



**REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, FINANCE, OPERATE AND MAINTAIN**

I-69 SECTION 5 PROJECT

THROUGH A PUBLIC-PRIVATE AGREEMENT

**VOLUME I
INSTRUCTIONS TO PROPOSERS**

**A PROJECT OF THE
INDIANA FINANCE AUTHORITY**

ISSUED OCTOBER 15, 2013

Addendum #1 Issued November 26, 2013

Addendum #2 Issued December 20, 2013

**Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204**

CERTAIN KEY DATES

<u>EVENT</u>	<u>DATE</u>
Issue Final Request for Proposals	October 15, 2013
Proposal Due Date	January 21, 2014
Anticipated Notification of Preferred Proposer	On or around February 19, 2014
Execution of PPA and Other Execution Documents (unless extended pursuant to <u>Section 1.7.3</u>) and Commercial Close	On or after 22 days after the date of publication of the notice of the designation of the

<u>EVENT</u>	<u>DATE</u>
	Preferred Provider required under IC 8-15.5-4-11(b). (execution date anticipated to be April 8, 2014)

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Form E	Personnel Work Assignment Form and Commitment of Availability
Form F	Non-Collusion Affidavit
Form G	Buy America Certification
Form H	DBE Certification
Form I	Conflict of Interest Disclosure Statement
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INSTRUCTIONS TO PROPOSERS

(Request for Proposals: The Project)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (“RFP”) is issued by the Indiana Finance Authority (“IFA”), a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions, in cooperation with the Indiana Department of Transportation (“the Department” or “Department”), to seek competitive proposals (individually, a “Proposal” and collectively, “Proposals”) for an availability payment concession public-private partnership to be evidenced by a Public-Private Agreement (“PPA”) as more fully described in this RFP and the PPA Documents.

The PPA shall provide that the successful Proposer (the “Developer”) shall develop, design, construct, finance, operate, and maintain the I-69 Section 5 project. The I-69 Section 5 project consists of upgrading approximately 21 miles of existing State Route 37, a four-lane median divided highway, between Bloomington, IN and Martinsville, IN to an interstate highway (the “Project”). A general map of the Project can be found at the following procurement website: <http://www.i69indyevn.org/section-5/> . The form of PPA, with the other PPA Documents, is included in Volume II of the RFP.

IFA is issuing this RFP to those Proposers shortlisted on July 30, 2013, based on IFA’s evaluation of Statements of Qualification (“SOQs”) delivered to IFA on July 9, 2013 in response to the Request for Qualifications for the Project issued on May 23, 2013 (as amended, the “RFQ”).

Proposers must comply with these Instructions to Proposers (“ITP”) during the procurement and in their respective Proposals. Proposals shall also take the Project goals identified in Section 1.2 below into consideration.

The RFP permits a Proposer to identify a Person other than the Proposer to act as Developer, thus allowing unsuccessful Proposers to avoid unnecessary costs associated with formation of such Person. However, if the Person identified as Developer in the successful Proposal is not formed as contemplated herein, or fails to comply with the requirements set forth herein, the Person(s) that signed the Proposal shall have the joint and several obligation either to enter into the PPA itself or to provide a substitute Developer acceptable to IFA, in its sole discretion.

1.2 IFA Goals

IFA’s goals for the Project are as follows (in no particular order of importance):

- (A) Provide congestion relief on SR 37;

(B) Reduce existing and forecasted traffic congestion, improving traffic safety and supporting local economic development initiatives;

(C) Spur economic development within Monroe and Morgan Counties, particularly in the areas of Bloomington and Martinsville;

(D) Strengthen the transportation network in Southwest Indiana (including improved business accessibility to labor, suppliers and markets and improved personal accessibility for residents);

(E) Reduce traffic safety problems and existing and forecasted traffic congestion;

(F) Support economic development in Southwest Indiana;

(G) Completes a key portion of the national I-69 corridor between Evansville and Indianapolis;

(H) Minimize the cost and funds required to develop, design, construct, finance, operate and maintain the Project;

(I) Achieve substantial completion for the Project by October 31, 2016;

(J) Provide a safe project for workers and the traveling public;

(K) Provide a high quality, durable and maintainable facility;

(L) Meet Disadvantaged Business Enterprise (“DBE”) goals and project “on-the-job” training (“OJT”) program opportunities;

(M) Seek private sector innovation and efficiencies, and encourage design solutions that respond to actual and anticipated environmental concerns, permits and commitments; and

(N) Generate additional permanent and temporary jobs that include construction related employment.

1.3 Procuring Agency and Stakeholders

IFA will be the procuring agency for the Project. IFA will work closely with the Department, and together may be referred to as the “Project Sponsors.” IFA's primary mission is to oversee State-related debt issuance and provide efficient, effective financing solutions to facilitate state, local government and business investments in the State.

As the entity responsible for the planning and development of the transportation system in the State, the Department will work closely with IFA to assist with the procurement of the Project and oversee the work of Developer in the development, design, construction, operation and maintenance of the Project. The Department's procurement role includes development of the Technical Provisions for the RFP and supporting the evaluation of the SOQs and responses to this RFP.

The BMCMPO (Bloomington/Monroe County Metropolitan Planning Organization) is the Metropolitan Planning Organization (“MPO”) serving the City of Bloomington, the Town of Ellettsville, and parts of Monroe County, as originally designated by the Governor of Indiana in 1982. The BMCMPO also includes Indiana University and Bloomington Transit as planning partners. The MPO provides a forum for coordinating the transportation planning practices of local communities within a regional framework that benefits all citizens. The MPO is responsible for conducting its transportation planning activities within its “Metropolitan Planning Area,” which encompasses portions of the Project.

1.4 General Description of and Scope of Developer’s Obligations for the Project

1.4.1 Overview

The Project begins at State Road 37 in Bloomington, IN and extends north approximately 21 miles to SR 39 in Martinsville, IN. The Project extends through Monroe and Morgan Counties, Indiana, with the majority of the Project being in Monroe County. The purpose of the Project, as well as the broader I-69 project, is to strengthen the transportation network in the State, support economic development in the region and complete a key portion of the broader I-69 project between Evansville and Indianapolis.

1.4.2 Project Design Features

The design features for the Project, which must be consistent with the FEIS and the ROD, are described below.

(A) Rural Design Features:

- Four-lane highway with two 12-foot-wide lanes in each direction;
- Lanes separated by either an 84-foot-wide depressed median or 60-foot-wide depressed median;
- Medians consist of two 7-foot-wide usable inside shoulders where six of those feet are paved.
- Additional 12 foot-wide outer shoulder is required in select locations for truck climbing lanes and ramp acceleration and deceleration lanes;

(B) Urban Design Features:

- Six-lane divided highway with three 12-foot-wide lanes in each direction;
- Median treatment options include a depressed median 60 feet in width (initial cross-section) or paved shoulders separated by a concrete barrier wall (low-impact cross section);

- Additional 12-foot-wide lanes are provided in locations warranting auxiliary lanes and ramp acceleration and deceleration lanes, and an 8- to 12-foot-wide paved outside shoulder.

(C) Local Access Roads Design Features:

- These roads are designed for either side of the mainline at various points throughout the Project corridor;
- Provide access to otherwise landlocked properties;
- Either 100-foot-wide median (initial cross-section) or barrier wall (low-impact cross-section) will be used between the interstate mainline and access roads;
- Paved shoulders, varying by specific alternative, will range from 5-8 feet;
- Minimum clear zone on each side without a barrier wall is 20 feet;
- Cross section for these lanes typically includes two travel lanes (width between 11-12 feet).

1.4.3 Environmental

Environmental studies for the Project have been completed. A Tier 2 Draft Environmental Impact Statement (“DEIS”) for the Project was prepared and circulated by the Federal Highway Administration (“FHWA”) and the Department in October 2012. FHWA issued a combined Tier 2 Final Environmental Impact Statement (“FEIS”) and Record of Decision (“ROD”) for the Project on August 7, 2013, which, among other things, governs the alignment of the Project.

Final environmental approvals and related requirements have not yet been secured.

1.4.4 Scope of Developer’s Obligations

IFA and the Department are currently advancing many of the key preconstruction environmental permits commensurate with the state of design development during the period leading to selection of and award to Developer.

Excluding the Advance Construction Projects, Developer will develop, design, construct and finance the Project and operate and maintain the Project (as more fully set forth in the Technical Provisions), in return for periodic availability payments. Developer will also be entitled to receive milestone and completion payments as described in the PPA Documents.

The PPA will require Developer to design and construct the elements of the Project within a period of time defined in the PPA.

Developer’s scope of work shall also exclude the design and construction of the SR 37 Clearing Contract and the bridge rehabilitation of the Walnut Street Bridge over existing SR 37 (collectively, the “Advance Construction Projects”). The Advance Construction Projects will be

included in separate design-bid-build contracts that will be separately let by the Department, with the lettings currently planned for November 2013. The Advance Construction Projects are expected to be awarded in December 2013. The SR 37 Clearing Contract is anticipated to be completed by the end of May 2014 and the Walnut Street Bridge rehabilitation is anticipated to be completed by the end of August 2014. Developer will be required to coordinate with the contractors constructing the Advance Construction Projects during the construction period, as more particularly set forth in the PPA and the Technical Provisions. Once complete, the Walnut Street Bridge will be included within the O&M Work and O&M Limits. The contracts for the Advance Construction Projects are included in the Reference Information Documents.

A specific description of the Project and Developer's scope of work is contained in the Technical Provisions (Volume II, PPA Documents). Developer's authorization to commence and pursue the Work shall be pursuant to the issuance of two notices to proceed, NTP1 and NTP2, each as described and defined in the PPA Documents. Each of the notices to proceed includes schedule requirements and limitations concerning the implementation of the Work.

1.4.5 Operations and Maintenance; Warranties

Developer will be responsible for performing operations and maintenance (routine and capital/life cycle) for the term of the Project as described and defined (as "O&M Work") in the PPA Documents. Developer's operations and maintenance responsibilities will generally occur in two phases (one starting at NTP2 through Substantial Completion and the other during the Operating Period). Developer's Design-Build Contractor may also be required to provide a warranty of the D&C Work of the Project for a period specified in the PPA, and Developer may be required to provide parent guaranties and warranty bonds from the Design-Build Contractor to support the Design-Build Contractor's obligations with respect to such warranties and work relating to such D&C Work.

1.5 Documents in the Request for Proposals

The RFP consists of the following volumes, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented:

Volume I - this ITP (including exhibits and forms)

Volume II - the PPA Documents

Volume III - the Reference Information Documents

Refer to Section 1.2 of the PPA for a list of the PPA Documents and their order of precedence.

The Reference Information Documents, which can be found at <http://i69section5.com/sites/rfp/SitePages/Home.aspx> (the "FTP Site"), are included in the RFP for the purpose of providing information to Proposers. Except as may be expressly provided otherwise in the PPA Documents, (a) the Reference Information Documents are not mandatory or binding on Proposer, Developer or IFA and (b) Proposers are not entitled to rely on the Reference Information Documents or any opinions, suggestions, directions or recommendations therein as presenting financing, design, engineering, construction, operating

or maintenance solutions or other direction, means or methods for complying with the requirements of this procurement, the PPA Documents, Governmental Approvals or applicable Laws.

Except as may be expressly provided otherwise in the PPA Documents, neither IFA nor the Department shall be responsible or liable in any respect for any causes of action, suits, judgments, claims, expenses, damages or losses whatsoever suffered by any Proposer by reason of (a) any use, in connection with participation in this procurement, of information, opinions or recommendations contained in the Reference Information Documents, or (b) any action or forbearance in reliance on the Reference Information Documents. Although the Reference Information Documents may include interpretations, extrapolations, analyses and recommendations concerning data, design solutions, technical issues and solutions and constructions means and methods, such interpretations, extrapolations, analyses and recommendations are (i) preliminary in nature and, in many cases, are obsolete; (ii) not intended to express the views or preferences of IFA, the Department or any other Governmental Entity or represent any statement of approval or acceptance thereof by IFA, the Department or any other Governmental Entity; and (iii) not intended to form the basis of a Proposer's design solutions, technical solutions or construction means and methods. Except as may be expressly provided otherwise in the PPA Documents, a Proposer shall use or not use the Reference Information Documents at its sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the Project, including those relating to site conditions, geotechnical conditions, Utilities, structures and bridge design, (y) the preparation of its Proposal, and (z) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Reference Information Documents.

Neither IFA nor the Department represents or warrants that the information, opinions and recommendations contained in the Reference Information Documents are complete or accurate or that such information, opinions and recommendations are in conformity with the requirements of the RFP, Governmental Approvals or applicable Laws. Proposers shall have no right to compensation, time extension or other claim in connection with participation in this procurement based on any incompleteness or inaccuracy in the Reference Information Documents, except as otherwise expressly provided in the PPA Documents.

Nothing contained in this Section 1.5 is intended to diminish or derogate from the rights of Developer for compensation or time relief in connection with Relief Events or pursuant to Section 16 of the PPA.

1.6 Definitions and Acronyms

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used but not defined herein, and refer to Exhibit 1 to the PPA for the meaning of capitalized terms and acronyms used but not defined herein or in said Exhibit A.

1.7 Procurement Schedule, Address for Proposal Delivery and Financial Close Deadline

1.7.1 Procurement Schedule

The following represents the current schedule for the procurement.

<u>EVENT</u>	<u>DATE and TIME</u>
Issue Final RFP	October 15, 2013
One on One Meetings re: ATCs	October 29-30, 2013
Deadline for Proposer submittal of questions/comments on RFP Documents Before November 13-14, 2013 One on One Meetings	October 31, 2013 at 12:00 P.M. (Eastern Time)
Last date for IFA to provide Addendum setting forth the available Milestone Payment amounts and schedule for payment per <u>Section 2.7.5</u>	November 4, 2013
One on One Meetings re: RFP Documents and ATCs	November 13-14, 2013
Updates regarding Project Right of Way and Utility status	Approximately every 2 weeks
Last date for submittals of ATCs	November 21, 2013 at 12:00 P.M. (Eastern Time)
Last date for IFA to provide Addendum identifying Project Right of Way status per <u>Section 2.7.3</u>	November 26, 2013
Last date for IFA to provide Addendum identifying Utility status per <u>Section 2.7.4</u>	December 6, 2013
Last date for IFA to provide Addendum regarding certain Governmental Approvals per <u>Section 2.7.6</u>	November 26, 2013
Last date to submit Pre-Proposal Submittals (other than those separately listed in this schedule)	November 26, 2013 at 12:00 p.m. (Eastern Time)
Last date for Proposer submittal of questions regarding the RFP (other than as to Addendum #2 to the RFP), as described in <u>Section 2.3.1</u>	December 6, 2013 at 3:00 P.M. (Eastern Time)
Last date for IFA notification regarding Pre-Proposal Submittals (other than those separately	December 9, 2013

<u>EVENT</u>	<u>DATE and TIME</u>
listed in this schedule)	
One on One Meetings re: RFP Documents (if applicable)	December 11-12, 2013
Last date for resubmittal of Pre-Proposal Submittals (other than ATCs and those Pre-Proposal Submittals with dates separately listed in this schedule and if any such other Pre-Proposal Submittals have been disapproved or otherwise rejected)	December 16, 2013 at 3:00 P.M. (Eastern Time)
Last date for IFA responses to ATCs	December 20, 2013
Last date for IFA responses to timely submitted questions regarding the RFP (if necessary) (other than as to Addendum #2 to the RFP)	December 20, 2013
Last date for IFA notification regarding resubmittal of Pre-Proposal Submittals (other than ATCs and those Pre-Proposal Submittals with dates separately listed in this schedule and only if applicable in respect of such other Pre-Proposal Submittals)	December 20, 2013
Last date for Proposer submittal of questions regarding Addendum #2 to the RFP, as described in <u>Section 2.3.1</u>	December 27, 2013 at 3:00 P.M. (Eastern Time)
Last date for IFA responses to timely submitted questions regarding Addendum #2 to the RFP (if necessary)	January 7, 2013
Deadline for submittal of Credit Spreads and Benchmark Rates	January 8, 2014 at 3:00 P.M. (Eastern Time)
IFA Notification regarding Credit Spreads and Benchmark Rates	January 13, 2014 at 3:00 P.M. (Eastern Time)
Proposal Due Date	January 21, 2014 at 3:00 P.M. (Eastern Time)
Anticipated Notification of Preferred Proposer	On or around February 19, 2014
Execution of PPA and Other Execution Documents (unless extended pursuant to <u>Section 1.7.3</u>) and	On or after 22 days after the date of publication of the notice of the

<u>EVENT</u>	<u>DATE and TIME</u>
Commercial Close	designation of the Preferred Provider required under IC 8-15.5-4-11(b) (execution date anticipated to be April 8, 2014)
Financial Close (<i>for reference only</i> , as terms and conditions governing Financial Close contained in the PPA Documents)	Either (a) the date scheduled for Financial Close as set forth in the written Notice from Developer to IFA as provided in <u>Section 13.7.2</u> of the PPA, or (b) the date scheduled for Financial Close as set forth in the written Notice from IFA to Developer extending the date for Financial Close as provided in <u>Section 13.7.2</u> of the PPA, or (c) 120 days after issuance of the IPDC Commencement Notice by IFA as provided in <u>Section 13.7.2</u> of the PPA

All dates set forth above and elsewhere in this RFP are subject to change, in IFA's sole discretion, by Addendum.

