
- f) Be in compliance with Indiana Code §§ 4-13-18-1 through 4-13-18-7.
- g) Comply with the training program requirements contained in Indiana Code § 5-16-13-12, if applicable based on size and tier as stated therein.

8.8 Contractor agrees:

- a) That in the hiring of employees for the performance of the Work or any subcontract hereunder, Contractor, nor any subcontractor, nor any person acting on behalf of Contractor or any subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the state of Indiana who is qualified and available to perform the work to which the employment relates;
- b) That Contractor, its subcontractors, nor any person on Contractor's or any subcontractor's behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of the Work on account of race, religion, color, sex, national origin or ancestry;
- c) That there may be deducted from the amount payable to Contractor by Owner, under this Agreement, a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and
- d) That pursuant to Indiana Code § 5-16-6-1, this Agreement may be cancelled or terminated by Owner and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation

of the terms or conditions of this sub-section of the Agreement.

8.9 Contractor certifies that it is not engaged in investment activities in Iran as defined in Indiana Code § 5-22-16.5. Contractor acknowledges that if this certification is false it may result in the consequences and remedies provided in Indiana Code, § 5-22-16.5-14, including termination of this Agreement, denial of future contracts, as well as imposition of a civil penalty.

8.10 Contractor and its subcontractors of any tier shall preserve the payroll and related records for a period of three (3) years after completion of the Work and make such records open to inspection by the department of workforce development.

#### ARTICLE 9. Miscellaneous

9.1 Except as otherwise expressly provided in the Contract Documents, the Agreement may not be changed, altered, or amended in any way except by a writing signed by a duly authorized representative of each party. Owners, officers, executive level employees, the project manager, and project superintendent of Contractor are deemed to be duly authorized representatives. Owner's duly authorized representative is Vanta E. Coda II, Chief Executive Officer, Ports of Indiana.

9.2 Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as otherwise provided in the Contract Documents, Contractor shall not assign the Agreement, in whole or in part, without written consent of Owner.

9.3 Contractor agrees that it is 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 Contractor's employees as employees of Owner for the purpose of keeping records, making reports and payment of unemployment compensation taxes or contributions. Nothing set forth and contained in this Agreement shall create or establish any contractual relationship or obligations between Owner and any of Contractor's employees, consultants, subcontractors, agents or representatives nor create a cause of action in favor of any third party against Owner or Contractor.

9.4 Nothing set forth and contained in this Agreement shall be deemed to create an agency relationship by and between Owner and Contractor whereby Contractor 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.

9.5 The Agreement and all Contract Documents shall be governed by the laws of the State of Indiana without regard to its choice of law provisions.

9.6 Time is of the essence of this Agreement and Contractor shall comply with all dates expressed in the Agreement or set forth in any notice given by Owner under the terms of the Agreement.

9.7 Every provision of the Contract Documents is intended to be severable such that, if any term or provision thereof is illegal or invalid for any reason whatsoever, such provision shall be severed from the Contract Documents and shall not affect the validity of the remainder of the Agreement.

9.8 As between inconsistent provisions among Federal, State and local laws, Contractor 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.

9.9 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

9.10 Whenever the Contract Documents require that notice be provided to the other Party, notice shall be in writing and delivered in person, sent by certified mail or national delivery service with receipt, or if sent by electronic mail and proven with a delivery receipt, however, electronic mail may not serve as notice from Contractor of a Claim or request for a change order to increase the Contract Sum or to extend the Contract Time.

9.11 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. The Work under this Agreement is being performed solely for Owner's benefit and no other entity shall have any claim against Owner or Contractor because of this Agreement or the performance or non-performance of Contractor's Work hereunder.

9.12 The Parties agree that electronic signatures are valid and enforceable in accordance with Indiana Code § 26-2-8.

9.13 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 herein with respect to effective dates for specific obligations, shall become binding and effective upon that date.

9.14 Neither party shall be deemed to be the drafter of the Agreement for purposes of contract interpretation.

OWNER AND CONTRACTOR AGREE TO THE TERMS ABOVE AND AS SET FORTH IN THE EXHIBITS 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

PORTS OF INDIANA  Vanta E. Coda, II Chief Executive Officer	COMPANY NAME  Name Title
--	-----------------------------------

## EXHIBIT A

### PROJECT DESCRIPTION AND SUMMARY OF WORK FOR PROJECT

Contract JF-2022-C2 (*contract number*)

The Project includes demolition, removal, and salvaging of crane rail steel and other materials; project also includes import, placement, and grading of borrow and aggregate materials in order to construct a laydown yard; all in accordance with Ports of Indiana and State of Indiana requirements at the Port of Indiana-Jeffersonville, Clark County, Indiana.

EXHIBIT B  
CONTRACT PRICING SUMMARY

**EXHIBIT C**

**NON-COLLUSION STATEMENT (From Contractor's Bid)**

**EXHIBIT D**

**MBE/WBE SUBCONTRACTOR COMMITMENT FORM (From Contractor's Bid)**



**EXHIBIT E**

**E-VERIFY AFFIDAVIT (From Contractor's Bid)**

**EXHIBIT F**

**STATE DRUG-FREE WORKPLACE CERTIFICATION (From Contractor's Bid)**

**EXHIBIT G**

**PERFORMANCE AND PAYMENT BOND (From Contractor's Supplemental Submission)**

GENERAL CONDITIONS OF THE CONTRACT

PORTS OF INDIANA  
STANDARD FORM OF GENERAL CONDITIONS OF THE CONTRACT  
FOR SMALL PROJECTS

GC-1 EXECUTION, CORRELATION AND INTENT OF DOCUMENTS - It is the intent of the Contract Documents to accomplish a complete and first-class installation in which there shall be installed new products of the latest and best design and manufacture, and in which workmanship and construction methods shall conform to the best practices of the respective trades, executed by competent and experienced workmen. Execution of the Agreement by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. In case of a conflict or ambiguity in or between the Contract Documents concerning the nature, character, scope or extent of Work to be performed or furnished by Contractor, or other rights and obligations of Owner and Contractor, the provision expressing the greater quantity, quality or scope of the Work, or imposing the greater obligation upon Contractor or affording the greater right or remedy to Owner shall govern. Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work. Unless otherwise provided in the Contract Documents, the building permit as well as other permits, fees, licenses, easements, rights of way, inspections by government agencies, and other authorizations necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work. Contractor shall conform to all regulations and requirements of the U.S. Army Corps of Engineers, the U.S. Coast Guard and/or any other Federal or State Agency with respect to navigation and accomplishing work in this locality. Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of Engineer or Owner's administration of the Contract Documents, or by tests, inspections or approvals required or performed.

GC-2 OWNER RESPONSIBILITIES - Owner shall furnish surveys in its possession, which may describe the physical characteristics, legal limitations and utility locations for the site of the Project. All information or services provided by Owner are for informational purposes only and Owner shall not be liable for inaccuracies or omissions therein. Unless otherwise provided in the Contract Documents, Owner shall furnish survey benchmarks and monuments to the extent reasonably required for Contractor's performance of the Work. The Contractor shall be responsible for all other lines, levels, bench marks, and control points necessary for construction and execution of the Work. The Contractor shall verify all grades, levels, conditions, and dimensions at the site and take all necessary measurements before commencing work. The Contractor shall be responsible for the maintenance of the monuments, reference lines, and permanent bench marks. Engineer, if applicable, will provide administration of the Agreement as described in the Contract Documents and will be an Owner's representative during construction. However, Engineer is the agent of the Owner only to the extent provided in the Contract Documents or in writing by Owner to Contractor. Owner and Engineer have the authority to stop the Work at their discretion whenever such stoppage is deemed to be advisable to ensure the proper execution of the Work.

GC-3 SEPARATE CONTRACTS - The Owner reserves the right to let other contracts in connection with this Project or the Work ("other contractors" or "separate contractors"). The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect its work with theirs. Contractor shall cooperate with the activities of Owner's own forces and of each separate contractor and coordinate the Work of Contractor with them. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. If any part of the Contractor's work depends for proper execution upon the work of any other contractor, the Contractor shall inspect and promptly report to the Owner or Engineer, any defects in such work that render it unsuitable for such proper execution and results. Its failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work.