1.7.2 Address for Proposal Delivery

The completed Proposal shall be submitted and delivered in sealed containers no later than the Proposal Due Date and time specified in Section 1.7.1, respectively. The Proposals are to be delivered to IFA at the following address, except those portions of the Proposal required to be delivered into escrow as specified in Section 4.4.3:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204
Attention: Silvia Perez

1.7.3 Deadline for Commercial Close and Financial Close Deadline

If a Proposer is selected as the Preferred Proposer for negotiations or execution of the PPA, then that Proposer shall be required to, on or before the date specified in Section 1.7.1 for PPA execution, deliver to IFA executed copies of the PPA and the documents required under Section 6.1.1. If notification of Preferred Proposer does not occur on or before February 21, 2014, the deadline for execution of the PPA and Execution Document and commercial close of April 8, 2014 shall be extended on a day for day basis.

IFA may, in its sole discretion, extend the deadline for PPA execution or commercial close by written notice to the Preferred Proposer, but may not extend the date of commercial close

beyond the 180 day Proposal validity period without mutual agreement by the Preferred Proposer.

Developer shall be required to achieve Financial Close on or before the Financial Close Deadline as set forth in the PPA.

1.8 General Provisions Regarding Proposals

1.8.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to this RFP, including (a) a Technical Proposal, including a Preliminary Project Management Plan and properly completed Proposal forms, and (b) a Financial Proposal, including a Financial Plan, Financial Model, properly completed Proposal forms (to be delivered directly to IFA), and certain supporting documentation (to be delivered into escrow as specified in Section 4.4.3).

Requirements for the Technical Proposal and the Financial Proposal are set forth in Exhibits B and C, respectively, and a checklist showing the required contents and order of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and shall be submitted without reservations, qualifications, conditions or assumptions set forth therein. Any failure to provide all the information and all completed forms in the format specified, or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions, may result in IFA's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. Except as expressly provided in the Proposal forms (e.g., requirements to fill the forms out, etc.), no substantive change shall be made in the Proposal forms by the Proposer.

1.8.2 Inclusion of Proposal in PPA Documents

Portions of the successful Proposer's Proposal will become part of the PPA Documents, as specified in the PPA. All other information is for evaluation purposes only and will not become part of the PPA Documents.

1.8.3 Commitments in the Proposal

Each Proposal will be interpreted and evaluated based on the commitments provided by the Proposer. Tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a commitment (such as when phrases such as "we will" or "we shall" are used).

1.8.4 Ownership of Proposal and Applicability of Public Records Act

Except for those documents delivered into escrow pursuant to Section 4.4.3, all documents submitted by the Proposer in response to the RFP shall become the property of IFA and will not be returned to the Proposer. Additionally, if Proposer accepts the stipend payment offered by IFA, as specified herein, the concepts, ideas and other information contained in its Proposal

shall become the exclusive property of IFA free of all intellectual property rights and claims, without further action on IFA's part.

Subject to the exceptions specified herein and Proposer's acceptance of the stipend payment, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to IFA during this procurement process, whether included in the Proposal or otherwise submitted, become the property of IFA upon delivery to IFA and will not be returned to the submitting parties. The foregoing does not apply to materials required to be delivered into escrow, which shall be delivered to the escrow agent as specified in Section 4.4.3.

Proposers shall familiarize themselves with the provisions of the Indiana Public Records Act, Indiana Code 5-14-3 and relevant provisions of Indiana Code 8-15.5-4-2, 6 and 13 (collectively, the "Public Records Act"). All materials submitted by Proposers, including the Proposals, shall be subject to the Public Records Act and any other Laws applicable to the disclosure of documents submitted under this RFP. Specifically, Proposers are advised that, except for portions of the Proposals and SOQs that fall under a specific exemption of the Public Records Act, Proposals will be made available to the public pursuant to a request submitted under the Public Records Act. In furtherance thereof, Proposers will be required to submit a redacted copy of their respective Proposals and SOQs to IFA no later than 15 days after commercial close, with redactions limited to only those portions of the Proposal and SOQ that fall under a specific exemption of the Public Records Act (and Proposers shall be required to submit, for IFA's review and approval, documentation identifying the specific exemption asserted and such other information requested by IFA in order for IFA to assess the eligibility of such portions of the Proposal for exemption from publication). Notwithstanding any proposed redactions and/or claims of exemption asserted by Proposer, IFA shall have sole discretion to determine the applicability of any exemptions under the Public Records Act and of the contents to be disclosed in response to a request thereunder. Failure of Proposer to submit a redacted form of its Proposal and SOQ, containing only those redactions consistent with IFA's determination as to the content that may be redacted, to IFA by 15 days after commercial close shall constitute consent by Proposer to, and a waiver of any right to contest, disclosure by IFA of Proposer's Proposal and SOQ in their entirety, without redaction, in response to a request submitted under the Public Records Act. As between a Proposer and a third party requesting disclosure under the Public Records Act (as opposed to as between a Proposer and IFA exercising its sole discretion rights pursuant to this ITP), this Section 1.8.4 shall not constitute a waiver of the Proposer's rights under the Public Records Act.

In no event shall IFA, the Department or any of either of their respective agents, representatives, consultants, directors, officers or employees be liable to a Proposer or any Proposer team member for the disclosure of any materials or information submitted in response to this RFP.

Submission of a Proposal constitutes the Proposer's agreement to the provisions of this Section 1.8.4. See also Section 2.6.

1.9 Federal Requirements and Funding

Proposers are advised that the RFP has been drafted based on the assumption that the Project and the plan of finance for the Project will remain eligible for federal-aid funds. Accordingly, the procurement documents and PPA Documents conform to requirements of applicable federal law and FHWA regulations, including those set forth in Exhibit 22 to the PPA and Buy America requirements, Title VI of the Civil Rights Act of 1964, as amended, regarding Equal Employment Opportunity (EEO) and Title 49 Code of Federal Regulations (CFR) Part 26, as amended, regarding Disadvantaged Business Enterprises (DBEs). It is IFA's intent that the RFP Documents, and the procurement itself, afford all Proposers nondiscriminatory bidding procedures regardless of national, state or local boundaries and without regard to race, color, religion, sex, national origin, age, or handicap. IFA views State laws, specifications, regulations and policies that are relevant to this procurement and the Project as not contrary to applicable federal law and FHWA regulations, but, in the abundance of caution, if IFA determines that any provisions of State laws, specifications, regulations, or policies operate in any manner contrary to any federal requirements, including those mentioned specifically in the second sentence of this Section 1.9, so as to prevent submission of a Proposal, or prohibit consideration of a responsive Proposal submitted by any responsible Proposer, such provisions shall not be applicable to the Project. In light of the foregoing, IFA reserves the right, in its sole discretion, to modify the procurement process described herein to address any concerns, conditions or requirements of FHWA. Proposers will be notified of any such modifications as provided in Section 2.3.2. The Project has federal funding and meets the definition of a major project requiring a major project review. As a major project, IFA and the Department shall be required to develop and maintain a project management plan and a finance plan.

1.9.1 EEOC; DBE Requirements

1.9.1.1 EEOC

IFA is an Equal Employment Opportunity employer.

1.9.1.2 DBE Requirements

IFA has determined that the DBE requirements apply to design and construction of the Project, and has adopted a DBE program to provide DBEs opportunities to participate in the business activities of IFA as service providers, vendors, contractors, subcontractors, advisors, and consultants. IFA has adopted the definition of DBEs set forth in 49 CFR § 26.5. The Proposer's DBE compliance obligations for the Project shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the PPA Documents and the Department's "DBE Program Manual."

IFA's DBE requirements applicable to the Project are set forth in Section 7.10 of the PPA and the DBE Special Provisions and IFA's DBE program adopted pursuant to Title 49 CFR Part 26. The DBE Goal for the Project is 11% of the Total Project Capital Cost for the professional services and construction portions of the Work performed under the PPA. Compliance with 49 CFR Part 26 shall be as set forth in the DBE Special Provisions. With respect to O&M Work,

there is no DBE Goal, but Developer will be required to use good faith efforts to encourage DBE participation in the O&M Work.

As set forth in Section 3.2.9 of Exhibit B, each Proposer shall submit a certification concerning DBE requirements with its Proposal. In addition, each Proposer shall be required to submit a Preliminary DBE Performance Plan. Failure to provide the required DBE certification and such Preliminary DBE Performance Plan shall be considered a breach of the Proposal requirements and may render a Proposal non-responsive.

The Preferred Proposer will also be required to provide DBE commitments in the form required by IFA as DBE contractors are identified, in accordance with the DBE Special Provisions, the approved DBE Performance Plan, Exhibit 2-L to the PPA, and the Department's "DBE Program Manual. "

Following award, Developer will be required to submit a detailed DBE Performance Plan describing the methods to be employed for achieving IFA's DBE Goal for the Project, including Developer's exercise of good faith efforts. Requirements for the DBE Performance Plan are set forth in the DBE Special Provisions. The DBE Performance Plan will be subject to review, comment and approval by IFA prior to and as a condition precedent to Developer's commencement of Design Work.

Developer shall comply with 25 IAC 5 as set forth in the DBE Special Provisions.

1.9.2 Workforce Diversity and Small Business Performance Plan Requirements

As set forth in Section 4.1.4 of Exhibit B, each Proposer shall submit a Preliminary Workforce Diversity and Small Business Performance Plan. Failure to provide the required Preliminary Workforce Diversity and Small Business may render a Proposal non-responsive.

Following award, Developer will be required to submit a detailed Workforce Diversity and Small Business Performance Plan. Requirements for the Workforce Diversity and Small Business Performance Plan are set forth in the DBE Special Provisions. The Workforce Diversity and Small Business Performance Plan will be subject to review, comment and approval by IFA prior to and as a condition of issuance of NTP2.

1.9.3 Private Activity Bonds

On or about November 4, 2013, USDOT reserved a conditional allocation for the issuance of a principal amount of private activity bonds ("PABs") in the amount of \$400 million for the Project. The expiration of the allocation will be December 31, 2014. Each Proposer may, but is not obligated to, use the PABs allocation in its Financial Proposal. If the Preferred Proposer's Financial Proposal includes the use of PABs, IFA will serve as the issuer of the PABs. Developer shall be responsible for all of IFA's costs associated with the issuance of the PABs, including attorneys' fees associated with obtaining bond counsel opinions; provided, however, that the \$3,000 application fee, the \$30,000 closing fee and the \$1,000 volume cap allocation fee will not be required. For a description of IFA's charges and costs for acting as PABs issuer and related forms, please refer to the "Large Bond Program" link at <http://www.in.gov/ifa/2340.htm> (PABs will be considered "Exempt Facility Bonds" for this

purpose). Developer should be familiar with IFA's regulations and guidelines for acting as a "conduit issuer" of PABs that Developer must satisfy as a condition to issuance of PABs by IFA. IFA will make this allocation available to provide for a portion of the financing for the Project, as set forth in the Preferred Proposer's Financial Proposal. A Proposer wishing to use PABs shall be solely responsible for obtaining ratings, bond counsel opinions and credit enhancement, as well as satisfying any conditions placed on the use of the allocation by USDOT or complying with any other requirements of state and federal tax laws; provided, however, that, as more particularly set forth in the PPA, IFA shall (i) agree to enter into a continuing disclosure agreement with respect to the PABs in substantially the form attached to the PPA as Exhibit 3, (ii) authorize the Developer to include, in the preliminary and final official statement for the PABs, the Financial and Economic Statement for the State of Indiana in the form posted on the Electronic Municipal Market Access (EMMA) site at the time of the publication of such offering materials, (iii) agree to provide a certificate of Public Finance Director with respect to the official statement in substantially the form attached to the PPA as Exhibit 11 and (iv) agree to provide an opinion from the Attorney General containing a statement that, to the best of his knowledge, the portion of the Financial and Economic Statement for the State of Indiana entitled "Litigation" does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Proposer's lead underwriter(s) ("Lead Underwriter(s)") or private placement agent ("Private Placement Agent", as applicable, must be a nationally-recognized firm with experience in transportation infrastructure finance. Counsel for the Lead Underwriter(s) must also be a nationally-recognized law firm with experience in transportation infrastructure finance. Proposer's bond counsel must be selected from the following firms:

- Hall, Render, Killian, Heath & Lyman
- Taft Stettinius & Hollister LLP
- Benesch
- Krieg DeVault LLP
- Barnes & Thornburg LLP
- Bingham Greenebaum Doll LLP
- Bose McKinney & Evans LLP
- Faegre Baker & Daniels

The Preferred Proposer may request that IFA allow the bond counsel to also act as the Preferred Proposer's local counsel and IFA will consider allowing the same under the following circumstances:

- IFA will not sign any waivers of conflict(s) of interest;

- The engagement letter must expressly state that if there is a dispute between Developer and IFA, the firm must resign as Developer's counsel upon IFA's request;
- IFA may hire additional Issuer's counsel, in its sole discretion, and Developer shall pay all associated counsel fees and expenses to IFA; and
- The engagement letter must expressly state that the firm will not be entitled to participate on Developer's behalf in any dispute or action between IFA and Developer.

Proposer must obtain IFA's approval of its Lead Underwriter(s), Private Placement Agent and counsel for the Lead Underwriter(s) prior to the Proposal Due Date in accordance with Section 2.4. The Proposer shall provide the qualifications of Proposer's intended Lead Underwriter(s) or Private Placement Agent, as applicable, and intended counsel for the Lead Underwriter(s) no later than the date for Pre-Proposal Submittals set forth in Section 1.7.1 for such submission; provided, however, that with respect to counsel for the Lead Underwriter(s), the Proposer may submit information about more than one (1) but no more than three (3) law firms. Such law firms shall not, in IFA's determination, have any conflicts of interest with respect to IFA or the Department with respect to the Project. The Proposer shall provide an original and seven copies of all information necessary for IFA to assess the qualifications of the intended Lead Underwriter(s) or Private Placement Agent, as applicable, and intended counsel for the Lead Underwriter(s). Each Proposer shall specifically provide information regarding the experience of the intended Lead Underwriter(s) and intended counsel for the Lead Underwriter(s) with PABs and transportation infrastructure finance. Each Proposer shall specifically provide information regarding the experience of the intended Private Placement Agent with Private Placements and transportation infrastructure finance. IFA may approve the Lead Underwriter(s) without approving counsel for the Lead Underwriter(s), but will not approve counsel for the Lead Underwriter(s), without approving the Lead Underwriter(s).