GC-4 SCHEDULING AND PROGRESS OF THE WORK - Prior to Contractor beginning to perform Work on

the Project site, Contractor shall prepare and submit to Owner for its approval a construction schedule (“Construction Schedule”) in such detail as requested by Owner. Contractor shall perform the Work consistent with the approved Construction Schedule provided that Contractor shall complete the Work within the Contract Time, notwithstanding. If, in the opinion of Owner, Contractor is behind schedule in the performance of the Work or is failing, without cause, to maintain progress of the Work, Contractor shall, at its own expense, perform such overtime or shift work, use extra labor, and undertake all other means necessary to bring the Work back on schedule. Contractor shall, as directed by Owner and without adjustment in the Contract Sum or Time, transfer Contractor’s personnel, materials, and equipment to such points and execute such portions of the Work as Owner may prescribe. Contractor shall coordinate the Work with all other contractors, subcontractors, and suppliers on the Project so as to not to delay, disrupt, hinder or interfere with their work. Contractor shall give prior notice to utility companies, make all arrangements and provide all services necessary to discontinue utilities, relocate utilities, and/or place the same in service.

GC-5 SHOP DRAWINGS - Contractor shall review and approve then submit to Owner, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to demonstrate the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. The Work shall be in accordance with approved submittals, including Samples, except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Owner’s or Engineer’s approval of such submittals unless Contractor has specifically informed Owner in writing of such deviation at the time of submittal and (1) Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation.

GC-6 MATERIALS, APPLIANCES, AND EMPLOYEES

a. Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, heat, transportation, and other facilities necessary for the execution and completion of the Work and shall pay all royalties and license fees associated with the Work. Contractor shall assume all liability for the payment of any unemployment benefits payable under any Federal or State law to individuals employed by it during the progress of the work covered by the Agreement. Contractor shall pay all other Federal, State and local taxes on all labor or services furnished by Contractor, and all taxes arising out of the operations under the Contract Documents. Contractor is exempt from assessment of Indiana Sales Tax and invoices submitted by Contractor shall not include Indiana Sales Tax. Upon request, POI will furnish a tax-exempt certificate to Contractor. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. Contractor may not make substitutions or otherwise deviate from the requirements of the Contract Documents except with the consent of Owner and only pursuant to a Change Order. Wherever in the Contract Documents an item of material, equipment, or service is specified in a proprietary manner by a manufacturer's or supplier's name or trade name, the Contractor shall furnish the product or service of one of the specified names unless the Contractor has been issued a Change Order.

b. Contractor shall be responsible to Owner for acts and omissions of Contractor’s agents and employees and all Subcontractors and Suppliers and their agents and employees. The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Project any unfit person or anyone not skilled in the tasks assigned to that person. Contractor shall remove from the Project any of its employees or the employees of its Subcontractors or Suppliers, if so requested by Owner at its sole discretion, and Contractor shall not be entitled to an increase in the Contract Sum therefor. All labor used throughout the Project and in performance of the Work shall be of a standing or affiliation that will permit the Work to be carried on harmoniously and without delay, and that will in no case cause any disturbance, interference or delay to the progress of the Work. Contractor agrees to proceed with its Work without interruption, regardless of any trade or craft affiliations or the lack thereof on the part of any workmen on the Project.

GC-7 PREQUALIFICATION OF CONTRACTOR AND SUBCONTRACTORS - Contractor, and all subcontractors, of any tier, prior to performing work for the Ports of Indiana must be pre-qualified under either the Indiana Department of Administration's ("DOA") or the Indiana Department of Transportation's ("INDOT") prequalification programs. See, Ind. Code 5-16-13-10(c). Ports of Indiana recognizes prequalification by INDOT as its primary determination of the contractor prequalification requirement under I.C. 5-16-13-10(c). INDOT prequalifies contractors based on specific work categories. All contractors, including subcontractors, of any tier, must be prequalified in the appropriate work type category which corresponds to such contractors' work prior to performing any work on the Project. Contractor must self-perform a minimum of 15% of the proposed work on the Project. Therefore, the Contractor must be prequalified in INDOT work categories which total at least 15% of the Contract Sum. If there are work categories that are not covered by INDOT's prequalification program, contractors (or subcontractors as the case may be) may submit a prequalification certificate from DOA prior to performing work for these categories. However, in order to perform work on the work categories, for which INDOT prequalifies, INDOT prequalification is required and DOA prequalification only will not be acceptable. Contractor shall become prequalified as provided in this Section at least seven (7) days prior to the Anticipated Date of Commencement. Failure to do so shall be a material breach of the Agreement.

GC-8 SUBCONTRACTS - Contractor shall, by written agreement, require each Subcontractor to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by these Contract Documents, assumes toward Owner, including providing all insurance required to be provided by Contractor and complying with all other insurance provisions provided in Section GC-27. Each subcontract agreement shall preserve the rights of the Owner under the Contract Documents with respect to the Work to be performed by the subcontractor. Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. Owner shall enjoy the same benefits and rights as to Contractor's subcontractors as Contractor enjoys with respect to its subcontractors. Such subcontractors shall owe the same duties and obligations to Owner as they do to Contractor. Should Owner terminate this Agreement, each subcontract agreement is assigned to the Owner by the Contractor, provided that assignment is effective only after termination of the Agreement by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. When the Owner accepts the assignment of a subcontract agreement, the Owner only assumes the Contractor's obligations under the subcontract which thereafter accrue. Notwithstanding the assumption of any subcontract, invoking such right shall not be a waiver of Owner's rights or remedies against Contractor, the subcontractor, or any other subcontractors of any tier.

GC-9 ACCESS TO AND INSPECTION OF WORK - The Owner or Engineer and their representatives shall at all times have access to the Work and the Contractor shall provide proper facilities for such access and for inspection, whenever or wherever the Work is in preparation or progress. If the Contract Documents, the Owner's or Engineer's instructions, any laws, ordinances, or public authorities require any part of the Work to be specially tested or approved, the Contractor shall give the Owner or Engineer timely notice of its readiness for observation by the Owner or Engineer or inspection by another authority and of the date fixed for such inspection. All required certificates of inspection shall be secured by the Contractor.

GC-10 USE OF PREMISES

a. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, rights-of-way, permits and easements. Contractor shall not unreasonably encumber the premises with construction equipment or other materials or equipment, and shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from Contractor's operations at the site or the performance of the Work. Contractor's use of the site shall not impede, impair or endanger daily ongoing operations of Owner or other users, occupants, operators, tenants, or licensees of the Port. If Owner or Engineer requires Contractor to relocate materials

which have been stored on site or within any building or structure, Contractor shall relocate such materials at no additional cost to Owner. Should any claim be made against Owner by any such owner or occupant described above, Contractor shall promptly attempt to settle or otherwise resolve such claim directly with such other party, by agreement or otherwise. The Contractor shall provide and maintain on the premises, where directed, watertight storage shed (or sheds) for storage of all materials which might be damaged by exposure to weather. Shipments of material to be used by the Contractor or any subcontractor under this Agreement should be delivered to the job site only during the regular working hours of the Contractor or subcontractors. If a delivery is made during other than the normal working hours of the Contractor or subcontractor, its authorized agent must be on duty to receive such material. No employee of the Owner is authorized to receive any shipment designated for the Contractor or subcontractor.

b. The Contractor shall enforce the Owner's or Engineer's instructions regarding signs, advertisements, fires, and smoking. Advertising is not permitted on the site of the work, without the Owner's prior written approval. Advertising and billboards shall comply with the Owner's written instructions. Without the prior written consent of Owner, Contractor shall not, and shall cause its employees and consultants not to, make any statements that are based on knowledge gained as a result of performing the Work. Contractor shall not make any statements to the press or any other public statements related to this Agreement without prior written approval by Owner. All publicity, press releases, and other announcements relating to this Agreement or the Work being provided hereunder by Contractor shall be reviewed in advance and subject to the written approval of Owner.