Following approval of IFA's application for a PABs allocation, Proposers may have direct contact with USDOT concerning PABs; provided that the Proposer provides advance notice to IFA of the meeting date and time with USDOT and a copy of the agenda of issues to be discussed. No other materials should be provided to IFA regarding the meeting.

The foregoing approach has been developed by IFA as an accommodation to the Proposers and in order to attempt to facilitate the use of PABs by Proposers. IFA makes no representation as to, nor guarantees the amount, if any, of PABs that can be issued for the Project or the use of proceeds to finance the Project as a matter of federal tax law. Proposers should seek the advice of their own respective tax consultants. Should a Proposer elect to include PABs in its Financial Proposal, it does so at its own risk and cost, and IFA shall have no liability with respect thereto.

1.9.4 Public Funding; Milestone Payments

It is currently anticipated that the Department, commencing with fiscal year 2015, shall transfer to IFA an aggregate amount over 3 fiscal years of \$60 million, as more particularly set forth in the Milestone Agreement, in support of the Project. It is currently anticipated that all or a

portion of such funds will be paid by IFA to Developer through Milestone Payments for Developer's D&C Work (and not O&M Work). In addition, the Availability Payments payable to Developer for its O&M Work will be funded from use payments made by the Department to IFA under a Use Agreement to be entered into between IFA and the Department. All of the foregoing funds from the Department are subject to legislative appropriation by the State.

To the extent that any other payments under the PPA come from State or federal funds (as opposed to bond proceeds, loans, etc.), Proposers should be aware that such state and federal funds shall be subject to legislative appropriation by the State.

1.10 Insurance Requirements

Proposers are cautioned to carefully review the minimum insurance requirements set forth in the PPA and shall take these minimum requirements into account in developing their respective Proposals.

1.11 Qualification To Do Business

On or before 30 days prior to the Proposal Due Date and continuing through the date of commercial close, Major Participants (excluding the Equity Members) must be qualified to transact business in the State. As of 15 days prior to commercial close, Developer must be qualified to transact business in the State.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

This RFP is issued pursuant to Indiana Code 8-15.5 et seq., as amended, and other applicable provisions of Indiana and federal Law. IFA will award the PPA (if at all) to the responsive Proposer offering a Proposal meeting the standards set by IFA and which is determined by IFA, through evaluation based upon the criteria set forth in the applicable Law and this RFP, to provide the best value to IFA and to be in the best interest of the State.

IFA will accept Proposals for the Project only from those Proposers that IFA has shortlisted for the procurement based on their respective responses to the RFQ.

Except for pre-approved Alternative Technical Concepts (“ATCs”) as described herein, IFA will not review or consider alternative proposals.

2.2 Receipt of the Request for Proposal Documents, Communications and Other Information

The RFP will be issued and made available to shortlisted Proposers in electronic format on the secure file transfer site for the Project, located at the FTP Site.

2.2.1 Authorized Representative

IFA has designated the following individual to be its authorized representative for the procurement (the “Authorized Representative”):

One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: Silvia Perez
Telephone: (317) 234-7701
Fax: (317) 232-6786
Email: sperez@ifa.in.gov

From time to time during the procurement process or during the term of the PPA, IFA may designate another Authorized Representative or Representatives to carry out some or all of IFA’s obligations pertaining to the Project.

2.2.2 Identification of Proposer Authorized Representative

A Proposer shall identify in its Proposal an individual authorized to act on behalf of the Proposer relating to the procurement (“Proposer Authorized Representative”). If a Proposer changes its Proposer Authorized Representative to receive documents, communications or notices in connection with this procurement subsequent to its submission of its Proposal, the Proposer shall provide IFA’s Authorized Representative with the name and address of such new Proposer Authorized Representative. Failure to identify a Proposer Authorized

Representative in writing may result in the Proposer failing to receive important communications from IFA. IFA is not responsible for any such failure.

Proposer may elect to designate a second individual, who may submit communications, questions and comments to IFA and who IFA may elect to include in official correspondence (as a "copy to"). If Proposer designates a second individual, such individual shall not be, nor be deemed to be, the "Proposer Authorized Representative." Failure by IFA to include the second designated individual in official correspondence shall not, and shall not be deemed to, render any communication to the Authorized Representative invalid. Any communication coming from the second designated individual to IFA shall also be delivered to the Proposer Authorized Representative.

2.2.3 Rules of Contact

From the date of issuance of the RFQ until the issuance of that certain letter agreement dated August 1, 2013, the rules of contact provisions in the RFQ were applicable to this procurement. From August 1, 2013 until issuance of the final RFP, the rules of contact provisions in the letter agreement were applicable to this procurement.

From and after the date of issuance of this RFP and ending on the earliest of (i) the execution and delivery of the PPA, (ii) rejection of all Proposals by IFA or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), other electronic means or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer nor any of its team members may communicate with another Proposer or its team members through its employees, agents or representatives with regard to the RFP or either team's Proposal, except that (i) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any IFA sponsored informational meetings.

(b) Each Proposer shall designate one representative responsible for contacts with IFA, and shall correspond with IFA regarding the RFP only through IFA's Authorized Representative and the Proposer Authorized Representative.

(c) No Proposer or representative thereof through either of their respective employees, agents or representatives shall have any *ex parte* communications regarding the RFP or the procurement described herein with any member of IFA or the Department, or with any IFA or Department staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative or the Public Finance Director, in her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings

of the Board or any public or Proposer workshop related to the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of IFA.

(d) Proposers shall not directly contact the following identified stakeholders (the “Stakeholders”) regarding the Project, including employees, representatives and members of the entities listed below, it being the intent of IFA that IFA provide any necessary coordination during the RFP stage with such entities in order that, among other things, the procurement be implemented in a fair, competitive and transparent manner and with uniform information:

- Indiana University;
- Monroe County, IN;
- City of Bloomington, IN;
- BMCMPPO (Bloomington/Monroe County Metropolitan Planning Organization);
- Morgan County, IN;
- Town of Ellettsville, IN;
- City of Martinsville, IN;
- FHWA;
- USDOT Secretary’s Office;
- USDOT Innovative Program Office;
- Environmental, regulatory and permitting agencies;
- Utilities; and
- Railroads (including CSX and Indiana Rail Road Company)

Information requests concerning these entities should be sent to IFA’s Authorized Representative, who, in IFA’s good faith discretion, may arrange for a general meeting between one or more of these entities and the Proposers. Such meetings will be open to all Proposers and will not include discussion of any confidential matters. Following any such general meeting, IFA may allow individual meetings between a Proposer and such entity(ies); provided that such Proposer notifies IFA in writing of any planned meeting at least three business days in advance and sends IFA an agenda along with the date, time, location or dial in number and proposed attendees for such meeting. In such event, IFA reserves the right, in its sole discretion, but without obligation, to send a representative to such meeting or join by phone. The representative will not actively or substantively participate in any such call or meeting and will not answer any questions during such call or meeting. Refer to Section 1.9.3 for information and requirements regarding meetings with the USDOT PAB’s office.

(e) Any communications determined by IFA, in its sole discretion, to be improper may result in disqualification. “Improper” as used herein means detrimental or prejudicial to the integrity of the procurement.

(f) Any official information regarding the Project will be in writing, on IFA letterhead, and signed by IFA’s Authorized Representative or designee.

(g) IFA will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified in this Section 2.2.3.

The Proposer shall note that no correspondence or information from IFA or anyone representing IFA regarding the RFP or the procurement process in general shall have any effect unless it is in compliance with Section 2.2.3(f).

2.2.4 Land Acquisition within the Project Right of Way

Prior to award of the PPA, no Proposer, including team members or Affiliates, may (i) secure, acquire title to or close on a purchase of land included within the Project Right of Way (“Restricted Property”), (ii) enter into an option to purchase or a purchase contract relating to the Restricted Property unless (a) it gives the seller the unilateral and unconditional right to cancel without charge or penalty if the Proposer does not become Developer and achieve Financial Close; and (b) the Proposer notifies IFA in writing within ten days after entering into such agreement; or (iii) engage in any predatory land or property acquisition practice.

2.2.5 Language Requirement

All correspondence regarding the RFP, ATCs, Proposal, and PPA are to be in the English language. Except as may be otherwise expressly permitted in these RFP Documents, if any original documents required for the Proposal are in any other language, the Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Responses Regarding the RFP and Addenda

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by IFA prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which the Proposer fails to understand. Failure of the Proposer to request such clarification(s) or interpretations and to so examine and inform itself shall be at its sole risk, and no relief for perceived discrepancy, deficiency, ambiguity, error or omission contained therein will be provided by IFA. Proposers shall submit requests for written clarification in accordance with this Section 2.3.1. IFA reserves the right not to respond to any such clarification requests received after the last date for Proposer submittal of questions regarding the RFP, as set forth in Section 1.7.1. To the extent responses are provided, they will not be considered part of the PPA Documents, nor will they be relevant in interpreting the PPA Documents, except as expressly set forth in the PPA Documents.

IFA will only consider comments and questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a Proposer to the Authorized Representative, by electronic transmission (with facsimile or hard copy delivered within 72 hours thereafter) in the prescribed format.

Such comments/questions may be submitted at any time prior to the applicable date specified in Section 1.7.1 or such later date as may be specified in any Addendum and shall: (i) be submitted electronically in writing in Microsoft Word format, using the form set forth in Form W; (ii) be sequentially numbered; (iii) identify the document (e.g., the PPA, Technical Provisions, etc); (iv) identify the relevant section number and page number (e.g., Technical Provisions, Section 3.2.2, page 3-9) or, if it is a general question, indicate so; (v) not identify the Proposer's identity in the body of the question or contain proprietary or confidential information; and (vi) indicate whether the question is a Category 1, 2, 3 or 4 question.

As used above, "Category 1" means a potential "go/no-go" issue that, if not resolved in a fashion acceptable to Proposer, may preclude the Proposer from submitting a Proposal. "Category 2" means a major issue that, if not resolved in a fashion acceptable to Proposer, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal. "Category 3" means an issue that may affect value for money, or another material issue, but is not at the level of a Category 1 and Category 2 issue. "Category 4" means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.

Proposers will be limited to 100 comments/questions for the RFP; provided, however, that (i) Proposers will be limited to 50 comments/questions for any Addenda; and (ii) neither of the foregoing limitation shall not apply to the Technical Provisions. If a question has more than one subpart, each subpart will be considered a separate question. Questions relating to the Technical Provisions, corrections of typographical errors, incorrect cross references or inconsistencies within or among the RFP Documents will be excluded from the 100-question or 50-question, as applicable, limitation. Notwithstanding this paragraph, IFA may, in its sole discretion, change the maximum number of comments/questions for future RFP versions by Addendum. In accordance with this discretion, for purposes of Addendum #2, Proposers are limited to 25 questions regarding the RFP Documents, exclusive of the Technical Provisions.

No telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification to any Person other than the Authorized Representative will be considered. Questions may be submitted only by the Proposer Authorized Representative or its designee, and must include the requestor's name, address, telephone and facsimile numbers, and the Proposer he/she represents. IFA will only provide responses to the Proposer Authorized Representative notwithstanding any submission on Proposer's behalf by any designee.

The questions and IFA's responses will be in writing and will be delivered to all Proposers, except that IFA intends to respond individually to those questions identified by a Proposer or deemed by IFA as containing confidential or proprietary ("confidential") information. If a Proposer believes a question contains confidential or proprietary information (including that the

question itself is confidential), it may mark such question as “confidential.” IFA reserves the right to disagree with Proposer’s assessment as to the confidentiality of information in the interest of maintaining a fair process or complying with applicable Laws. Under such circumstances, IFA will inform the Proposer and may allow the Proposer, within a time period set by IFA, to withdraw the question, rephrase the question, have the question answered non-confidentially or, if IFA determines that it is appropriate to provide a general response, IFA will modify the question to remove information that IFA determines is confidential. If a Proposer fails to respond to IFA within the time period set by IFA, such failure shall be deemed Proposer’s consent to IFA’s answering the question non-confidentially. IFA may rephrase questions as it deems appropriate and may consolidate similar questions. IFA may also create and answer questions independent of the Proposers. IFA contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to the issuance of Addenda to the RFP, the last set of responses will be issued no later than the date specified in Section 1.7.1. A consolidated, final set of questions and answers will be compiled and delivered to the successful Proposer prior to award.

A Proposer may, at its option, elect to submit revised drafts, in redline, of the ITP, PPA, and Technical Provisions in connection with the submission of its comments/questions per RFP version issued. Subject to the Public Records Act, IFA will not circulate each Proposer’s revised drafts submitted, nor make such revised drafts public. IFA will not respond to any such revised drafts, nor is IFA obligated to review any such revised drafts. IFA will, however, respond to the questions/comments properly submitted and delivered pursuant to this Section 2.3.1. IFA may convene pre-Proposal submission meetings with Proposers as it deems necessary (see Section 2.5), and Proposers must make themselves available to IFA for such pre-Proposal submission meetings and to discuss any matters they submit to IFA under this Section 2.3.1. If IFA determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, IFA will prepare and issue an Addendum.

2.3.2 Addenda

IFA reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the Proposal Due Date (or, if Proposal Revisions are requested, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the FTP Site, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts this RFP, as determined in IFA’s sole discretion, IFA may change the Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for the Proposer to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

Each Proposer shall acknowledge in its Proposal Letter (see Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause a Proposal to be deemed non-responsive and be rejected. IFA reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. IFA does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need

arises, IFA reserves the right to issue Addenda after such date. If IFA finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum, including any extension to the Proposal Due Date determined necessary by IFA, in its sole discretion.

2.4 Pre-Proposal Submittals

The “Pre-Proposal Submittals” are as follows:

- Pursuant to Section 1.9.3 (regarding Proposer’s Lead Underwriter(s) or Private Placement Agent, as applicable, and counsel for Lead Underwriter(s));
- Pursuant to Section 2.11 (regarding changes in a Proposer’s organization, changes in Key Personnel and new Key Personnel);
- Pursuant to Section 3.2 (regarding Alternative Technical Concepts);
- Pursuant to Section 5.10.2 (regarding the Model Auditor);
- Pursuant to Section 5.10.3 (regarding the Benchmark Interest Rates); and
- Pursuant to Section 5.10.4 (regarding the Credit Spreads).

The applicable deadlines for submission of the Pre-Proposal Submittals, and the last date for IFA to respond, are set forth in Section 1.7.1.

Proposers are encouraged to submit Pre-Proposal Submittals at any time prior to the stated deadlines, and IFA will endeavor to respond to the Pre-Proposal Submittals within 14 days of the Friday in the week in which the Pre-Proposal Submittals were submitted, provided, however, that this time period for IFA’s response may be extended in IFA’s sole discretion based on the number and complexity of the Pre-Proposal Submittals in receipt at any one time. IFA reserves the right to respond to Pre-Proposal Submittals in whatever order it chooses in order to expedite reviews.

2.5 Pre-Proposal Submission Meetings

2.5.1 Informational Meetings

IFA may hold joint informational meetings with all Proposers at any time prior to the Proposal Due Date. Informational meetings may be held either in-person or by telephone or other electronic means. If held other than in-person, the meeting will permit interactive communication between all Proposers and IFA. IFA will provide written notice of any such informational meetings to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

Each Proposer shall attend informational meetings with appropriate members of its proposed key management personnel, and if required by IFA, senior representatives of proposed team members identified by IFA.

2.5.2 One-on-One Meetings

IFA intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.7.1 herein, and on such other dates designated by IFA in writing to the Proposers, to discuss issues and clarifications regarding the Project and Project-related documents or communications provided by IFA or the Proposers (including the RFP), and the Proposer's ATCs. IFA reserves the right to disclose to all Proposers any issues raised during any of the one-on-one meetings; provided, however, that IFA will not disclose such issues if IFA, in its sole discretion, determines that disclosure (i) would (x) impair the confidentiality of information submitted as part of this procurement or (y) would reveal a Proposer's confidential business strategies; (ii) is not necessary in order to address an error, mistake, omission, conflict or ambiguity in the Project-related documents, (iii) is not necessary for purposes of fairness and transparency; and (iv) is not required by the Public Records Act. Participation at such meetings by the Proposers shall be mandatory. Representatives of FHWA, the Department, and IFA and Department consultants may attend and participate in one-on-one meetings.