c. In carrying out any part of this work, the Contractor shall consider and provide for the convenience and safety of the public, and shall not obstruct any road, street, highway, thoroughfare or footwalk longer or to any greater extent than is absolutely necessary. The Contractor shall provide safe, simple and convenient means of approach and entrance to adjoining roads, lanes, driveways, buildings, and property, for vehicles, passengers, and pedestrians. Contractor shall perform the Work in a manner as to cause the least possible disturbance to neighbors and/or adjacent work.

d. Contractor shall abide by and comply with the security policies, protocols and procedures of Owner. If requested by Owner, such security measures shall include but not be limited to Owner-issuance of background security checks on individuals workers at the Project site, Owner-issuance of badges or equivalent site access credentials to such workers, Owner maintenance of a security check point at the perimeter fence around the Project site at or near a entrance gate, and establishment by Owner of vehicular gates for ingress and egress. Contractor and its employees and subcontractors working onsite at the Project shall be required to comply with all reasonable security requested by Owner. Contractor shall be and remain responsible for all site security at the Project inside the perimeter fence, including any required interior night security or watchman, in accordance with the requirements of the Contract Documents.

e. Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by its employees or work, and at the completion of the work it shall remove all its rubbish from and about the building, and all its tools, scaffolding and surplus materials, and shall leave its work "broom clean" or its equivalent, unless more exactly specified. In case of dispute, the Owner may remove the rubbish and charge the cost to the several contractors as the Owner or Engineer shall determine to be just. At the completion of the Work Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by Owner. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents. All glass shall have dirt, paint, excess putty, etc., removed from both surfaces (inside and outside) and both surfaces shall be given a thorough washing. Contractor shall dispose of all excess materials and accumulated waste in a properly certified landfill or as otherwise required by law. Contractor may not reuse, sell, gift, or otherwise transfer excess fill, dirt, spoils, excavated materials, or other similar materials except to dispose of such material in a certified landfill. Contractor shall maintain proper chain of custody records for all such disposed materials and shall provide such records to Owner as part of the Project Closeout documents.



## GC-11 PROJECT SAFETY AND PROTECTION OF WORK AND PROPERTY

a. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. Contractor shall be solely responsible for the safety of its employees and those of other contractors and Subcontractors working at the Project site that may be affected by its Work. Contractor's superintendent shall be the person designed by Contractor with the primary duty of prevention of accidents. Contractor shall immediately report in writing any safety-related injury, loss, damage or accident arising from the Work at the Project to Owner and any other entity as required by law. Owner shall not have responsibility for the safety of individuals working on the Project, which responsibility shall remain exclusively with Contractor with respect to its employees, other contractors, or Subcontractors, and any other individual affected by Contractor's Work. The Contractor shall provide and maintain adequate protection for all properties adjacent to the site.

b. The Contractor shall continuously maintain adequate protection to prevent damage, injury or loss to the Work and materials and equipment to be incorporated therein, and other property at the Site or adjacent thereto. Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

c. Contractor is responsible for compliance with any requirements included in the Contract Documents or by any laws, ordinances, codes, rules, and regulations, regarding hazardous materials applicable to the Work. If Contractor encounters hazardous materials, wastes, chemicals or substances not addressed in the Contract Documents which could be harmful, Contractor shall stop Work in the affected area and report the condition to Owner in writing. Contractor shall recommence the Work in the affected area upon notice from Owner to do so. Owner shall not be responsible for materials or substances Contractor brings to the Site nor for hazardous materials or substances to the extent of Contractor's fault or negligence.

GC-12 CHANGES IN THE WORK - Owner, without nullifying this Agreement and without notice to any surety, may at any time direct Contractor in writing to make changes to the Work. If a Change Directive provides for an adjustment to the Contract Sum for which a unit price has been established in the Contract Documents, the adjustment shall be based on such unit prices. Otherwise, the adjustment in the Contract Sum shall be based on either, mutual acceptance of a lump sum or, if the Parties are not able to agree, the Contractor's actual labor, material, and equipment cost arising directly from the changed Work, cost plus a fee of five percent (5%). In which case, Contractor shall keep an itemized accounting together with appropriate supporting data to verify any and all costs and expenditures or savings, if any, directly attributable to the change as described in the Change Directive. Contractor shall not be entitled to an adjustment for supervision, general conditions, or other similar cost unless the changed Work requires a category of cost unrelated to the original Work. In no circumstance shall Contractor be entitled to an increase in any unit price as a result of changes in the Work ordered by Owner, a Claim, changed or unforeseen condition, or any other reason entitling Contractor to an adjustment in the Contract Sum.

GC-13 OWNER'S RIGHT TO DO WORK - If the Contractor defaults, neglects to prosecute the Work properly, fails to remove and replace rejected Work as provided by the Contract Documents, fails in any respect to perform the Work in strict accordance with the Contract Documents, or fails to perform any provision of this Contract and fails within a three (3) day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such three day period, and without prejudice to any other remedy available to it, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

## GC-14 OWNER'S RIGHT TO STOP WORK AND TERMINATE CONTRACT

a. If Contractor fails to correct Work that is not in accordance with the strict requirements of the Contract

Documents or fails to carry out the Work in accordance with the Contract Documents, Owner may, in addition to any other right or remedy afforded by this Agreement, issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

b. Owner may declare Contractor to be in default of the Agreement and terminate the Agreement if the Contractor;

1. refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
3. disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
4. otherwise is guilty of a breach of a material provision of the Contract Documents;
5. is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or Contractor or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws, or a trustee or receiver is appointed for Contractor or for any of Contractor's property on account of the Contractor's insolvency, and Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within ten (10) days of receipt of a written request by Owner for such assurance;
6. fails or refuses to perform or prosecute the Work or any separate part or element thereof in accordance with the Contract Documents and with such diligence as will insure its completion within the Contract Time;
7. fails to adhere to the original and any revised progress schedules (including the Construction Schedule) established under the Contract Documents;
8. performs any Work which is rejected as defective and fails or neglects to correct any such Work;
9. abandons or suspends performance of any of the Work, or removes from the site materials or equipment reasonably required to perform and complete the Work, without Owner's written consent, directive or approval; or
10. fails to become prequalified as required by the Contract Documents at least seven (7) days prior to the Anticipated Notice to Proceed Date.

c. When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate the Agreement and may, subject to any prior rights of the surety;

1. exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
2. accept assignment of subcontracts; and
3. complete the Work by whatever reasonable method the Owner may deem expedient.

d. When the Owner terminates the Agreement under this Section, the Contractor shall not be entitled to receive further payment until the entire Work is complete. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Engineer's or other professionals' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

e. Owner may, at any time, terminate the Agreement for Owner's convenience and without cause. Upon receipt of written notice from Owner of such termination Contractor shall (a) cease operations as directed by Owner in the notice; (b) take actions necessary, or that Owner may direct, for the protection and preservation of the Work;

and (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders. In case of such termination for convenience, Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, but shall not be entitled to any compensation with respect to the Work not executed, including lost anticipated profit, overhead, or other direct, indirect or consequential damages relating to portions of Work not performed. The payment provided by this section shall constitute Contractor's sole and exclusive remedy in the event of such termination for convenience.

f. If Owner terminates the Agreement for cause and it subsequently is found or determined in legal proceedings or for any reason that Contractor was not in default or breach of the Agreement by failure to perform in accordance with its terms, or that such failure to perform was caused through the fault of Owner, or that such termination was wrongful as against Contractor, or that adequate grounds did not exist to support the termination or such termination was not otherwise proper, then the termination shall be deemed to be a termination for the convenience of Owner, whereupon the rights and obligations of the parties shall be determined and governed in accordance with the provisions of GC-14(e).

GC-15 DEDUCTIONS FOR UNCORRECTED WORK - Contractor shall promptly remove from the premises all materials and Work determined by the Owner or Engineer as failing to conform to the Contract Documents, whether incorporated in the Work or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner. If Owner deems it expedient not to correct work injured or not performed in accordance with the Contract Documents, an equitable deduction from the Contract Sum will be made thereof.