The one-on-one meetings are subject to the following rules:

- The meetings are intended to provide Proposers with a better understanding of the Project and Project-related documents or communications provided by IFA.
- IFA, except as provided in this ITP, will not discuss with any Proposer any information submitted as part of this procurement (including other Proposals or other Proposers' ATCs) other than its own.
- Proposers shall not seek to obtain commitments from IFA in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Accordingly, material information about the Project or procurement that IFA reveals or discusses in response to questions raised in a one-on-one meeting will, except as provided in this ITP, be revealed to the other Proposers.
- The discussions or any statements made by either party in one-on-one meetings shall not be binding on such Person.
- No part of the evaluation of Proposals will be based on the conduct or discussions that occur during one-on-one meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules at each meeting.

2.5.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions, and IFA may provide responses. However, any responses provided by IFA during one-on-one meetings may not be relied upon unless questions were submitted in writing and IFA provided written responses in accordance with Sections 2.3.1 (and then, only to the extent provided in Section 2.3.1 and in the PPA Documents). Such questions and responses will be provided in writing to all Proposers, except to the extent such questions are deemed by IFA, in its sole discretion, to contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs (unless, in either case, IFA believes such disclosure is necessary in the interest of maintaining a fair process or complying with applicable Law). Nothing stated at any pre-Proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

2.6 Confidentiality

Pursuant to the Public Records Act, with certain specified exceptions, the records related to this procurement, including the Proposals, Pre-Proposal Submittals, evaluation and selection procedures, and the records created during the discussion, negotiations, evaluation and selection process, will remain confidential records. Pursuant to IC 8-15.5-4-2(5), IFA may not disclose the contents of Proposals during discussions or the substance of negotiations with Proposers to other Proposers. Following the preliminary selection of the Preferred Proposer as Developer by IFA under IC 8-15.5-4-8, the Preferred Proposer's Proposal shall be made publically available for inspection and copying (except for portions that may be treated confidential in accordance with IC 5-14-3). See also Section 1.8.4 of this RFP.

IFA shall disclose the contents of all Proposals if it receives a proper Public Records Act request, except the parts of the Proposals that may be treated as confidential in accordance with IC 5-14-3, when either (1) the RFP process is terminated or (2) both commercial close and Financial Close has been achieved. (IC 8-15.5-4-13, IC 5-14-3). Subject to the provisions of this Section 2.6 and the other terms and conditions of the ITP with respect to permitting the Proposer and/or IFA to assert claims of confidentiality and to defend against requests for disclosure, each Proposer, by submitting a Proposal to IFA in response to this RFP, consents to such disclosure and expressly waives any right to contest such disclosure under the Public Records Act.

If a Proposer has special concerns about information which it desires to make available to IFA but which it believes constitutes a trade secret or is otherwise exempt from disclosure under the Public Records Act, such responding Proposer team shall specifically and conspicuously designate that information by placing "CONFIDENTIAL" in the header or footer of each such page affected. Any such designation of trade secret or other basis for exemption shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that authorizes the exemption from disclosure under the Public Records Act. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for IFA to treat the entire Proposal as public information. IFA will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Public Records Act or other applicable Laws, as to the interpretation of such Laws,

or as to definition of trade secret. Nothing contained in this provision shall modify or amend requirements and obligations imposed on IFA by the Public Records Act or other applicable Law. The provisions of the Public Records Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable law.

If a request is made for disclosure of the Proposals and Pre-Proposal Submittals (other than for such disclosures required by Indiana Code 8-15.5 et seq., as amended) prior to award of the PPA, IFA will take reasonable steps to notify the Proposer and submit a request for advice from IFA General Counsel prior to disclosing any such documents in accordance with the Public Records Act and other applicable Law. The Proposer shall then have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under the Public Records Act or other applicable Law to IFA general counsel within the time period specified in the notice issued by IFA (if any) and prior to the deadlines for release set forth in the Public Records Act and other applicable Law. However, it is the responsibility of the Proposer to monitor such proceedings and make timely filings. IFA may, but is not obligated to, make filings of its own concerning possible disclosure; however, IFA is under no obligation to support the positions of the Proposer. By submitting a Proposal to IFA in response to this RFP, Proposer consents to, and expressly waives any right to contest, the provision by IFA to IFA General Counsel of all, or representative samples of, the Proposal in accordance with the Public Records Act. IFA shall have no responsibility or obligation for a failure of IFA General Counsel to respond or to respond timely to any IFA request for advice and IFA shall not be required to wait therefor if it is required to disclose or otherwise take action under the Public Records Act or other applicable Law. **Under no circumstances will IFA, the Department, or their respective officers, employees, contractors or consultants, employees or consultants be responsible or liable to a Proposer or any other party as a result of disclosing any such materials, including materials marked "CONFIDENTIAL," whether the disclosure is deemed required by Law or by an order of court or IFA General Counsel or occurs through inadvertence, mistake or negligence on the part of IFA, the Department, or their respective officers, employees, contractors or consultants.**

All Proposals received in response to this RFP shall conform to and contain the detailed information required by the Public Records Act and other applicable Law. IFA will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under the Public Records Act or other applicable Law, as to the interpretation of such Laws, or as to definition of trade secret. The Proposer shall be solely responsible for all determinations made by it under applicable Laws and for clearly and prominently marking each and every page or sheet of materials with "CONFIDENTIAL" as it determines to be appropriate. Each Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws to that Proposer's own circumstances.

In the event of any proceeding or litigation concerning the disclosure of any Proposal or portion thereof, the Proposer shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that IFA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by IFA in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by the Proposer whose Proposal is the subject thereof.

Proposers are also advised that with respect to the PABs process, FHWA and USDOT personnel are subject to the terms of the Freedom of Information Act ("FOIA").

Submission of a Proposal constitutes Proposer's agreement to the provisions of this Section 2.6. See also Section 1.8.4.

2.7 Status Updates

IFA intends to provide informal updates approximately every two weeks to the Proposers regarding changes in the status of the matters addressed in this Section 2.7.

2.7.1 Site Studies and Investigations

The Department has already performed certain geotechnical investigation work for the Project and certain historical geotechnical investigation work exists for the Project corridor. Such work includes activities conducted on environmental resources such as karst, wetlands, and historical/archaeological conditions. Additional geotechnical investigation work by the Department is currently under way. IFA will make such historical and new information available to Proposers.

The Project is located within a karst region in the State. In 1993, the Department, the Indiana Department of Environmental Management ("IDEM"), the Indiana Department of Natural Resources ("IDNR"), and the United States Fish and Wildlife Services ("USFWS") entered into a Karst Memorandum of Understanding to define guidelines for the development of transportation projects located within a karst region. The Department is conducting additional karst investigation pursuant to the Karst Memorandum of Understanding. The Department currently anticipates that a Project-specific memorandum of agreement will be developed to provide a process for addressing karst features in the Project. The karst study that was undertaken extends from Clear Creek, south of the Project site, to Chambers Pike and covers 12.1 of the 21 miles of the Project site. Three distinct areas of karst geology were identified in the study. IFA will make such historical and new information available to Proposers.

To the extent that any Proposer desires additional geotechnical investigation prior to submittal of its Proposal, then such Proposer will need to coordinate with the Project Sponsors prior to conducting any investigation. The Project Sponsors may decide to perform additional geotechnical investigation based on input received from Proposers during the draft RFP process.

Except as otherwise expressly set forth in the PPA Documents, all information provided by IFA or the Department will be subject to the same limitations applicable to similar information furnished in the Reference Information Documents. Specifically, IFA and the Department make no representation or warranty as to the accuracy, completeness or suitability of the additional information. See Section 1.5 for further limitations on Reference Information Documents.

2.7.2 Hazardous Materials

The Department has certain hazardous materials information for the Project and has such information available to Proposers through the Reference Information Documents. The Department is also currently undertaking additional hazardous materials investigation work which also will be made available to Proposers. At this time, no material hazardous materials issues have been identified in the Project footprint. Proposers may, during the draft RFP process, be asked to provide input on what, if any, additional hazardous materials investigation information may need to be collected. The Project Sponsors may decide to perform additional hazardous material investigation based on the input received from Proposers during the RFP process.

2.7.3 Right of Way

No ROW has been acquired for the Project as of the date of this RFP. IFA anticipates that the Department will commence ROW acquisition and portions of the ROW will be acquired (or access rights obtained), subject to the requirements of the Uniform Act. On or before the date set forth in Section 1.7.1, IFA will issue an Addendum to the RFP which will set forth (i) the Project Right of Way that has been acquired (or access provided); and (ii) the Project Right of Way that has not been acquired but, with respect to which, IFA will retain responsibility to acquire following Financial Close within a time period specified in the PPA Documents.

2.7.4 Utilities

The Department has certain historical Utility Information for the Project and has made such information available to Proposers through the Reference Information Documents. The Department is also currently undertaking additional utility investigation work which also will be made available to Proposers. Proposers may be asked to provide input on what, if any, additional utility investigation information may need to be collected. The Project Sponsors may decide to perform additional utility investigation based on the input received from Proposers during the RFP process.

IFA and the Department are working with Utility Owners and attempting to negotiate agreements with the Utility Owners. Developer, however, will be responsible for coordination with Utility Owners, obtaining utility agreements and compliance with such utility agreements during the term of the PPA. Developer will be responsible for performing or causing certain necessary Utility Adjustments to be performed in accordance with applicable standards and Laws and for the costs associated with Utility Adjustments, except to the extent the Utility Owners are legally responsible for such costs or IFA expressly retains such responsibilities in accordance with the PPA.

IFA has discussed certain types of Utility Adjustments with the affected Utility Owners, as defined in Section 15 of the Technical Provisions.

On or before the date set forth in Section 1.7.1, IFA will issue an Addendum to the RFP which will set forth the status of the efforts and negotiations, and provide copies of any of the foregoing agreements which have been completed.

2.7.5 Milestone Payments

As noted in Section 1.9.4, IFA is in the process of determining the available Milestone Payment amounts and schedule for payment. On or before the date set forth in Section 1.7.1, IFA will issue an Addendum to the RFP which will set forth the available Milestone Payment amounts and schedule for payment.

2.7.6 Governmental Approvals

Prior to the date set forth in Section 1.7.1, IFA and the Department intend to advance several key preconstruction environmental Governmental Approvals commensurate with the state of Project development. See Table 7-1 in Section 7 of the Technical Provisions for a list of such Governmental Approvals, along with a list of other major permits that IFA and the Department anticipate shall be required for the Project.

Such list is not an exhaustive list of all Governmental Approvals required for the Project and Proposers are not entitled to rely upon such list.

On or before the date set forth in Section 1.7.1, IFA will issue an Addendum to the RFP which will set forth (i) the Governmental Approvals that have been obtained; (ii) the Governmental Approvals that have not been acquired but, with respect to which, IFA will retain responsibility to acquire following Financial Close within a time period specified in the PPA Documents; and (iii) the Governmental Approvals that will be the responsibility of Developer.

Upon commercial close, under the PPA Documents, Developer will generally be responsible for continuing to advance, obtain and maintain (including preparation of Governmental Approval applications) all pending Governmental Approvals and obtain and maintain all other necessary regulatory, environmental, building and other permits and Governmental Approvals (including any Governmental Approval modifications) to develop, design, construct, finance, operate and maintain the Project. Developer's responsibility will include compliance with all NEPA commitments for mitigation and monitoring as set forth in the NEPA documents and all Governmental Approval conditions included in any Governmental Approvals. Developer will finalize all Governmental Approval applications based on its proposed design and obtain final Governmental Approvals from the permitting agencies, including taking responsibility for any changes in permits and permit conditions arising out of Developer's design. The Department will support Developer in coordination with environmental regulatory and permitting agencies. Except as otherwise required by Law or set forth in the PPA, it is anticipated that the Department will be the permittee on all Governmental Approvals..

2.7.7 Railroad Companies

CSX and the Indiana Rail Road Company have rail lines and facilities that may be impacted by the Project. Developer will be responsible for coordination with railroads, including design reviews. Developer will be responsible for causing the necessary railroad work or protection to be performed in accordance with applicable standards and Laws and for the costs associated with the railroad work or protection, except to the extent the railroad is legally responsible for such costs.

2.7.8 Governmental Agencies, Key Stakeholders Coordination

Key stakeholders include IFA, the Department, Indiana University, BMCMPPO , City of Bloomington, Morgan County, Monroe County, Town of Ellettsville, and City of Martinsville, and it is anticipated that Developer will play an active role in coordinating with these and other stakeholders.

2.8 Examination of RFP and Site Access

2.8.1 Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Reference Information Documents, all Addenda, materials posted on the FTP Site with respect to any and all conditions that may in any way affect the amount or nature of its Proposal, or the performance of Developer's obligations under the PPA Documents and for monitoring the FTP Site and <http://www.in.gov/ifa/2779.htm> (the "Website") for information concerning this RFP and procurement. The Proposal Letter (Form A) includes an acknowledgment that the Proposer has received and reviewed all such materials. Failure of a Proposer to so examine and inform itself of the aforementioned documents and materials shall be at its sole risk, and IFA will provide no relief for any error or omission. The ability of Proposers to rely on the Reference Information Documents is limited and is expressly set forth in Section 1.5 and in the PPA.

Each Proposer is responsible for conducting a Reasonable Investigation in connection with its Proposal, regarding the condition of existing facilities and Site conditions, including Hazardous Materials, karst features, permanent and temporary Utility appurtenances, area population and demographics, land use and development (including development-related infrastructure), and traffic patterns and driver preferences. The Proposer's receipt of IFA-furnished information (including specifically the Reference Information Documents) does not relieve the Proposer of this responsibility.

The submission of a Proposal shall be considered *prima facie* evidence that the Proposer has made the above-described examination and is satisfied as to all matters and conditions to be encountered in performing the Work and as to the requirements of the PPA Documents.

2.8.2 Existing Construction Work Site Information and Access

After issuance of the RFP and through the Proposal Due Date, IFA (in consultation with the Department) may provide Proposers with Project updates concerning the status of existing construction by the Department, including the Advance Construction Projects. These updates will be considered additions to the Reference Information Documents described in Section 1.5. In addition, IFA and the Department will use reasonable efforts to assist Proposers with, but does not guarantee, access to such areas under construction in order that it may review construction progress with prior written consent by IFA and the Department through the process outlined in Section 2.8.3.

2.8.3 Other Access

Proposers may be allowed access, through the Proposal Due Date, to those portions of the Project on which IFA or the Department may have rights of access, subject to the terms and conditions of a right of entry agreement satisfactory to IFA and the Department, for purposes of inspecting in-place assets and determining site conditions. Proposers' access, if any, will be for purposes of surveys and inspections only. No construction equipment or drilling equipment will be permitted on any portion of the Project Right of Way during the procurement period and no intrusive site investigations (e.g. borings, potholing, etc.) by Proposers will be permitted. For access to the Project Right of Way, please contact the designated site manager no later than 24 hours prior to desired visit: Mr. David Pluckebaum, dpluckebaum@corrado.com, 812-334-8869.

2.9 Errors

If any mistake, error, or ambiguity is identified by the Proposer at any time during the procurement process in any of the documents supplied by IFA, the Proposer shall have a duty to notify IFA of the recommended correction in writing in accordance with Section 2.3.1.

2.10 Improper Conduct

2.10.1 Non-Collusion

Neither the Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form F).

2.10.2 Organizational Conflicts of Interest

Any Person under contract with IFA or the Department to prepare procurement documents for the Project will not be allowed to participate in any capacity on a Proposer team. Any Person previously under contract with IFA or the Department to prepare preliminary plans, planning reports or other project development products for the Project may be able to participate on a Proposer team if such Persons first submit a written request for a determination of no conflict from IFA and receive written confirmation that they may participate, or conditionally participate on a Proposer team (and, in the case of any confirmation of conditional participation, subject to observation of any or all such condition(s)).

Additional exceptions to this policy may be granted by IFA, upon written request from such Person, if it is determined that the Person's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit such written request as soon as possible (optimally by October 31, 2013) because IFA does not intend to extend the Proposal Due Date. Notwithstanding the preceding sentence, IFA is not responsible for any inability or failure to respond prior to the Proposal Due Date to any such request.

In addition to the foregoing, the organizational conflict of interest rules found in 23 CFR § 636, Subpart A, including 23 CFR § 636.116, also apply to this procurement. 23 CFR § 636.103 defines an "organizational conflict of interest" as follows:

“Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.”

(“Owner” thereunder means IFA and the Department)

The Proposer shall provide information concerning organizational conflicts of interest and disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest. The Proposer shall state how its interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors or key personnel thereof, may result in, or could be viewed as, an organizational conflict of interest.

Proposer is prohibited from teaming with, receiving any advice or discussing any aspect relating to the Project or the procurement of the Project with any Person with an organizational conflict of interest, including, but not limited to:

- KPMG LLP
- Nossaman LLP
- Ice Miller LLP
- Perkins Coie LLP
- Michael Baker Corporation
- Philip Moss PG
- Bernardin Lochmueller & Associates
- Weintraut and Associates, Inc.
- Gray and Pape, Inc.
- Atkins
- Faithful & Gould
- Dyer Environmental, Inc.
- Shrewsberry and Associates, Inc.
- Environmental Solutions and Innovations, Inc.
- BHE Environmental

- Traynor & Associates, Inc.
- First Appraisal Group, Incorporated
- Boomerang Ventures
- Kristin Murney Compass Rose Consulting, LLC
- Monroe/Owen Appraisal, Inc.
- David Patterson Agency, LLC
- Roadway Services, LLC
- RWS South, Inc.
- CPS Acquisitions, LLC,
- JAY Real Estate Services, Inc.
- STS, Inc. d/b/a Will Stump & Associates
- Metropolitan Abstracting Consultants, LLC
- Beam, Longest and Neff
- HNTB Corporation
- American Structurepoint
- Corradino Group
- Stephen J. Christian and Associates
- Parsons Cunningham and Shartle Engineers Inc.
- Cardno ATC Group Services Inc.
- Earth Exploration Inc.
- K & S Engineers Inc.
- Padgett Inc.
- Cardno JF New and Associates
- Cardno TBE

- Delcan
- Ozark Underground Laboratory
- Courtland Title & Escrow, Inc.
- KKM, Inc.
- Metropolitan Abstracting Consultants LLC
- Woodco Enterprises LTD
- Central States Consulting
- Durham Engineering
- Hanson Professional Services
- Affiliates (meaning includes parent companies, subsidiary companies, Persons under common ownership, joint venture members and partners, and other financially liable parties for a Person) of any of the above

Such Persons are also prohibited from participating on a Proposer team as an Equity Member, Major Participant, contractor, subcontractor, consultant or subconsultant.

By submitting its response to this RFP, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to IFA that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest about which the Proposer knew, or should have known, but failed to disclose is determined to exist during the procurement process, IFA may, in its sole discretion, disqualify the Proposer. If an organizational conflict of interest about which the Proposer knew, or should have known, but failed to disclose exists and the Proposer has entered into the PPA as Developer, IFA may, at its sole discretion, terminate the PPA. In either case, IFA reserves all rights and remedies.

Proposers are also advised that IFA's guidelines in this RFP are intended to augment applicable federal and state Law, including federal organizational conflict of interest Laws and the Laws and rules relating to NEPA. Such applicable Law will also apply to Proposer teams and teaming and may preclude certain Persons from participating on a Proposer team.

2.10.3 Equitable Treatment of Proposers

Proposers are assured that, during the procurement process (including the process for evaluation of ATCs and Proposals), IFA will make every reasonable effort to treat Proposers equitably.

2.11 Changes in Proposer's Organization and Key Personnel

2.11.1 Changes in Proposer's Organization

In order for a Proposer to remain qualified to submit a Proposal, unless otherwise approved in writing by IFA, the Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement (i.e., until execution of the PPA Documents). If a Proposer wishes to make changes in the Major Participants identified in its SOQ including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, the Proposer shall submit to IFA a written request for its approval of the change as soon as possible but in no event later than the date and time set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Any such request shall be addressed to IFA at the address set forth in Section 2.2.1, accompanied by the information specified for such Persons in the RFQ. If a request is made to allow deletion of any Major Participant identified in its RFP, the Proposer shall submit such information as may be required by IFA to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). The Proposer shall submit an original and five copies of each such request package. IFA is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the PPA, a Proposer may not make any changes in any Major Participants identified in its RFP after the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Between the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals and execution of the PPA, IFA, in its sole discretion, will consider requests by Proposers to make changes in the Proposers' organization based only on unusual circumstances beyond the Proposer's control.

2.11.2 Changes in Key Personnel

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by IFA, the Proposer's Key Personnel as identified in the SOQ must remain intact for the duration of the procurement (i.e., until execution of the PPA Documents). If a Proposer wishes to make changes in the Key Personnel identified in its SOQ, the Proposer shall submit to IFA a written request for its approval of the change from as soon as possible but in no event later than the date and time set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Any such request shall be addressed to IFA at the address set forth in Section 2.2.1, accompanied by the information specified for such individuals in the RFQ. If a request is made to allow deletion of any Key Personnel identified in its SOQ, the Proposer shall submit such information as may be required by IFA to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). The Proposer shall submit an original and five copies of each such request package. IFA is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the PPA, a Proposer may not make any changes in any Key Personnel identified in its SOQ after the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Between the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals and execution of the PPA, IFA, in its sole discretion, will consider requests by

Proposers to make changes in the Proposers' organization based only on unusual circumstances beyond the Proposer's control.

2.11.3 New Key Personnel Positions Identified Following RFQ

In order for Proposers to have confidence that those individuals proposed for Key Personnel positions that were added to the RFP since submittal of the SOQs are acceptable to IFA, each Proposer shall submit to IFA a written request for its approval of those individuals proposed for Key Personnel positions that were added to the RFP since submittal of the SOQs in no event later than the date and time set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Any such request shall be addressed to IFA at the address set forth in Section 2.2.1, accompanied by the information specified in the RFQ for Key Personnel positions. The Proposer shall submit an original and five copies of each such request package. IFA is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Once approved, any changes to such individuals and Key Personnel positions shall be handled pursuant to Section 2.11.2. Notwithstanding the foregoing, IFA may, in its sole discretion, after such date set forth in Section 1.7.1, consider resubmittals of Key Personnel positions where prior timely submittals were not approved by IFA; provided, however, that Proposer shall remain solely responsible for submitting Key Personnel acceptable to IFA and in no event shall the Proposal Due Date be extended or shall IFA incur any liability for any disapproval of a Key Personnel. For clarification, the new Key Personnel positions with respect to which approval must be obtained under this Section 2.11.3 are:

- Engineer of Record;
- Financial Director;
- Public Information Coordinator;
- DBE Coordinator;
- Utility Manager;
- Construction Quality Manager;
- Design Quality Manager;
- Safety Manager;
- Environmental Compliance Manager;
- Karst Specialist; and
- Erosion and Sediment Control Manager; and
- Maintenance of Traffic (MOT) Manager.

2.12 Non-Exclusive Relationship with Rating Agencies

The market for rating agencies is small enough that exclusive teaming arrangements between rating agencies and Proposers would give Proposers in exclusive arrangements a distinct and unfair advantage over other Proposers. As a result, to ensure a fair procurement process, Proposers are forbidden from entering into exclusive teaming arrangements with rating agencies.

2.13 Release of Exclusive Relationship with Core Lender(s), Lead Underwriter and Private Placement Agent

Each unsuccessful Proposer shall release its Core Lender(s), Lead Underwriter and Private Placement Agent of any exclusivity obligations no later than 5 days after being notified by IFA that IFA has executed the PPA with another Proposer. Failure to satisfy the requirements of this Section 2.13 may result in forfeiture of the Proposer's Proposal Security under Section 4.7.

2.14 Non-Exclusive Relationship with Bond Counsel and Multiple Lead Underwriter(s)

The market for Indiana bond counsel with PABs experience is small enough that exclusive teaming arrangements between such Persons and Proposers would give Proposers in exclusive arrangements a distinct and unfair advantage over other Proposers. As a result, to ensure a fair procurement process, Proposers are forbidden from entering into exclusive teaming arrangements with bond counsel.

With respect to Lead Underwriters, Proposers are allowed to enter into an exclusive relationship with a single Lead Underwriter. If a Proposer wishes to engage additional underwriters, such additional underwriters must be engaged on a non-exclusive basis.

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPT REVIEWS

3.1 Alternative Technical Concepts

Sections 3.1 - 3.5 set forth a process for pre-Proposal review of concepts (“Alternative Technical Concepts” or “ATCs”) conflicting with the requirements for development, design, construction, and/or operation and maintenance of the Project, or otherwise requiring a modification of the requirements of the Technical Provisions. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing IFA (in consultation with the Department), in IFA’s sole discretion, to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

ATCs eligible for consideration hereunder are limited to those deviations from the requirements of the as-issued PPA Documents that result in performance, quality and utility of the Project that is equal to or better than the performance, quality and utility of the Project absent the deviation, as determined by IFA (in consultation with the Department) in IFA’s sole discretion. A concept is not eligible for consideration as an ATC if, in IFA’s sole judgment, it is premised upon or would require or result in (a) a reduction in quantities without achieving equal or better performance, quality and utility; (b) a reduction in performance, quality, utility or reliability; (c) major changes to the environmental documents, including the NEPA Documents, such as another supplemental environmental impact statement; (d) the addition of a separate IFA or Department project to the PPA (such as expansion of the scope of the Project to include additional roadways); (e) a Change in Law, (f) an increase in the amount of time required for Substantial Completion beyond the last date for Substantial Completion set forth in Form N, or (g) multiple or material additional right-of-way parcels. ATCs that, if implemented, would require further environmental evaluation of the Project, such as a revaluation of the environmental impact statement or modification of Governmental Approvals, may be considered; provided that Developer bears the schedule and cost risk associated with such additional environmental evaluation or modification of Governmental Approvals and the changes are not major, as determined in IFA’s sole discretion. If Developer is not able to obtain the Governmental Approvals necessary to implement the ATC, Developer will be obligated to develop the Project in accordance with existing Governmental Approvals without additional IFA cost or extension of time (and IFA may be entitled to a reduction in the MAP, Milestone Payments and/or schedule as set forth in the PPA Documents).

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by IFA, IFA recommends that the Proposer submit such concept for review as an ATC.

ATCs are Pre-Proposal Submittals (see Section 2.4). Once an ATC is submitted and IFA responds thereto pursuant to Section 3.3, such ATC may not be resubmitted, in whole or in part, by a Proposer to IFA unless otherwise approved by IFA, in its sole discretion.

3.2 Pre-Proposal Submission of ATCs

Proposers may submit ATCs for review to IFA at the address specified in Section 2.2.1, until the last date and time for submittals of ATCs identified in Section 1.7.1. Proposers are encouraged to submit ATCs at any time prior to the stated deadlines, and IFA (in consultation with the Department) will endeavor to respond to the ATC submissions within 14 days of the Friday in the week in which the ATC submissions were submitted, provided, however, that this time period for IFA's response may be extended in IFA's sole discretion based on the number and complexity of the ATC submission and other Pre-Proposal Submittals in receipt at any one time. IFA reserves the right to respond to ATC submissions in whatever order it chooses in order to expedite reviews.

All ATCs shall be submitted in writing, with a cover sheet identifying the Proposer and stating "I-69 Section 5 Project – Confidential ATC[s]." Proposers shall clearly identify the submittal as a request for review of an ATC under this ITP. If a Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by IFA. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below.

3.2.1 Pre-Proposal ATC submissions shall include:

- (a) a sequential ATC number identifying the Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers);
- (b) a description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information, including necessary design exceptions and a traffic operational analysis, if applicable;
- (c) the locations where, and an explanation of how, the ATC will be used on the Project;
- (d) any changes in roadway or operations requirements associated with the ATC, including ease of operations;
- (e) any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;
- (f) any changes in Handback Requirements associated with the ATC;
- (g) any changes in the anticipated life of the item(s) comprising or affected by the ATC;

(h) any reduction in the time period to reach Substantial Completion resulting from implementing the ATC, including, as appropriate, a description of method and commitments;

(i) references to requirements of the RFP which are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;

(j) the analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;

(k) a preliminary analysis of potential impacts on vehicular traffic (both during and after construction), community impact, safety, and life-cycle and infrastructure costs, including impacts on the cost of repair, maintenance and operation;

(l) a preliminary analysis of potential impacts on environmental permitting (including comparison to the NEPA Documents), Major Environmental Approvals and other applicable Governmental Approvals and an analysis of whether the Proposer believes an updated or supplemental EIS or any additional mitigation would or would not be required and why),

(m) any additional right-of-way required to implement the ATC (and Proposers are advised that IFA may condition any approval of such ATC with a requirement that the Proposer shall (i) be solely responsible for the acquisition of any such right-of-way, subject to the terms of the PPA Documents, including the cost thereof and obtaining any necessary Environmental Approvals; (ii) not be entitled to any Change Order or Relief Event as a result of Site conditions (e.g., Hazardous Materials, differing Site conditions, geotechnical issues, Utilities, etc.) on such additional right-of-way; and (iii) not be entitled to any Change Order or Relief Event as a result of any delay, impact, inability or cost associated with the acquisition of such right-of-way;

(n) a description of other projects where the ATC has been used, the degree of success or failure of such usage and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such assessments;

(o) a description of added risks to IFA, the Department or third parties associated with implementing the ATC;

(p) an estimate of any additional IFA, Department, Developer and third-party costs, if any, associated with implementation of the ATC;

(q) an estimate of any savings that would accrue to IFA and the Department should the ATC be approved and implemented;

(r) an analysis of how the ATC is equal or better in quality, utility and performance than the requirements of the RFP; and

(s) a preliminary analysis of potential impacts on the annual MAP.

3.2.2 Proposers shall not make any public announcement or disclosure to third parties concerning any ATC until after pre-approval (including conditional pre-approval) has been

obtained. Following pre-approval (including conditional pre-approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify IFA in writing of its intent to take such action, including details as to date and participants, and obtain IFA's prior written consent, in its sole discretion, to do so.

3.2.3 If implementation of an ATC will require approval by a third party (e.g., a Governmental Entity), IFA may condition any approval of the ATC with a requirement that the Proposer will have full responsibility for, and bear the full cost and schedule risk of, obtaining any such approvals after award of the PPA and submission of data; provided, however, that, in such event, IFA shall retain its role as liaison with any Governmental Entities as more particularly described in the PPA Documents. If any such condition is imposed and the required third-party approval is not subsequently granted with the result that the Proposer must comply with the requirements of the original RFP and PPA Documents (without regard to the ATC), the Proposer will not be entitled to a Change Order or other Relief Event under the PPA.

3.2.4 If IFA (in consultation with the Department) determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity or mistake, IFA reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC (including that such ATC no longer qualifies or is eligible for consideration as an ATC).

3.3 IFA Review of Pre-Proposal Submission of ATCs

IFA may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the date set forth in Section 1.7.1, provided that IFA has received all requested information regarding such ATC.