#### GC-16 CLAIMS FOR EXTRA WORK

a. Unless otherwise provided in the Contract Documents, Contractor shall make any and all Claims to Owner for an increase in the Contract Sum, additional costs, damages, extensions of the Contract Time, or other modification of a term in the Contract Documents (for any reason) in writing within seven (7) calendar days of the event giving rise to such Claim. The failure to give such written notice within the time limit allowed for submission of a Claim shall constitute an irrevocable waiver of the Claim by Contractor. If Owner disputes the validity or amount of a change proposal submitted by Contractor including whether the Work entitles Contractor to an increase in the Contract Sum or Contract Time but Owner nevertheless directs Contractor to proceed with the disputed Work, Contractor shall promptly commence, prosecute and complete such disputed Work pending resolution of the Claim. In such case Contractor shall keep detailed records associated with the disputed Work.

b. Concealed or Unknown Conditions. If Contractor encounters a subsurface or otherwise concealed physical condition (other than Underground Facilities) for which Contractor intends to make a Claim for an adjustment to the Contract Sum or Contract Time, Contractor shall, immediately and before further disturbing such condition (except in an emergency as permitted by the Contract Documents), notify Owner in writing. Contractor shall be entitled to an adjustment in the Contract Sum or Contract Time, as applicable, only if such condition differs materially from conditions reasonably foreseeable based on the nature and character of the work in the particular location in which the work is being performed, but, only to the extent that (1) evidence of such conditions could not with the exercise of reasonable competence and diligence have been discovered or foreseen by Contractor prior to the Effective Date of the Contract, (2) Contractor, by the terms of the Agreement and Contract Documents, has not assumed the risk of such conditions and (3) Contractor has explicitly fulfilled all of its requirements provided by this Section. Notwithstanding the foregoing, unsuitable soil shall not be the basis of a Claim under this Section.

c. Underground Facilities. Underground Facilities consist of all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other manmade facilities or structures, and any encasements containing such facilities, which have been installed at or below the surface of the ground for the purpose of furnishing, storing, removing or transmitting electricity, gases, steam, liquid petroleum products, telephone or other communications,

cable television, computer signals or data, sewage, drainage, traffic or other control systems, water, or other similar products. Owner shall not be responsible for the accuracy or completeness of any information or data provided to or obtained by Contractor. Contractor shall have the sole responsibility for reviewing and checking all such information and data, for locating all Underground Facilities, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof and for repairing any damage thereto resulting from the Work or Contractor's operations, the cost of all of which having been included in the Contract Sum.

#### GC-17 DELAYS AND EXTENSION OF TIME

a. Contractor recognizes that changes may be made or occur in the Construction Schedule and agrees to comply with such changes without additional compensation. If Contractor is delayed at any time in the progress, performance or completion of any portion or portions of the whole of the Work contemplated by the Agreement as the result of flood, cyclone, hurricane, tornado, earthquake or other similar catastrophe, or as the result of Acts of God, the public enemy, Acts of the Government, or fires, epidemics, quarantine restrictions, strikes or labor disputes, freight embargoes or unusual delay in transportation, unavoidable casualties, or on account of any acts or omissions of Owner, Engineer, or others engaged by them (except as herein provided), or by their employees, agents or representatives, or by changes ordered in the Work by Owner which are not required to correct problems or discrepancies in Contractor's Work, or by any other causes which Contractor could not reasonably control or circumvent, and which are not due, in whole or in part, to any fault, neglect, act or omission on Contractor's part, and the risks of which are not otherwise assumed by Contractor pursuant to the provisions of the Contract Documents, then Contractor may request an extension of time for performance of the Work, and the right to such time extension shall be Contractor's sole and exclusive remedy. Contractor shall not be entitled to claim or recover any increase in the Contract Sum or damages or additional compensation of any type whatsoever as a consequence of any such delays, suspensions, hindrances or disturbances, whether or not contemplated by the parties and regardless of the severity or duration thereof. Contractor shall provide written notice to Owner of its intent to request an extension of the Contract Time within seven (7) days of the event giving rise to the delay.

b. Contract Time extensions will be granted to Contractor only to the extent that excusable delays occur without concurrent non-excusable delays and which excusable delays alone actually extend the time required by Contractor to perform and complete critical Work elements and activities and thereby cause an actual delay to achievement of Project completion. Extensions of the Contract Time shall be based solely upon the effect of delays upon the required contract completion date. The Contract Time shall not be extended for delays to parts of the Work, whether or not changed by any Change Order, that are not on the critical path of the Project Construction Schedule. Concurrent work activities which are not critical to Project completion shall not be the subject of additional time extensions or compensation if those work activities are performed, or could be performed, within a moveable time frame concurrent with a critical item. However, no such extension will be made for delay occurring more than seven (7) days before notice of such Claim therefore is made in writing to the Owner or to the Engineer (when one is employed). In the case of a continuing cause of delay, only one notice of Claim is necessary.

c. Should Contractor be entitled to an extension of time due to an excusable delay, Owner shall have the right to order Contractor to accelerate its Work in lieu of providing an extension of time. Contractor shall within three (3) days of Owner's request provide to Owner its additional premium portion of wages and other additional actual costs not included in the Contract Sum that would be required for Contractor to work the requested overtime in lieu of an extension of time. Should Owner determine to accelerate the Work instead of granting an extension of time and issue to Contractor a Change Directive authorizing Contractor to proceed with such acceleration methods, Contractor shall promptly implement the overtime and/or additional manpower or shifts. In such an event, Owner shall issue a Change Order to Contractor in accordance with the Change Directive, and Contractor shall be entitled to recover its substantiated additional premium portion of wages and substantiated additional actual costs incurred by Contractor without markup.

d. Contractor agrees that whether or not any delay shall be the basis for an extension of time it shall have no claim against Owner for an increase in the Contract Sum, nor a claim against Owner for a payment or allowance of any kind for damage, loss or expense resulting from delays or acceleration, suspension, hindrance, interference or disruption nor shall Contractor have any claim for damage, loss or expense resulting from delays, hindrances or disruptions to, acceleration of, interference with or suspension of its Work to enable other contractors to perform their Work. As between Contractor and Owner, Contractor shall assume the risk of any and all delays, hindrances or disruptions to, acceleration of, interference with or suspension of its performance of the Work and the consequences thereof, regardless of the length thereof or the party responsible therefor, arising from any and all causes whatsoever, including without limitation, those due to any acts or omissions of Owner, Engineer or other separate contractors or subcontractors, except only to the extent that an extension of time may be due to Contractor as expressly provided for in this Section for such delays or acceleration, suspension, hindrance, interference or disruption. Contractor shall assume all risk and bear all direct and indirect costs, expenses and liabilities which it may incur in connection with such delays or acceleration, suspension, hindrance, interference or disruption. All such delays or acceleration, suspension, hindrance, interference or disruption, costs, expenses and liabilities of any nature whatsoever, whether or not specially provided for in the Contract Documents, shall conclusively be deemed to have been within the contemplation of the parties. The sole and exclusive remedy available to Contractor shall be an extension of time as provided by the Contract Documents. Contractor acknowledges the risks imposed upon it by this provision and hereby waives any rights to claim the non-applicability of this Subparagraph upon grounds of delays or acceleration, suspension, hindrance, interference or disruption by Owner or Engineer, unreasonableness of delays, or that any delays or acceleration, suspension, hindrance, interference or disruption was not within the contemplation of the parties as of the Bid Date or effective date of the Agreement.

#### GC-18 ALLOWANCES

a. The Contractor shall include in the Contract Sum all allowances Owner lists in the Contract Documents. Materials and equipment under an allowance shall be selected by Owner with reasonable promptness. Contractor shall designate within the Construction Schedule an appropriate time frame for Owner's selection of allowance items.

b. Unless otherwise provided in the Contract Documents:

1. allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
3. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances and no overhead or profit shall be allowed.

#### GC-19 PAYMENT

a. Within ten (10) days from the Date of Commencement, Contractor shall submit a schedule of values to Owner for approval. The schedule of values shall total the entire Contract Sum and shall be broken down into individual labor, material, equipment, and general conditions line items in such detail and with such supporting documentation as requested by Owner. Contractor's overhead and profit or fee shall be distributed proportionally among each line item. The approved schedule of values shall be used by Contractor as the basis of its Applications for Payment ("Applications"). Owner may disapprove any previously approved schedule of values and request Contractor resubmit its schedule of values at any point during the Project at its discretion.

b. If the Contract Time is less than sixty (60) days, Contractor shall submit its Application for Payment, including all backup documentation, upon Substantial Completion of the entire Work. Within seven (7) days from

receipt of Contractor's properly completed Application for Payment, Owner shall review and certify, in whole or in part, such Application. Owner shall pay the Contractor, ninety percent (90%) of the value of the Work properly completed, subject to any other right to withhold payment contained elsewhere in the Contract Documents.

c. If the Contract Time is sixty (60) days or longer, Contractor shall submit monthly Applications for Payment to Owner based on the approved Schedule of Values. In its monthly Application for Payment, Contractor shall estimate the quantity of units (or percentage thereof) properly performed for that month for each such line item in the schedule of values. The total of the estimated quantity of units multiplied by the corresponding unit cost in the approved schedule of values shall be the total amount of Work Contractor represents to have performed. The amount of line items based on a percentage of the entire line item shall be determined by the percent complete of such line item as of the end of the period for such Application for Payment. Within seven (7) days from receipt of Contractor's properly completed Application for Payment, Owner shall review and certify, in whole or in part, such Application. Owner will make partial payment to the Contractor on the basis of a duly certified approved Application minus retainage of ten percent (10%) of the amount certified for each Application until final completion and acceptance of all of the Work. Owner may, at its sole discretion, pay Contractor for the value of material suitably stored and protected on the Site, but not yet incorporated into the Work of 80% of the value of such material.

d. Upon certification of Contractor's Application for Payment, in whole or in part, Owner will process such certification and payment will be made to Contractor in its normal course of business. All payments shall be made in arrears in conformance with State Fiscal Policies and procedures and, as required by Indiana Code § 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. All payments provided for herein are subject to appropriations made and funds allotted as provided by the laws of the State of Indiana.

e. No payment made to the Contractor, nor partial or entire use of occupancy of the Work by the Owner, will constitute an acceptance of any work or materials not in accordance with the Contract Documents.

f. When the Owner, at its discretion, determines that the Work is acceptable under the terms of the Contract Documents and all other material terms of the Contract Documents have been fully performed, it shall issue a final Certificate of Payment. Final payment, including any retainage, shall not be payable until the Contractor furnishes the Owner separate affidavits affirmatively stating: (1) all bills or claims from subcontractors, materialmen, suppliers and laborers employed or having furnished supplies and/or equipment for or in connection with the Work have been paid in full; and (2) all Indiana income taxes withheld from payrolls, if required to be withheld by the Contractor and/or subcontractors in connection with the Agreement, have been paid or will be paid by the end of the current calendar year quarter. In no event shall final payment be made until after thirty (30) days following the date of final completion and acceptance of the Work and submission of the affidavits as required herein. Owner shall make final payment to Contractor once the following conditions precedent have been satisfied: a) Contractor has fully performed the Work in accordance with the Contract Documents; b) Contractor has submitted to Owner all warranties, certifications, record documents, instruction manuals, and other documents required by the Contract Documents; and c) all other conditions or requirements identified in the Contract Documents to be performed prior to final payment have been completed.

g. The making and acceptance of final payment shall constitute a waiver of all Claims by Owner against Contractor and by Contractor against Owner except (i) liens, security interests or encumbrances arising out of the Agreement unsettled; (ii) Claims by Contractor specifically reserved in writing in Contractor's final Application; (iii) claims by Owner attributable to Defective Work or prior corrective work, appearing after final inspection; (iv) failure of the Work to comply with the requirements of the Contract Documents, unless specifically waived in writing at the time of final payment; (v) Contractor's neglect or failure in any respect to perform any of its duties or responsibilities in accordance with the Contract Documents, unless specifically waived in writing at the time of final payment; (vi) Owner's claims and other rights arising under the terms of any general or special warranties or guarantees specified by the Contract Documents or otherwise provided by Contractor, Subcontractors, Suppliers,

or manufacturer, (vii) Owner's claims and other rights in respect of Contractor's and its surety's continuing post-completion obligations under Laws and Regulations or the Contract Documents, and (viii) unresolved Claims that remain from those Claims designated by the Contractor and Owner in writing at the time of final payment.

h. Owner shall not pay any interest or finance charges unless or until payment is due and unpaid in accordance with the terms hereof, in which event, provided Contractor is not otherwise in breach or default of the terms of the Agreement, payments shall bear interest or finance charges at the rate of two percent (2%) per annum from the date payment is otherwise due and owing. In the event Owner is entitled to withhold payments or in the event of a good faith dispute between Owner and Contractor, no interest or finance charge shall accrue.

i. Contractor will save and keep the Project structures and improvements, the real estate within which the Project is situated, the interests of Owner and all other persons having an interest in such Project and real estate, and the contract proceeds or other moneys now due or hereafter to become due and payable by Owner to Contractor, free and clear from all mechanic's and other liens and from any claims against the contract proceeds or to establish the personal liability of Owner by reason of the Work or any labor, materials or other things used therein. If Contractor fails to remove any lien or claim against Owner or the contract proceeds by bonding or otherwise as directed by Owner, and within the time period required by Owner, then Owner may retain sufficient funds out of any money due or thereafter to become due by Contractor to pay the same and all costs incurred by reason thereof, including attorney fees, and may pay or bond said lien and costs, including attorney fees, out of any funds at any time in the hands of Owner and otherwise owing to Contractor. Contractor further shall defend and indemnify Owner and all other persons having an interest in such Project and real estate from and against any and all such liens and claims.

#### GC-20 PAYMENT WITHHELD

a. The Owner and/or the Engineer may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate to such extent as may be necessary to protect the Owner from loss on account of;

1. Defective work not remedied;
2. Claims filed or reasonable evidence indicating probable filing of claims;
3. Failure of the Contractor to make payments properly to subcontractors or for materials or labor;
4. A reasonable doubt that the Agreement can be completed for the balance then unpaid;
5. Damage to Owner or another separate contractor;
6. Failure of the Contractor to maintain its construction schedule or reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. other failure to carry out the Work in accordance with the Contract Documents.

b. When the above grounds are removed, certification will be made for amounts withheld because of them.

c. If certification for payment is withheld under GC-20(a)(3), Owner may, at its sole option, issue joint checks to Contractor and to any Subcontractor or material or equipment suppliers to whom Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If Owner makes payments by joint check, Owner shall notify Engineer, if one is employed on the Project, and Engineer will reflect such payment on the next Certificate for Payment. Alternatively, at its sole option, Owner may, but shall not be obligated or required to, make direct payment on behalf of Contractor of any part or all of such sums due and owing to said subcontractors, material suppliers and/or laborers for their labor, materials or equipment furnished to the Project, not to exceed the Contract Sum remaining due and owing to Contractor, and charging all such direct payments against the Contract Sum under the Contract. However, nothing contained in this paragraph shall create any

personal liability on the part of Owner to any subcontractor, material supplier or laborer, or any direct contractual relationship between Owner and them.

d. If Contractor disputes a determination by Owner or Engineer with regard to a Certificate or payment therefor, a Claim made by Contractor, or any other dispute, Contractor nevertheless shall continue to execute the Work as described in the Contract Documents.

**GC-21 USE OF COMPLETED PORTIONS OF THE WORK** - Owner may occupy or use any completed or partially completed portion of the Work at any stage. In such case, Owner and Contractor shall agree in writing each Parties responsibilities for security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Immediately prior to such partial occupancy or use, Owner, Contractor and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**GC-22 SUBSTANTIAL COMPLETION**

a. Substantial Completion is the stage in the progress of the Work, as determined by Owner, when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits, if any, have been issued so that Owner can occupy or utilize the Work for its intended use.

b. When the Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Contractor shall prepare and submit to Owner or Engineer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.

c. Upon receipt of Contractor's list, Owner or Engineer shall make an inspection and other investigation as appropriate to determine whether the Work or designated portion thereof is substantially complete and whether Contractor has satisfied other requirements of the Contract Documents to be met prior to the Work being certified as substantially complete. If Owner's or Engineer's inspection or other investigation discloses any item or requirement, whether or not included on Contractor's list, which is not sufficiently complete or in accordance with the Contract Documents, Contractor shall, before issuance of the Certificate of Substantial Completion, complete, correct or satisfy such item or requirement upon notification by Owner or Engineer. In such case, Contractor then shall submit a request for another inspection and investigation by Owner to determine Substantial Completion.

d. When the Work or designated portion thereof is substantially complete and Contractor has satisfied other conditions required by the Contract Documents to be met prior to Substantial Completion, Owner or Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents, except for those warranties specified in the Contract Documents to commence on a later date, shall commence on the date of Final Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Final Completion.