IFA's responses will be limited to one of the following statements:

(A) the ATC is acceptable for inclusion in the Proposal (with such conditions, modifications or requirements as identified by IFA);

(B) the ATC is not acceptable for inclusion in the Proposal;

(C) the ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in IFA's sole discretion, of certain identified conditions that must be met or clarifications or modifications that must be made; or

(D) the submittal appears to be within the requirements of the RFP and does not qualify as an ATC (provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, IFA reserves the right to require compliance with the requirements of the RFP and PPA Documents (without regard to the submittal), in which event the Proposer will not be entitled to modify its Proposal or, under the PPA Documents, entitle Developer to a Change Order for additional compensation or a time extension under the PPA).

(E) the submittal does not qualify as an ATC and may not be included in the Proposal.

IFA (in consultation with the Department) will make a preliminary determination on whether to accept and approve an ATC for submission. However, the Proposer will be responsible for ensuring that the final submittal complies with the requirements of the RFP.

Approval of an ATC will constitute a change in the specific requirements of the PPA Documents associated with the approved ATC for that specific Proposer. Each Proposer will be responsible for ensuring that its Proposal complies with the RFP requirements, as modified by approval of the ATC. Approval of an ATC is limited to deviations from the requirements of the PPA Documents that are expressly identified as deviations in the narrative of the proposed ATC and for which deviations the Proposer requested specific approval. All other requirements of the PPA Documents not otherwise expressly identified as deviations in the ATC and expressly approved by IFA in its approval letter remain in full force and effect and all conditions relating to such ATCs reflected in the PPA Documents must be satisfied by the Proposer.

Approval of an ATC does not constitute approval of any design exceptions necessary to implement the ATC. Proposer must submit requests for design exceptions through the normal Department design exception review process. IFA and the Department reserve the right to review, condition or disapprove of the design exception

In its Proposal, Proposer must specifically state whether any approved ATCs are included, with reference to the ATC identification number assigned by IFA, and Proposer shall describe how the ATC is used, cross-referencing other elements of the Proposal that are affected by the ATC.

Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to the ATC process as well as IFA's determinations regarding ATCs.

IFA's rejection of a pre-Proposal submission of an ATC does not entitle the Proposer to an extension of the Proposal Due Date or the date that the ATCs are due; provided, however, that the foregoing shall not limit IFA's absolute and sole right to modify the Proposal Due Date or any other date in connection with this procurement.

IFA anticipates that its (and, in IFA's sole discretion, the Department's) comments regarding an ATC provided to a Proposer will be sufficient to enable the Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, the Proposer may provide a written request for clarifications under Section 2.3.1, in each case, subject to the end dates set forth in Section 1.7.1 of this ITP.

3.4 Incorporation of ATCs into the PPA Documents

Following notification of the Preferred Proposer, the ATCs that were pre-approved by IFA and incorporated in the Proposal of the Preferred Proposer shall be included in the PPA Documents. If IFA responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the PPA Documents. The PPA Documents will be conformed after notification of the Preferred Proposer, but prior to execution of the PPA, to reflect the ATCs, including any IFA conditions thereto. Notwithstanding

anything to the contrary herein, if Developer does not comply with one or more IFA conditions of pre-approval for an ATC or Developer fails to obtain a required third-party approval for an ATC, Developer will be required to comply with the original requirements of the RFP and the PPA Documents without regard to the ATC and without being entitled to a Change Order or other Relief Event (and IFA may be entitled to a reduction in the MAP, Milestone Payments and/or schedule as set forth in the PPA Documents).

In accordance with Section 3.5 below, ATCs from unsuccessful Proposers may, in IFA's sole discretion, be presented to the Preferred Proposer for possible incorporation into the PPA Documents. In addition, following execution of the PPA and payment to the unsuccessful Proposers of a stipend under Section 6.3, ATCs from unsuccessful Proposers may, in IFA's sole discretion, be presented to the selected Developer as an IFA Change in accordance with the PPA Documents.

Notwithstanding the foregoing, in the event IFA establishes a competitive range, IFA will not disclose the ATC of a Proposer in the competitive range to any other Proposer in the competitive range.

3.5 Confidentiality of ATCs

Subject to the provisions of the RFP, the Public Records Act and other applicable Law, IFA shall maintain the confidentiality of ATCs and all communications regarding ATCs until the earlier of (a) cancellation of the procurement without selection of a Preferred Proposer, (b) commercial close; (c) payment of the stipend to the Proposer; or (d) such other date as may be prescribed under the Public Records Act or other applicable Law, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Public Records Act, applicable Law and Sections 1.8.4 and 2.6 of this ITP. By submitting a Proposal and agreeing to accept the stipend payment, Proposer agrees, if it is not selected as the Preferred Proposer or to be in the competitive range, to disclosure of its work product (including regarding ATCs and its Technical Proposal) to the Preferred Proposer. The foregoing shall not preclude IFA from exercising any of its rights with respect to ATCs, as set forth in Section 3.0, including the right to modify the RFP following submission of an ATC to address issues raised by or arising out of an ATC, which modification(s) may render such ATC moot or no longer applicable.

SECTION 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY IFA

4.1 General Submittal Requirements

Each Proposal shall include a Technical Proposal and a Financial Proposal meeting the requirements set forth in Exhibits B and C.

4.1.1 Proposal Due Date

The completed Proposal shall be delivered to IFA in sealed containers no later than the Proposal Due Date.

4.1.2 Signatures Required

The Proposal Letter (Form A) shall be signed in blue ink by all Equity Members and shall be accompanied by evidence of signatory authorization as specified in Form A.

4.1.3 Certified Copies

Where certified copies of the Proposal are required, the Proposer shall mark the document or cover with the words “Certified True Copy” and have the mark over-signed by the Proposer Authorized Representative. The over-signature can be undertaken by graphic reproduction.

4.1.4 Conflict Between Electronic and Paper Copies of Proposal

If there is a conflict between paper and electronic copies of the Proposal, IFA, in its sole discretion, shall determine which version shall control and take precedence.

4.1.5 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent early opening if IFA determines that the Proposer did not follow the foregoing instructions. It is the Proposer’s sole responsibility to see that its Proposal is received as required. Proposals received after the time set on the Proposal Due Date shall be rejected without consideration or evaluation.

4.2 Requirement to Submit Responsive, Compliant Proposal

A Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval). If a Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits, it may be considered non-responsive and/or non-compliant.

Each Proposal must be submitted in the official format specified by IFA in this RFP. Proposers shall each sign the original copy of their respective Proposals submitted to IFA (on Form A). Multiple or alternate proposals or proposals with options may not be submitted.

Proposals may be considered non-responsive or non-compliant and may be rejected for any of the following reasons:

(A) If the Proposal is submitted in a paper or electronic form other than that specified by IFA; if it is not properly signed; if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;

(B) If IFA determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including due to illegible text, omissions, erasures, alterations, items not called for in the RFP, or unauthorized additions;

(C) If multiple or alternate Proposals or Proposals with options are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into an PPA following award;

(D) If the Proposer attempts to limit or modify the Proposal Security (see Exhibit B, Section 3.3), if the Proposal Security is not provided, and/or if requested information deemed material by IFA is not provided;

(E) The Proposal contains a material alteration, as determined by IFA, in its sole discretion, to the ITP forms or exhibits, including any material alteration to the form of Proposal Security (Form K).

If a Proposal is deemed non-responsive or non-compliant, IFA may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of the Proposer's Proposal Security.

4.3 Format

Each Proposal shall contain concise written material and drawings enabling a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal and Financial Proposal are essential. The Technical Proposal shall not exceed the page limitations set forth in Exhibit B, Section 2.0. No page limit applies to appendices, dividers, exhibits and tables of contents, however, IFA does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8 ½ by 11-inch format (½ inch margins) is required for typed submissions and an 11 by 17-inch format is required for drawings, except that design drawings may be submitted in roll format not to exceed 36 by maximum 120 inches (and such design drawings shall be submitted on CD or flashdrive in Adobe (.pdf) format and in MicroStation (.dgn) format). Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and analyze the schedule in Primavera P6.

Submittals must be bound with all pages in binders sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than twelve-point (either Times New Roman or Arial), provided the font in organizational charts, graphics and tables may be ten-point so long as the organizational charts, graphics and tables are legible, as determined by IFA in its sole discretion. The use of 11 by 17-inch foldouts for tables, graphics and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch foldout will be considered one page. Technical drawings and schedules in 11 by 17-inch format that comprise large continuous portions of the Proposal (i.e., more than 10 continuous pages) shall be bound in an appendix such that the 11 by 17-inch sheets are not folded. In addition, sheets for technical drawings that exceed 11 by 17-inch size shall be submitted in roll form and need not be placed within the bound document.

Dividers may be used within bound volumes and for any 11 by 17-inch appendix volumes and will not be counted towards any applicable page counts.

4.4 Additional Requirements for Proposal Delivery

Proposals are to be delivered to IFA at the address set forth in Section 1.7.2, except for the Escrowed Materials, which shall be delivered to the escrow as specified in Section 4.4.3.

Each binder of the Proposal shall be labeled to indicate its contents. The original Technical and Financial Proposals shall be clearly identified as “original”; copies of the Proposals shall be sequentially numbered, labeled and bound.

4.4.1 Technical Proposal

The Technical Proposal shall be contained in two volumes: Volume 1-Executive Summary, Administrative Materials and Forms and Volume 2-Preliminary Performance Plans, as more fully described in Exhibit B.

All of the binders comprising the original Technical Proposal, (including roll form documents) together with an electronic copy of the entire Technical Proposal (including roll form documents) shall be uploaded to one or more CDs or flash drives (and clearly labeled as such) together with the envelopes described in Section 4.4.2, shall be packaged in a single container, clearly addressed to IFA as provided herein, and shall each be labeled “[Proposer Name]: Original Technical Proposal for the I-69 Section 5 Project.”

Proposers shall provide one original and 20 certified copies of bound Technical Proposal except Proposers shall provide (i) (the original and copies of the Proposal Security in accordance with Section 4.4.2; (ii) a certified copy of the Escrow Agreement in accordance with Section 4.4.2; (iii) only two (2) certified copies of all roll form technical drawings that are referenced in Proposer’s Technical Proposal; and (iv). only 10 certified copies of the executed contracts, term sheets or heads of terms described in Section 3.2.2 of Exhibit B to this ITP are required). Proposers do not have to provide originals of the roll form technical drawings or the executed contracts, term sheets or heads of terms described in Section 3.2.2 of Exhibit B to this ITP.

The containers that include the required hard copies of the Technical Proposal shall be labeled "Copies of Technical Proposal for the I-69 Section 5 Project." "Hard copy" roll form documents shall be included in the containers in a fashion that Proposer deems most prudent to deliver such roll form documents.

The electronic copy shall be in a searchable Adobe (.pdf) format on CD(s) or flash drives, with file names that correspond to the (or portions of the) Technical Proposal; provided, however, that (a) Proposal forms may be submitted in either Adobe (.pdf) or Microsoft Word (.doc or .docx only) format, and (b) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

4.4.2 Proposal Security and Escrow Agreement

One original and three certified copies of the Proposal Security shall be provided with the Technical Proposal, and shall be in one separate envelope labeled "[Proposer Name]: Proposal Security for the I-69 Section 5 Project." The original of the Proposal Security shall be stamped "original" in the single envelope with the three certified copies. A certified copy of the Escrow Agreement shall be provided with the Technical Proposal in a separate envelope labeled "[Proposer Name]: Escrow Agreement for the I-69 Section 5 Project."

4.4.3 Financial Proposal

The following components of the Financial Proposal shall be delivered to IFA as specified below:

(a) One original and 10 certified copies of the Financial Proposal (excluding the components identified in Section 4.4.3(b)), together with one electronic copy on (a) CDs or flash drive(s) of the financial capacity information and Financial Plan in either Adobe (.pdf) or Word (.doc or .docx only) format. The documents shall be included in a sealed container labeled "[Proposer Name]: Financial Proposal for the I-69 Section 5 Project." If the Financial Proposal includes audited Financial Statement information prepared in a language other than English, Proposer's original hard-copy Financial Proposal submission (including electronic submission) and one additional copy (in Financial Proposal copy #1) shall contain both the original language audited Financial Statement information and a translation of all such Financial Statement information with certification by subject Person's chief executive, chief financial officer or treasurer (or equivalent position or role) that such translation is true, correct and accurate. If the certifying individual is not the chief executive, chief financial officer or treasurer, then such certification shall include the additional certification that (i) the certifying individual's position or role is equivalent to that of the entity's chief executive, chief financial officer or treasurer and (ii) the certifying individual has been duly authorized by all requisite organization action to deliver the certification that the such translation is true, correct and accurate. Copies #2 to 10 shall include only the translation of all such Financial Statement information and accompanying certification(s).

(b) One or more sealed containers labeled: “[Proposer Name]: Financial Proposal for the I-69 Section 5 Project – Financial Model” containing the following (see Exhibit C, Section 5.0):

- (i) One original and 10 certified copies of the Financial Model output sheets and the Assumptions Book and Instructions Guide;
- (ii) One original and 10 certified copies of the MAP Proposal (Form J);
- (iii) One electronic copy of the Financial Model on a CD-ROM or flash drive, including a summary document (as a clearly labeled document in either Adobe (.pdf) or Microsoft Word (.doc or .docx only) format) identifying the names of all the workbooks and identifying their respective functions;
- (iv) One electronic copy of the Assumptions Book and Instructions Guide in either Adobe (.pdf) or Microsoft Word (.doc or .docx only) format on a CD or flash drive; and
- (v) One electronic copy of the MAP Proposal (Form J) in either Adobe (.pdf) or Microsoft Word (.doc or .docx only) format on a CD-ROM or flash drive.

In addition, one or more sealed container(s) labeled: “[Proposer Name]: Financial Proposal for the I-69 Section 5 Project – Cost and Pricing Data,” containing one set of the Cost and Pricing Data (see Exhibit C, Section 6.0) shall be delivered into escrow not later than 72 hours after the Proposal Due Date. The Cost and Pricing Data of the Preferred Proposer shall be subject to the review of IFA in connection with any award of the PPA.

4.5 Currency

All required pricing, revenue and cost information shall be provided in US\$ currency only. Where pricing is to be provided in 2014 dollars, such pricing shall be as of the Proposal Due Date.

4.6 Modifications, Withdrawals and Late Submittals

4.6.1 Modifications to a Proposal

A Proposer may modify its Proposal in writing prior to the specified time on the Proposal Due Date. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so IFA can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B and C. Line item changes will not be accepted. Proposer shall deliver any such modification(s) in the types and manner described in this Article 4; no facsimile or other electronically transmitted modifications will be permitted.

4.6.2 Withdrawal and Validity of Proposals

A Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by its Proposer Authorized Representative. Such written request shall be delivered to the address in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to deliver a new Proposal; provided that it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by IFA upon the Proposal Security.

All Proposals are valid for a period of 180 days after the Proposal Due Date. No Proposer shall withdraw its Proposal within this 180-day period, unless notified by IFA that (i) no PPA for the Project will be awarded by IFA pursuant to the RFP, (ii) IFA has awarded the PPA to another Proposer, and IFA has received the executed PPA and all other required documents from Developer, (iii) IFA does not intend to award the PPA to the Proposer; or (iv) the Proposer is not notified during the 180-day period that IFA has selected the Proposer as the Preferred Proposer to enter into negotiations of the PPA. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the 180 day period set forth above.

Notwithstanding the foregoing, if a Proposer's commitment for a Bank Debt Financing or Private Placement expires on or after 120 days after the Proposal Due Date but before commercial close, then (i) the Proposer shall conduct negotiations with the Core Lender(s) and any other members of the lending group from whom Proposer has obtained commitments to renew or extend the Core Lender(s)' commitments to a date no earlier than 180 days after the Proposal Due Date; and (ii) the Proposer shall be entitled to the risk sharing and relief set forth in Section 13.7.8.3 of the PPA for the period commencing on the date that is 120 days after the Proposal Due Date through and until the earlier of (x) commercial close; or (y) 180 days after the Proposal Due Date. If commercial close is achieved, the provisions of the PPA, including Section 13.7, shall apply (but there shall be no duplication of relief or adjustments provided to the Proposer/Developer pursuant to application of the terms of this Section 4.6.2 and the terms of the PPA). If the sole reason that commercial close has not occurred within the 120 day commitment period is due to an event set forth under Section 4.7(d) and Preferred Proposer has otherwise complied with all of its obligations under this paragraph within the 180 day Proposal validity period, Section 4.7 shall apply.