**GC-23 CORRECTION OF WORK AFTER FINAL PAYMENT** - If within one (1) year from the date of Substantial Completion, any Work does not conform to the Contract Documents, Contractor shall correct such Work at its own cost upon receipt of notice from Owner, except for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear. Nothing contained in this Section shall be construed to establish a period of limitation with respect to



liability Contractor has under the Contract Documents. Establishment of the one (1) year period for correction of Work as described in this Section relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

#### GC-24 PROJECT RECORDS AND OWNER AUDIT

a. Records, files and Project management reports of all Contractor accounting, cost, labor, and production records, including all supporting vouchers, canceled checks, subcontracts, purchase orders, time records, project cost reports and similar data and all production records (the "Accounting Records") as required to substantiate an expenditure, including but not limited to the following items: (a) costs incurred and payments for labor and material, including supervision and equipment (whether rented or owned); (b) costs incurred and payments to Subcontractors and suppliers and vendors; (c) changes in the Work; (d) Claims submitted by Contractor; (e) suspension of the Work and Contractor operations; (f) Project closeout; (g) termination of the Contract; and (h) whenever Contractor's costs and expenses are subject to audit under the Contract Documents, 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 designated representative within five (5) days, unless mutually agreed otherwise.

b. Contractor's other records related to the Project (the "Project Records") and the Accounting Records, including any and all electronically stored or saved information, shall be retained and maintained and be made available, upon request, for review and verification by Owner or Owner's designated representative, for a period of at least ten (10) years following completion of the final completion and acceptance of the Work 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.

c. Contractor shall comply with any additional or longer retention requirements of any controlling Federal, State or local governmental or regulatory authority with jurisdiction over the Project or funding source for the Project.

#### GC-25 DISPUTES

a. Contractor waives any Claims against Owner for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, rental expenses, for losses of use, income, profit, financing, business and reputation, and 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 services being furnished hereunder. This waiver is applicable, without limitation, to all consequential damages due to either party's termination.

b. As between the parties to 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 Substantial Completion of the Work except as provided otherwise by applicable statute.

c. Owner and Contractor shall be responsible for their own attorney fees and legal expenses regardless of which party prevails.

d. All disputes concerning questions of fact arising under this Agreement, including all Claims, shall be submitted to Owner for decision. If Contractor does not agree with Owner's decision, it shall send written notice to Owner stating the reasons therefor within 30 days of Owner's initial decision or Owner's decision will be final and binding Contractor. Thereafter, Owner and Contractor shall arrange a meeting of executives to attempt to come

to an agreement. If the Parties are unable to come to an agreement, either Party may initiate formal dispute resolution proceedings.

#### GC-26 PROJECT CLOSEOUT

a. Contractor, through qualified individuals, shall adequately instruct designated employees of Owner in the operation and care of all equipment installed hereunder. Contractor shall also furnish and deliver to Owner or Engineer within forty-five (45) days of the shop drawing approval date, three (3) complete sets for permanent files, of instructions, technical bulletins and any other printed matter, such as diagrams, prints or drawings, containing full information required for the proper operation, maintenance and repair of the equipment installed and the ordering of spare parts, except for equipment that may be furnished by Owner.

b. Contractor shall maintain in a safe place at the Project site one copy of all Drawings and Specifications, Addenda, Written Amendments, Change Orders, Construction Change Directives, Field Orders and written interpretations and clarifications related to the Project in good order and annotated to show all changes made during construction. These documents, together with all approved samples, attic stock, instruction manuals, warranties, and a counterpart of all approved Shop Drawings, including the final As-Built or Record Drawings shall be available to Owner and Engineer for reference. Upon completion of the Work, these documents, samples, and Shop Drawings shall be delivered to Owner and Engineer as a condition precedent to Contractor's right to receive final payment.

c. Contractor shall, during the progress of the Work, keep a master set of the Drawings and Specifications on the Project site, on which is kept a careful and neat record of all deviations from the Drawings and Specifications made during the course of the Work. Contractor shall provide Owner and Engineer with the master set of Drawings and Specifications incorporating the revisions and changes made during construction up to acceptance of the Project. These updated documents shall reflect all changes to the original construction documents to indicate the as-built conditions, including revisions in site and building area tabulations. These Drawings and Specifications shall be certified as to their correctness by the signature of Contractor.

d. The Contract Sum shall include the costs of furnishing competent and experienced engineers, superintendents or other technically qualified representatives who shall represent equipment manufacturers and shall assist Contractor, when required, to install, adjust, test and place in operation equipment in conformity with the Contract Documents. When equipment is ready for permanent operation, such engineers, superintendents or representatives shall make all adjustments and tests required by Owner or Engineer to prove that such equipment is in proper and satisfactory operating condition, and shall instruct such personnel as may be designated by Owner in the proper operation and maintenance of such equipment.

e. Upon request of Owner after completion of the Project, Contractor shall provide to the Owner the percentage of the total Contract Sum that was paid in wages to persons under the Contractor's employ for the Project.

#### GC-27 INSURANCE

a. All insurance policies must include a waiver of subrogation in favor of the Owner. In the event of a loss, the Contractor shall submit to Owner one (1) copy of its insurance policies evidencing the insurance required herein. All insurance required herein shall be in effect without interruption from the date of commencement of the work until the date of final payment, except as noted below for products and completed operations coverage which shall remain in effect for one-year following acceptance of the project/work by Owner.

b. The insurance required herein shall be no less protective of Owner than it is of Contractor. Contractor and subcontractors of any tier must maintain insurance in compliance with the insurance requirements in this Section GC-27 as well.

c. Contractor's insurance shall provide that it may not be canceled or modified without at least thirty (30) days prior written notice delivered to Owner. Contractor shall provide Owner with thirty (30) days prior written notice of any cancellation, termination, or change in any insurance. A certificate of insurance provided by Contractor's insurer or insurer's representative containing the Owner's insurance requirements specified in the Contract Documents shall be on file with the Owner prior to the commencement of the Work and renewal certificates shall be provided 30 days before the expiration of the Contractor's insurance. Appropriate renewal or replacement insurance conforming to Owner's insurance requirements shall be in force prior to or upon the expiration of any such insurance without any lapse in coverage.

d. Contractor's insurance shall be issued by companies licensed or authorized to provide insurance in the State of Indiana and otherwise reasonably acceptable to Owner and the insurance carrier shall at all times as the final definitive agreement is in full force and effect, have a policyholder rating of not less than "A-VII" in the most current edition of Best's Insurance Reports or the equivalent.

e. Contractor, at its expense, shall procure and maintain in full force and effect fire and all-risk or commercial property insurance written with Special Form Causes of Loss insuring the Contractor's personal property, property of its employees, and all tools and equipment owned by the Contractor.

f. Without limiting its liability under the Contract, the Contractor and all subcontractors shall maintain, at its expense during the life of the Contract, the following minimum insurance in companies that are acceptable to the Owner and are licensed to do business in the State of Indiana:

1. Workmen's Compensation: The Contractor shall maintain such Workmen's Compensation insurance as will comply with all applicable statutes, and provide Employer's Liability coverage with a minimum limit of \$500,000. If applicable to Contractor's project work, this coverage shall include coverage for the United States Longshoremen's and Harbor Worker's Act, and for Masters or Members of the Crews of Vessels. A waiver of subrogation in favor of the Owner shall apply.
2. Commercial General Liability: The Contractor shall maintain Commercial General Liability insurance on an occurrence basis on an ISO CG 0001 form or an equivalent form for bodily injury and property damage that may arise out of their operations, whether such operations be by the contractor or by a subcontractor or by anyone directly or indirectly employed by them. Such insurance shall include each of the following, subject to the following minimum limits:

\$1,000,000 each occurrence combined single limit  
\$1,000,000 personal and advertising injury  
\$2,000,000 general aggregate  
\$2,000,000 products-completed operations aggregate

- Coverage for ongoing operations, independent contractors, and any persons or entities performing work on behalf of Contractor.
- Products and completed operations coverage, which coverage shall be maintained through the on-going operations and for a period of 1 year following the acceptance of the work project by Owner.
- Provide that the limits apply per work project.