4.6.3 Late Proposals

IFA will not consider any late Proposals. Proposals and/or modifications not requested by IFA received after the time for submittal of Proposals will be returned to the Proposer without consideration or evaluation.

4.7 Forfeiture of Proposal Security; Relief from Obligation to Close By Specified Deadline

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security (i) if the Proposer withdraws, repudiates or otherwise indicates in writing that it will not meet any commitments made in its Proposal; (ii) if the Proposer does not release its

Core Lender(s) and Lead Underwriter or Private Placement Agent, as applicable, from exclusivity pursuant to Section 2.13 or (iii) if the Proposer is selected as the Preferred Proposer and any of the following occur:

(a) Following notification from IFA that it is the Preferred Proposer, the Preferred Proposer fails to negotiate in good faith as expressly defined in Section 5.10.1;

(b) Following notification from IFA that it is the Preferred Proposer, the Preferred Proposer fails to provide the documents required under, or satisfy the conditions set forth in Sections 5.11.1 and 6.1.1;

(c) Following notification from IFA that it is the Preferred Proposer, the Preferred Proposer fails to provide access to, or participate in the review of, or both, the Escrowed Materials as set forth in Section 5.11.3;

(d) Following notification from IFA that it is the Preferred Proposer, commercial close does not occur by the deadline specified in Section 1.7.1, unless such failure to close is directly attributable to:

(i) IFA's failure to provide timely responses to Post-Selection Deliverables in accordance with Section 5.11.2;

(ii) IFA's cancellation of the procurement or decision not to close with the Preferred Proposer and end negotiations after the Preferred Proposer has engaged in good faith negotiations, including elections made under Section 5.10.1, without cause by the Preferred Proposer;

(iii) IFA's failure to execute the PPA within three Business Days after the Preferred Proposer's satisfaction of all conditions thereto and execution and delivery of the Execution Documents by the Preferred Proposer to IFA;

(iv) IFA's failure to provide any other deliverable IFA is required to deliver to Developer as a condition precedent to commercial close, where such failure is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Preferred Proposer;

(v) Absence of concurrence in the award by FHWA (as required by Section 6.1(b)), where such absence is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Preferred Proposer;

(vi) An unresolved pending protest filed pursuant to Section 7.1(c) or an unresolved action to contest the validity of the PPA brought pursuant to IC 8-15.5-4-12 (unless, in either case, IFA has elected, in its sole discretion, to undertake commercial close irrespective of such protest or action, in which case, this clause (vi) shall not apply);

(vii) IFA's failure to comply with any other conditions required by the Act (as required by Section 6.1), where such failure is not caused in whole or in part by the acts,

omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Preferred Proposer; or

(viii) Issuance by a court of competent jurisdiction of an order or injunction that prohibits IFA from executing the PPA and proceeding with commercial close, where such order or injunction is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Preferred Proposer.

For purposes of this Section 4.7, Proposer's obligation to achieve commercial close shall be satisfied when Proposer has executed and delivered to IFA the PPA and all documents and payments required hereby, including the documents described in Section 5.11 and Section 6.1.

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing.

4.8 Acceptance of Delivery by IFA; Delivery into Escrow

IFA will provide a receipt for Proposals that are timely delivered to IFA as specified herein. The Proposer will be responsible for obtaining a delivery receipt from the Escrow Agent and obtaining the Escrow Agent's signature on the Escrow Agreements. Proposer shall deliver to IFA no later than three (3) Business Days after delivery a certified copy of such delivery receipt evincing the time and date of delivery in conformance with the requirements hereunder.

SECTION 5.0 EVALUATION AND POST-SELECTION PROCESS.

IFA's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable Laws governing this procurement.

The Proposal evaluation process will include an initial review of each Proposal for responsiveness to the requirements of the RFP Documents and as against pass-fail criteria, a qualitative evaluation of the Preliminary Project Management Plans, an evaluation of the Financial Proposal and a best value determination. The process may include a request for Proposal Revisions, the establishment of a competitive range, and negotiations phase with the Preferred Proposer. The steps in the process and evaluation criteria are set forth in Sections 5.2 through 5.10. The evaluation and selection process is subject to modification by IFA, in its sole discretion.

The details of the evaluation and selection process are set forth more fully in this Section 5.

5.1 Organization of the IFA Evaluation Committees

Evaluation of Proposals will be conducted by a Technical Proposal Evaluation Committee ("TPEC"), and a Financial Proposal Evaluation Committee ("FPEC") with assistance from subcommittees, including an Administrative/Legal subcommittee, a Technical Proposal pass/fail and responsiveness subcommittee, and a Financial Proposal pass/fail and responsiveness subcommittee. The Public Finance Director may serve on either the FPEC or the TPEC.

The TPEC and FPEC will be comprised of representatives from IFA and the Department, selected at the sole discretion of the Public Finance Director. The subcommittees will be comprised of representatives from IFA, the Department and, at the sole discretion of the Public Finance Director, advisors (including outside consultants) and other qualified individuals. The primary responsibility of these advisors will be to assist the TPEC and FPEC in making an educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, observers from federal, State or other agencies with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements and conflict of interest disclosures, or otherwise be subject to IFA confidentiality restrictions and conflict of interest control requirements.

5.2 Best Value Determination

The best value determination will be based on the following 100 point scale. The "Financial Score" will represent up to 80 points of the total score and the "Technical Score" will represent up to 20 points of the total score. A Proposer achieving 100% of the points available for the Financial Score will score 80 points and a Proposer achieving 100% of the points available for the Technical Score will score 20 points. The determination of apparent highest ranked Proposal shall be based on the highest Total Proposal Score computed as follows:

Total Proposal Score (max. 100 points) = Financial Score (max. 80 points) + Technical Score (max. 20 points)

5.2.1 Financial Score

The Financial Score (maximum of 80 points) will be comprised of the sum of the MAP Score and the Financial Proposal Feasibility Score.

The MAP Score (maximum of 75 points) will be based on the value of Base MAP (determined pursuant to [Section 5.5](#)), normalized to the Proposal containing the lowest value of Base MAP, calculated as follows:

$$\text{MAP Score} = \frac{\text{Lowest Value of Base MAP}}{\text{Proposer's Value of Base MAP}} \times 75 \text{ points}$$

The Financial Proposal Feasibility Score shall be a maximum of 5 points.

$$\text{Financial Score} = \text{MAP Score} + \text{Financial Proposal Feasibility Score}$$

5.2.2 Technical Score

The Technical Score (maximum of 20 points) will be comprised of the Technical Proposal Score.

The Technical Proposal Score will be calculated based on the TPEC evaluation score for the Preliminary Performance Plans (maximum 100 points) as described in [Section 5.4.1](#). The Preliminary Performance Plans for technical scoring purposes will be divided into three parts; the Preliminary Project Management Plan elements as further described in [Section 5.4.1.1](#), the Preliminary Design-Build Plan elements as further described in [Section 5.4.1.2](#) and the Preliminary Operations and Maintenance Plan elements as further described in [Section 5.4.1.3](#). The TPEC evaluation score is the sum of the values of the three parts described in the preceding sentence. The Technical Proposal Score will be calculated using the following formula:

$$\text{Technical Proposal Score} = \text{TPEC evaluation score} \times 0.20.$$

5.3 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals and the Financial Proposals will be made available for review by the relevant pass/fail and responsiveness subcommittee(s). They will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below. Any Proposal that fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award and will be considered unresponsive. Responsiveness shall be assessed on the basis of overall responsiveness, with IFA retaining the sole discretion to disregard or waive minor irregularities, omissions, nonconformities and discrepancies.

Regarding the recommendations of the pass/fail and responsiveness subcommittees, the TPEC and FPEC, respectively, may accept the recommendations provided by the subcommittees, may request the subcommittees to reconsider their respective recommendations, or the TPEC and FPEC, respectively, may develop its own recommendations.

In the event that a Proposal contains or omits information that may potentially result in a “fail” determination, the Authorized Representative may request additional or clarifying information from Proposer prior to a final pass/fail determination.

Those Proposals not responsive to this RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and the Proposer will be so advised. IFA may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. IFA reserves the right in its sole discretion to disregard or waive minor informalities, irregularities, nonconformities, discrepancies, omissions and apparent clerical mistakes which, in each case, are unrelated to the substantive content of the Proposals.

5.3.1 Technical Proposals

Technical Proposals will be evaluated based on the following pass/fail criteria:

(a) The business form of the Proposer, the proposed Developer, and any Persons that will have joint and several liability under the PPA or that will provide a performance guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation bylaws or equivalent documents) is consistent with the requirements of the Project and PPA Documents and provides for continuation of Proposer (and Developer) in the event of bankruptcy or withdrawal of any of its members.

(b) The Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.9;

(c) The information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 do not identify any material adverse information;

(d) The Proposer has delivered Proposal Security in the form of a complete, properly executed bond that complies with the requirements of Exhibit B, Section 3.3.1 or letter of credit that complies with the requirements of Exhibit B, Section 3.3.2;

(e) The date for Baseline Substantial Completion set forth on Form N is not later than the IFA Last Allowable Date for Baseline Substantial Completion, as set forth on Form N;

(f) The Technical Proposal contains the required materials as listed in Exhibit B, Sections 3 and 4.

(g) If Proposer anticipates execution of the PPA by a special purpose entity, Proposer has delivered either (i) pro formas of the special purpose entity organizational documents (i.e., certificate of formation/charter, bylaws/partnership agreement/operating

agreement) or (ii) indicative term sheets of such corporate formation documents that will be used to establish the entity, in either case, should IFA select it as the Preferred Proposer;

(h) Proposer has delivered (1) executed Contracts, or if a Contract has not been executed, detailed, binding term sheets or heads of terms outlining the key commercial and required Key Contract terms between (A) Proposer (or Developer) and Design-Build Contractor and (B) Proposer (or Developer) and Lead O&M Contractor and (2) detailed, signed binding term sheets or heads of terms outlining the key commercial and required Key Contract terms between Proposer (or Developer) or Design-Build Contractor and Lead Engineering Firm, provided, however, if Proposer commits its Developer in the Proposal to self-perform the O&M Work under the PPA Documents in an amount no less than 30% of the O&M Work (excluding Rehabilitation Work and Handback Requirements Work, such amount to be measured by the aggregate value of O&M Work over the term of the PPA, as delineated in Form O-3), the foregoing items relating to the (i) Key Contract between Developer and the Lead O&M Contractor or (ii) executed, detailed binding term sheet or heads of terms between Proposer and Lead O&M Contractor, as applicable, shall not be required;

(i) The Major Participants, including Equity Members, and Key Personnel listed in the Proposer's SOQ have not changed since the Proposer's submission of the SOQ, or the Proposer has previously sought IFA's consent to a change, IFA has consented to such change, and the Proposal attaches a true and correct copy of IFA's written consent thereto;

(j) Proposer has delivered a properly completed and executed Conflict of Interest Disclosure Statement (Form I);

(k) Proposer has delivered written evidence, satisfactory to IFA, in its sole discretion, from an insurance company(ies), broker(s), agent(s) or advisor(s) expressly indicating that Proposer (and Developer) will be able to obtain and maintain the insurance types and amounts required by the PPA Documents and can do so under the terms, and subject to the conditions, specified in Article 17 of and Exhibit 18 to the PPA. IFA shall be satisfied if such insurance company(ies)', broker(s)', agent(s)' or advisor(s)' signatories to such written evidence explicitly state that it/they have read the PPA Documents and insurance requirements set for the therein and that the Persons required to obtain insurance under the PPA have the capability of obtaining such insurance in the coverages and under the conditions listed in the PPA;

(l) Proposer has delivered all other documents, properly completed and signed (if required), in form and substance as specified under the RFP Documents, and such documents do not identify any material adverse information;

(m) The Proposer's Workforce Diversity and Small Business Performance Plan in its Technical Proposal includes a statement committing to participate in the Department's Equal Employment Opportunity Trainee Program as set forth in Section 4.1.4 of Exhibit B to the ITP; and

(n) The Preliminary Project Baseline Schedule submitted with the Proposal (see Section 4.1.2 of Exhibit B) delineates that (i) the start of bridge construction, roadway construction (secondary or primary), building demolition, and utility relocation work in the

Bloomington area shall be initiated in 2014 and shall continue on an ongoing basis until complete, (ii) the local access roads and improvements associated with That Road and the overpass and local road improvements associated with Rockport Road will be completed and opened to traffic without the necessity of further Closures by June 1, 2015, and (iii) the interchanges and associated entrance and exit ramps at Fullerton Pike and Tapp Road and the overpass and improvements associated with Vernal Pike will be completed and opened to traffic without the necessity of further Closures by December 31, 2015. The Proposer should note that the dates set forth in the Preliminary Project Baseline Schedule set forth in its Proposal shall become commitments of Developer under the PPA, and the PPA shall require that the Project Schedule that must be approved under the PPA must be consistent with such commitments.

5.3.2 Financial Proposals

Financial Proposals will be evaluated based on the following pass/fail criteria:

(a) Based on the information provided pursuant to Section 2.0 of Exhibit C, the Proposer's (and each of its Equity Member(s)) financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the SOQ, such that the Proposer (by and through its Equity Member(s)) continues to have the financial capacity to develop, design, construct, operate, and maintain a project of the nature and scope of the Project. Factors that will be considered in evaluating the Proposer's financial capacity include the following:

- i. Profitability;
- ii. Capital structure;
- iii. Ability to service existing debt;
- iv. Ability to invest equity; and
- v. Other commitments and contingencies.

If IFA determines that a Proposer does not appear to have the financial capability to fulfill its obligations under the PPA Documents, it may offer the Proposer the opportunity to meet the financial requirement through one or more Guarantors acceptable to IFA.

(b) The Proposer's Financial Proposal demonstrates the following:

- i. it identifies sufficient financing for the Project, including all design, construction, operation, maintenance and Rehabilitation Work;
- ii. it is sufficiently developed and (1) has attracted sufficient commitment and provides commitment letters from the Core Lender(s) and Lead Underwriter(s), as applicable; (2) that the Core Lender(s) and Lead Underwriter(s), as applicable, have performed the required due diligence and (3) has attracted sufficient support and commitments from Equity Members, in each case, to satisfy IFA that

there is no material risk on financial grounds of any performance failure, including failure to perform any of the following:

- A. Execution and delivery of the PPA;
- B. Achievement of Financial Close;
- C. Completion of design and construction of the Project by the Substantial Completion Deadline set forth in, and in accordance with, the PPA Documents; and
- D. Operation and maintenance of the O&M Limits throughout the Term in accordance with the requirements of the PPA Documents, including the Handback Requirements.

iii. it contains key milestones that are consistent with the Preliminary Performance Plans delivered pursuant to Exhibit B, Section 4.

iv. Proposer has received IFA's approval of the Lead Underwriter(s) and counsel for the Lead Underwriter(s) (if bonds are used by the Proposer as part of its Financial Proposal);

v. Proposer has received IFA's approval of the Private Placement Agent if a Private Placement **is to** be used by the Proposer as part of its Financial Proposal; and

vi. Proposer has delivered a letter(s) of support from an Eligible Surety or bank/financial institution as described in Section 3.2.10 of Exhibit B.

(c) The Proposer's Financial Proposal is likely to result in Financial Close and meets a minimum level of feasibility;

(d) Proposer has provided the required commitment letters evidencing the willingness of the Core Lender(s) and Lead Underwriter(s), as applicable, to provide funding pursuant to Section 3.4 of Exhibit C.