- Contractual liability coverage to the same or greater extent as covered under ISO commercial general liability coverage form CG 0001 10 04.
  - Contain a severability or separation of insureds clause
  - A Form No. CG 2026 11 85 and CG 2037 10 01 together as additional insured endorsements, or an equivalent endorsement acceptable to Owner, naming the Owner as an additional insured.
  - Provide that such insurance is primary and non-contributing to any insurance which may be available to the Owner.
  - A waiver of subrogation in favor of the Owner shall apply.
3. Automobile Liability: The Contractor shall maintain Automobile Liability insurance coverage for all owned, hired, and non-owned vehicles subject to the following minimum limits:
- A combined single limit for bodily injury and property damage of \$1,000,000 per accident.
  - An endorsement naming the Owner as an additional insured.
  - A waiver of subrogation in favor of the Owner shall apply.
4. Umbrella Excess: Umbrella Excess Liability coverage with a limit of \$3,000,000 or more providing coverage excess of the General Liability, Automobile and Employer's liability required herein. Coverage shall be no less broad than the underlying coverages and Contractor may, at its option, purchase any combination of primary and excess liability coverage that when combined together meets the \$3,000,000 minimum threshold stated herein.
5. Railroad Protective Liability Insurance: **If Contractor's project work requires any project work to be done within fifty (50) feet of any railroad tracks or facilities**, the Contractor shall maintain Railroad Protective Liability Insurance covering the premises, operations, independent contractors, subcontractors, products/completed operations, with minimum contractual liability hazards coverage in the amount of \$2,000,000/occurrence and \$6,000,000 aggregate. **Owner will not accept an endorsement** to Contractor's general liability policy removing the so-called "railroad exclusion" from Contractor's general liability policy as equivalent or in lieu of the RPL coverage specified above. Owner requires separate standalone RPL coverage issued to Owner as the named insured.

## GC-28 INDEMNIFICATION

a. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend at its own expense Owner, the State of Indiana, and any other person identified in the Contract Documents as being indemnified by Owner or Contractor, and all of their officers, directors, agents and employees, from and against all claims, suits, damages, losses, costs and expenses, including attorney's fees and court costs, arising out of or resulting from, or alleged to arise out of or result from, the performance of the Work, provided that any such claim, suit, damage, loss, cost or expense: (a)(1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use thereof and consequential damages resulting therefrom, or (2) is attributable to direct or indirect costs, expenses, or other losses or any other economic damages incurred by Owner, or (3) is attributable to damages to any party indemnified hereunder or its employees, servants and agents, in all cases regardless of whether such claim, suit, damage, loss, cost or expense is based upon, or claimed to be based upon, statutory, contractual, tort or other theory of liability; and (b) is caused in whole or in part by any

negligent act or omission, breach of contract, breach of warranty, strict liability, or other fault or breach of duty of Contractor or anyone directly or indirectly employed by it or anyone for whose acts it may be liable, or is caused by or arises out of the use of any products, materials, machinery or equipment furnished by Contractor, regardless of whether such claim, suit, damage, loss, cost or expense is caused in part, but not wholly, by a party indemnified hereunder. In any and all claims against Owner, the State of Indiana, or other parties identified in the Contract Documents as being indemnified by Owner or Contractor, or any of their officers, directors, agents or employees, by any employee of Contractor or anyone directly or indirectly employed by a subcontractor of any tier, or anyone for whose acts Contractor may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under worker's compensation acts, disability benefit acts or other employee benefit acts. Contractor shall indemnify and hold Owner, the State of Indiana, and other parties identified in the Contract Documents as being indemnified by Owner or Contractor, and all of their officers, agents, employees and servants, harmless from claims, suits, damage, loss or liability of any nature, including costs, royalties, license fees, expenses and legal fees for or on account of use of any patented or unpatented invention, article, material or appliance used or furnished under the Contract, including use by or for Owner after installation and for any alleged or actual infringement or violation of any patent or patent right arising in connection with the Project.

b. If any part of the indemnity provisions of this Section is adjudged to be contrary to law, the remaining parts of the provisions shall in all other respects be and remain legally effective and binding. Moreover, such indemnity obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or other right which would otherwise exist as to any party or person described in this Section.

GC-29 PERFORMANCE AND PAYMENT BOND - Contractor shall furnish and pay for an approved one hundred percent (100%) combination performance and payment bond covering the faithful performance of the Agreement and the payment of all obligations arising thereunder and to remain in effect for a period of one year from the date of final acceptance of the work. Surety companies furnishing these Bonds must be listed in the U.S. Department of Treasury, Circular 570, the latest revision at the time of Date of Commencement, whose underwriting limitation is at least three (3) times the total Contract Sum, excluding any surety companies de-listed subsequent to the latest publication date of Circular 570. Bonds shall be in a form proscribed by Owner. Contractor shall require the Attorney-in-Fact that executes the required Bonds on behalf of the surety to affix to the Bonds a certified and current copy of the Power of Attorney. The penal sum or other limiting amount stated on the face of any bond issued and delivered to Owner pursuant to the Contract Documents shall be deemed, automatically and without notice, adjusted by the aggregate sum of any Change Orders signed by Owner and Contractor, notwithstanding any contrary provision set forth in any such bond as executed.

GC-30 OWNERSHIP OF DRAWINGS AND SPECIFICATIONS - Owner is the property owner of all rights in any Project Deliverables. Contractor, Subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Project Deliverables. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of Owner's reserved rights.

GC-31 CONFIDENTIAL INFORMATION

a. "Confidential Information is information that relates to Owner's past, present and future research, development, business activities, products, work and technical knowledge, including derivatives and enhancements to preexisting Confidential Information. Contractor agrees that all Confidential Information disclosed to or discovered by Contractor in the course of the performance of this Agreement shall be considered confidential and protected information, and that Contractor shall not disclose such information to a third party unless: (1) such disclosure is necessary in the performance of the Work, (2) Contractor 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 Contractor without use of Confidential Information;

(b) separately acquired by Contractor 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 this Agreement.

b. Contractor agrees to protect the confidentiality of Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event shall Contractor exercise less than reasonable care. Confidential Information disclosed hereunder shall at all times be the property of Owner and shall be copied or reproduced without Owner's prior written consent. All Confidential Information shall be returned or destroyed upon the earlier of (1) written request of Owner; (2) the completion of the Work; or (3) the termination of this Agreement. Contractor shall (a) use the Confidential Information only in connection with the Work and for no other purpose; (b) restrict disclosure of the Confidential Information to only those employees and subcontractors, suppliers and consultants of Contractor and its affiliates with a "need-to-know;" and (c) advise those employees, subcontractors, suppliers or consultants who access the Confidential Information of their obligations with respect. A "need-to-know" means that the employee, subcontractors, suppliers or consultants requires the Confidential Information to perform their responsibilities in connection with the Work.

c. Confidential Information shall include all Project specific information, including Owner's project criteria and information furnished by Owner to Contractor hereunder, including but not limited to area and cost information, operational or business information and other program specific information, shall be considered to be confidential and proprietary information of Owner and subject to the confidentiality provisions of this Subparagraph as well as those provisions. All studies, reports, designs, drawings, specifications, models, computer models and other products created or commissioned by Contractor or any of its subcontractors, suppliers or consultants during the course of performing the Work for Owner under the Agreement shall also be deemed to be Confidential Information.

d. Contractor agrees that an impending or existing violation of this Section and its subparts of this Agreement would cause Owner irreparable injury for which it would have no adequate remedy at law, and agree that Owner shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.

GC-32 DEFINITIONS - When in these General Conditions reference is made to "Engineer", in those cases where no Engineer has been engaged by Owner for the Project, it shall mean the Owner, unless the wording clearly indicates a meaning otherwise. "Subcontractor" shall mean a subcontractor of any tier performing part of the Work on the Project unless the context specifically indicates only those having a direct contract with the Contractor. "Project Deliverables" shall mean all drawings, specifications, contracts, documents, reports, communications, drawings, spreadsheets, computer programs, electronic data and databases, information, and other documents, including those in electronic form, created, prepared, provided by or to Contractor or its Subcontractors and Suppliers of any tier related to the performance of the Work. "Claim" shall mean a request by Contractor for an adjustment in the Contract Sum, Contract Time, or modification of any other term in the Contract Documents.

PART III

TECHNICAL SPECIFICATIONS

**PORT OF INDIANA, JEFFERSONVILLE  
CLARK COUNTY, INDIANA**

**TECHNICAL SPECIFICATIONS**

CONTRACT JF-2022-C1

**CRANE RAIL DEMOLITION / REMOVAL AND  
LAYDOWN YARD CONSTRUCTION PROJECT**

**I. PROJECT DESCRIPTION**

- A. The work performed on this project shall consist of furnishing all labor, services, materials, insurance, and equipment to provide for the demolition, removal, and salvage of the existing crane rail system located at 5150 Maritime Road, Jeffersonville, Indiana. In addition, the work shall include removal and salvage of a railroad overhead signal gantry stored in the rear lot at 1402 Port Road, Jeffersonville, Indiana. The crane rail system is adjacent to a railroad spur line operated by MG Rail.
- B. Port of Indiana, Jeffersonville is located on the map shown as Figure 1:

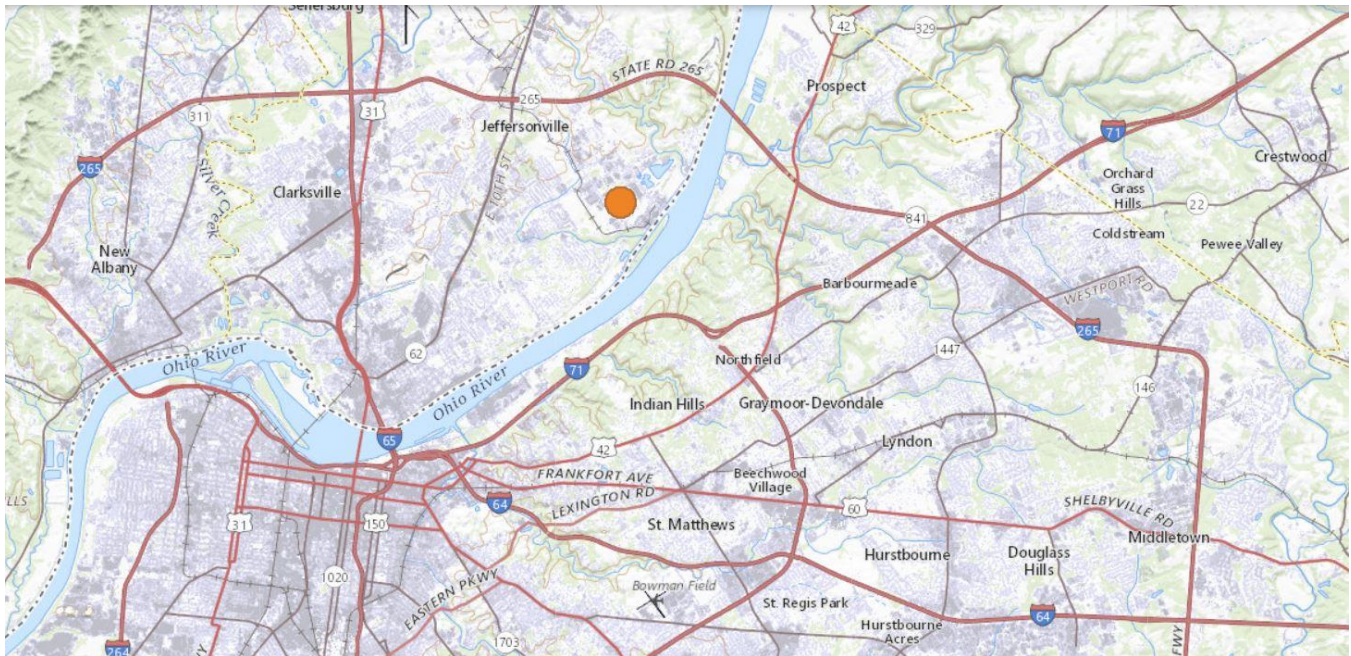


Figure 1 – Port of Indiana, Jeffersonville

- C. The approximate project limits are depicted on Figure 2. The overhead railroad signal gantry is not shown in the figure; it is located at 1402 Port Road, Jeffersonville, Indiana.





Figure 2 – Approximate Project Limits

D. Details of the crane rail work are shown on Figure 3. Add dimensions are approximate:



Figure 3 – Details of Crane Rail Work

## II. PREVAILING INDOT SPECIFICATION

1. The 2022 Indiana Department of Transportation Standard Specification effective date September 1, 2021, (INDOT Specification) shall be used on this project for materials, installation, and

workmanship. All references to measurements and basis of payment are deleted and not part of these Technical Specifications.

2. The Federal Railroad Administration “Track Safety Standards Compliance Manual” dated January 1, 2022, shall be used on this project to evaluate the railroad spur track upon completion of the work and determine if the track alignment and grade are within acceptable tolerances.

### **III. DEMOLITION AND REMOVAL CRANE RAIL**

#### **A. Prevailing INDOT Specification:**

Section 202, 203, and 211

#### **B. Additions:**

1. The demolition of the crane rail system will include the removal of the overhead crane and all the steel horizontal, cross bracing, and vertical members of the system.
2. Electrical panels, switches, conduit, and wiring shall be disconnected and removed from the site.
3. Concrete mass footings shall be demolished and removed from the site. Backfilling with INDOT B Borrow shall be incidental to the removal. Backfill to be compacted to 98% Standard Proctor Density.
4. Any time that the Contractor is working within eighteen feet (18’) of the railroad spur track centerline there must be MG Rail personnel on site. The Contractor must maintain a clear zone that is ten feet (10’) from the centerline of the track unless the track is taken out of service by MG Rail. No materials shall be removed over the track clear zone unless the track is out of service. Any damage done by the Contractor to the track operating area within eighteen feet (18’) of the centerline of the of the track will be restored by the Contractor at its expense to the satisfaction of the Ports of Indiana and MG Rail.
5. Upon completion of construction adjacent to the railroad spur track, the track shall be tested for alignment and grade. Both parameters shall be within the acceptable tolerances as determined by the Track Safety Standards Compliance Manual.
6. Overhead railroad signal gantry is stored in the rear yard at the Ports of Indiana office building. The Contractor shall notify the Ports of Indiana Port Director and schedule a time to remove the materials three business days prior to the desired removal date.
7. All removed materials will become the property of the Contractor for disposal. The Contractor will have a period of fourteen (14) days to haul of site the dismantled steel members once they are taken down. Salvage value received by the Contractor shall be credited to the Ports of Indiana.

#### **IV. CONSTRUCTION OF LAYDOWN YARD**

##### **A. Prevailing INDOT Specification:**

Section 201, 303, and 904

##### **B. Additions:**

1. The work shall be completed as shown on the attached drawing, labeled C1.0.
2. All grasses and other vegetation shall be cleared and grubbed per Section 201. Trees shall remain.
3. Topsoil shall be removed as required and replaced with INDOT B Borrow.
4. INDOT NO. 53 Crushed Stone Dense Graded Aggregate shall be imported and placed at site of the demolished crane rail system per Section 303 as shown on the attached drawing C1.0.
5. The minimum desired finished depth of aggregate, both existing and imported, is four inches (4”).
6. Aggregate shall be graded and compacted per Section 303 and in a manner required to create an outdoor storage yard that can be driven on by trucks and standard outdoor use forklifts.
7. Vertical elevation separations between finished aggregate and other surfaces shall be no greater than one-half inch (1/2”).