(e) Proposer has provided assurance that equity from the Equity Member(s) will be in place in at least the minimum amounts required under the PPA Documents, including the required letters from Proposer's Equity Members and Financially Responsible Parties (if applicable) evidencing their respective commitments to provide equity funding (or, with respect to Financially Responsible Parties, their guaranty an Equity Member's equity funding commitment) pursuant to Section 3.5 of Exhibit C.

(f) The Financial Proposal contains all other materials required by Exhibit C;

(g) Proposer has provided a letter from its independent insurance consultant or broker in accordance with the requirements of Section 7.0 of Exhibit C and substantially in the

form of Form Z (with such modifications as shall be acceptable to IFA, in its sole discretion); and

(h) Proposer has placed the Escrowed Materials into escrow as specified in Section 4.4.3.

If PABs are included as part of a Financial Proposal, approval of the issuance by IFA, in its role as conduit issuer, shall not be required as of the Proposal Due Date in order for the Financial Proposal to be considered “committed financing.”

5.4 Evaluation of Technical Proposal By TPEC

After completion of, or concurrently with, the pass/fail and responsiveness review, the Preliminary Performance Plans will be evaluated by the TPEC based on the factors set forth below to determine whether the Technical Proposal meets, and also whether it includes any improvements over, and brings additional benefits and/or value to IFA, the Department and the public in addition to, the requirements of the PPA Documents. In evaluating the Technical Proposal, the TPEC may consider other information provided with the Technical Proposal.

5.4.1 Technical Proposal Score - Preliminary Performance Plan Evaluation Factors

The evaluation factors for the Preliminary Performance Plan component of the Technical Proposal are as follows:

- (a) Preliminary Project Management Plan (maximum 30 Technical Proposal Score points);
- (b) Preliminary Design-Build Plan (maximum 35 Technical Proposal Score points); and
- (c) Preliminary Operations and Maintenance Plan (maximum 35 Technical Proposal Score points).

Subfactors are listed in Section 5.4.1.1 through 5.4.1.3. Consecutive factors or subfactors are set forth in descending order of importance, provided, however, except as otherwise noted, consecutive factors or subfactors may be of equal value to each other.

5.4.1.1 Preliminary Project Management Plan

Objectives: An organization that is designed with clear lines of responsibility, appropriate personnel and well defined roles that respond to the requirements of the PPA Documents for all phases of the Work. A robust DBE Performance Plan that will achieve the DBE goals and encourage participation of minority and women owned businesses. A robust Workforce Diversity and Small Business Performance Plan that will achieve the goal of educating and training employees. A well-defined and logical approach to the project schedule methodology, and schedule and cost information in detail sufficient for assessing the project schedule/cost balance.

The Preliminary Project Management Plan evaluation subfactors include:

- (a) Project Management Approach;
- (b) Preliminary Baseline Schedules;
- (c) Preliminary DBE Performance Plan and Preliminary Workforce Diversity and Small Business Performance Plan;
- (d) Quality Management; and
- (e) Cost Control, Safety, Environment and Risk Management.

The Preliminary Project Management Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.1 of Exhibit B.

5.4.1.2 Preliminary Design-Build Plan

Objective: Incorporation of technical solutions with innovative features that achieve the requirements of the PPA Documents and a design-build management organization with clear lines of responsibility, and which presents a well-defined and executable approach for design and construction.

The Preliminary Design-Build Plan evaluation subfactors include:

- (a) Design-Build technical solutions
 - 1. Roadway elements;
 - 2. Bridge structures, retaining walls, noise walls and other structures, including the approach to durability;
 - 3. Context Sensitive Solutions Elements; and
 - 4. Utility Relocation and Adjustment Work elements
- (b) Design-Build management approach; and
- (c) Design-Build quality management.

The Preliminary Design-Build Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.2 of Exhibit B.

5.4.1.3 Preliminary Operation and Maintenance Plan

Objective: Technical solutions that provide a well-operated and -maintained Project responding to the needs of the Project, the adjacent communities and the traveling public; and an operations and maintenance management organization with clear lines of responsibility, and which presents a well-defined and executable approach for operations and maintenance.

The Preliminary Operations & Maintenance Plan evaluation subfactors are as follows:

- (a) Operations and maintenance technical solutions;
- (b) Operations and maintenance management approach; and
- (c) Operations and maintenance quality management.

The Preliminary Operations and Maintenance Plan subfactors listed above will reflect the solutions and approaches to operations and maintenance phases during construction and during the Operating Period as set forth in Section 4.3 of Exhibit B.

5.5 Evaluation of Financial Proposal by FPEC

After, or in the sole discretion of the FPEC, prior to completion of the pass/fail and initial responsiveness review, the FPEC will evaluate the Financial Proposal to (i) evaluate the responsiveness and feasibility of the Financial Proposal and (ii) provide its calculation of the MAP Score.

5.5.1 Financial Proposal Feasibility

The FPEC will evaluate and make a recommendation regarding the feasibility of the Financial Proposal. Subfactors that will be considered in evaluating the feasibility of the Proposer's Financial Proposal include the following:

- (a) the level and duration of commitment of financing facilities provided by Core Lender(s) and/or underwritten by Lead Underwriter(s), as contemplated by Section 3.4 of Exhibit C;
- (b) reasonableness of costs and financing assumptions;
- (c) the terms and conditions of the financing (including debt, debt securities in a Private Placement, quasi-equity and equity), including compliance with the conditions set forth in Section 13.3 of the PPA and the degree of conditionality attached;
- (d) the level of lender, underwriter and Private Placement purchaser, as applicable, due diligence performed;
- (e) the conditions precedent to Financial Close included in the commitment letters and term sheets;
- (f) guarantees and other security required to realize financing;
- (g) the level of commitment of Equity Members, as contemplated by Section 3.5 of Exhibit C; and
- (h) if a Financially Responsible Party or Guarantor has been identified for a Proposer or Equity Member, the level of commitment and the form of the guaranty provided, as contemplated by Section 2.0(3)(b) of Exhibit C.

The quantitative score born of the qualitative considerations in this Section 5.5.1 is the “Financial Proposal Feasibility Score.”

5.5.2 MAP Score

The evaluation of the MAPs will be independent of any underlying Proposer schedule. The Base MAP is to be stated as of the Proposal Due Date.

The Proposer’s MAP Score will be determined as set forth in Section 5.2.1.

5.6 Total Proposal Score

After completion of the evaluation of the Technical Proposal by the TPEC and the Financial Proposal by the FPEC, the Public Finance Director, with the assistance of IFA and the Department representatives and advisors, will determine the Total Proposal Score for each Proposal by adding the Proposal’s Technical Score and Financial Score.

5.7 Requests for Clarification

IFA may, at any time, issue requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within three Business Days from receipt of the request (or within such other time as is specified by IFA in any clarification or additional information soliciting correspondence). The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, IFA.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

5.8 Requests for Proposal Revisions

IFA may, at any time after receipt of Proposals and prior to award and execution of the PPA, determine that it is appropriate to request changes to the Proposals (“Proposal Revisions”). Only Proposers that submitted responsive Proposals will be permitted to submit Proposal Revisions. If Proposal Revisions are requested, IFA will follow the procedures for revised proposals described in 23 CFR Part 636. IFA may request Proposal Revisions with or without discussions as described therein. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, then the term “Proposal,” as used in the RFP Documents, shall mean the original Proposal, as modified by the Proposal Revision.

Upon receipt of Proposal Revisions, the TPEC and FPEC, with assistance from the subcommittees and advisors, as appropriate, will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

5.9 Identification of the Preferred Proposer

Once the Public Finance Director has determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions), the Public Finance Director may recommend to IFA that the Proposer with the highest Total Proposal Score be the Preferred Proposer and that the Preferred Proposer be preliminarily selected as Developer under the PPA Documents. If the IFA adopts a resolution preliminarily selecting the Preferred Proposer as Developer under the PPA Documents, the Public Finance Director shall authorize staff to notify the Preferred Proposer and commence finalization of the PPA Documents (which may include negotiations) with such Proposer pursuant to Section 5.10. Alternatively, the Public Finance Director may require Proposal Revisions pursuant to Section 5.8, reject the recommendation and cancel the procurement or request reconsideration of the recommendation. In addition, a public hearing shall be conducted on such preliminary selection and the terms of the PPA as required under IC 8-15.5-4-9. If IFA does not believe that the negotiations with the Preferred Proposer will be successful, IFA may suspend or cease negotiations with the Preferred Proposer and commence negotiations with the Proposer who had the next highest Total Proposal Score or terminate the procurement process.

5.10 Finalization of the PPA; Extension of Deadlines for Commercial Close

5.10.1 Negotiation of PPA Documents

After preliminary selection by IFA, the staff of IFA will proceed with the Preferred Proposer to finalize the PPA Documents. IFA may elect to negotiate various aspects of the PPA Documents with the Preferred Proposer, including aspects of the Proposal that will be incorporated into the PPA Documents and incorporation of unsuccessful Proposers' work product; however, any decision to commence negotiations regarding the terms of the PPA Documents is at IFA's sole discretion.

By submitting its Proposal, each Proposer commits to enter into the form of PPA included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of PPA indicates is required from the Proposal (e.g., ATCs).

If IFA elects to negotiate various aspects of the PPA Documents with the Preferred Proposer and a PPA satisfactory to IFA, in its sole discretion, cannot be negotiated with the Preferred Proposer, IFA may formally suspend or end negotiations with that Preferred Proposer and take action consistent with the direction provided by the Public Finance Director. Such action may include (a) requiring the Preferred Proposer to enter into the form of PPA Documents included in the RFP, without further negotiation or variation except to fill in blanks and include information that the form of PPA indicates is required from the Proposal (e.g., ATCs); (b) rejection of all Proposals; or (c) proceeding to the next most highly ranked Proposal to finalize or attempt to negotiate a PPA with that Proposer in accordance with this Section 5.10.

In the event IFA elects to commence negotiations with a Preferred Proposer, then such Preferred Proposer will be deemed to have failed to engage in good faith negotiations with IFA and shall forfeit its Proposal Security as set forth in Section 4.7 if the Preferred Proposer fails

to attend or actively participate in reasonably scheduled negotiation meetings with IFA or insists upon terms or conditions for any documents to be negotiated or provided by Developer hereunder that are inconsistent with the PPA Documents as issued in the RFP Documents. Failure by a Preferred Proposer to agree to inclusion of ATCs from unsuccessful Proposers shall not be deemed a failure to engage in good faith negotiations that will entitle IFA to draw upon the Proposal Security.

5.10.2 Financial Model Audit

As a condition precedent to award of the PPA, the Preferred Proposer shall cause a preliminary independent audit of the Preferred Proposer's Financial Model to be conducted by a Person engaged by the Preferred Proposer and approved by IFA (the "Model Auditor"), at the Preferred Proposer's sole cost and expense. Copies of the preliminary audit report(s) and opinion(s) shall be co-addressed to IFA, and IFA shall be expressly identified therein as entitled to rely upon such audit, subject to the Model Auditor's contractual caps on liability, if any, set forth below. The Preferred Proposer shall cause the drafts or pro formas of the preliminary audit report(s) and opinion(s) to be delivered to IFA no later than 10 days after the date of notification by IFA that it is the Preferred Proposer.

Prior to engaging the Model Auditor and in accordance with the dates set forth in Section 1.7.1, the Preferred Proposer will provide IFA with information about the proposed Model Auditor (including qualifications and relevant experience), the proposed terms of engagement (including the proposed form of the model audit opinion and any governing law provisions) and the level of professional liability coverage (which must include IFA as an additional insured and which must cover claims by IFA arising from any errors or omissions by the Model Auditor in connection with the model audit). The engagement terms with the Model Auditor may limit the Model Auditor's liability to IFA for the Model Auditor's opinion's failure to identify any error(s) in the Financial Model to five years from completion of services and in an amount of no less than the greater of (i) \$2,000,000 or (ii) the amount contained in its contract; provided that such caps shall be effective only if the Model Auditor maintains professional liability insurance in the amount and for the duration of the cap. The Model Auditor chosen by the Preferred Proposer must be unaffiliated with the Preferred Proposer and otherwise be free of any conflict of interest.

The information to be submitted by the Proposer to IFA in accordance with the dates set forth in Section 1.7.1 pursuant to this Section 5.10.2 shall also include, at a minimum, the following: (a) the name and address of the proposed Model Auditor; (b) a list of public-private partnership projects and transportation projects, grouped by geographic location, for which the proposed Model Auditor has provided model auditing services; (c) a list of the Model Auditor team members; and (d) a resume for each Model Auditor team member. The required information is a Pre-Proposal Submittal subject of the submission and deadline requirements of Section 2.4.

The Proposer assumes the risk of errors, omissions, defects and deficiencies in its Financial Model. Any amendment to the Financial Model required due to the results of the Financial Model Audit will be implemented without any adjustment to the MAP or Milestone Payment(s) based on the results of the model audit.

The Preferred Proposer shall also provide IFA with an opinion from the Model Auditor stating that the Financial Model is suitable for use in connection with the Relief Event procedures set forth in the PPA. The Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with GAAP. This opinion, on which IFA shall be a co-addressee and expressly entitled to rely, may also result from an independent review of the Financial Model required by the Preferred Proposer's lenders. The opinion is to be provided at the Preferred Proposer's cost.

The preliminary audit report(s) and opinion(s) shall be delivered prior to final award and will be updated, refreshed and delivered again at commercial close.

5.10.3 Market Interest Rate Adjustment

Except as set forth in the PPA, IFA will bear the risk and have the benefit of changes in market interest rates (either positive or negative) for the period beginning at 10:00 A.M. Eastern Time on January 8, 2014 and ending on the date set forth in Section 13.7.8.1 of the PPA, as the same may be extended pursuant to the PPA.

The interest rate adjustment will be based on the movement, if any, in the benchmark bond(s) or swap rates underlying the financing contained in Proposer's Financial Plan and Financial Model (the "Benchmark Rate(s)"). The Benchmark Rate(s) must be independently-verifiable by IFA using Bloomberg U.S.-based screens or another independently verifiable source acceptable to IFA, as appropriate. A Proposer shall submit its selected indices and Benchmark Rate(s) to IFA for approval by the date set forth in Section 1.7.1 and the Benchmark Rate(s) must be approved by IFA not later than 3:00 P.M. Eastern Time on the date set forth in Section 1.7.1 to be included in the Proposal; provided, however, that if IFA has a clarification or issue regarding a Proposer's submittal, IFA may extend the date by which it must approve the selected indices and Benchmark Rate(s) while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the approved indices and Benchmark Rate(s) shall be included in the Proposal (and the delay in approval shall not affect the January 8, 2014 date above). Proposers may also provide Benchmark Rates for alternate forms of financing by the date set forth in Section 1.7.1 and must do so in order to be entitled to a Credit Spread fluctuation adjustment as set forth in Section 5.10.4 below, to be memorialized in the final, execution-version PPA Documents.

The Proposer shall use Table 6 of Form P for purposes of the Benchmark Rate submittal. The PPA sets forth the process, mechanics and constraints on any applicable market interest rate adjustment.

5.10.4 Credit Spread Adjustment

IFA will bear a portion of the risk and share in a portion of the benefit of changes in Credit Spreads (either positive or negative) in accordance with the PPA. The PPA sets forth the process, mechanics and constraints on any applicable Credit Spread fluctuation adjustment.

(a) No later than 3:00 P.M. Eastern Time on January 8, 2014, each Proposer must submit to IFA for approval the Credit Spreads that the Proposer intends to use in its Financial Model. Proposer may also provide Credit Spreads for alternate forms of financing by the date

set forth in Section 1.7.1 and must do so in order to be entitled to a Credit Spread adjustment under the PPA. As part of the Credit Spread submittal, the Proposer shall provide the indicative credit rating(s), approximate average life of the financing instruments, market comparables and/or other supporting data. The Proposer shall use Table 6 of Form P for purposes of the Credit Spread submittal.

(b) No later than 3:00 P.M. Eastern Time on the date specified in Section 1.7.1, IFA will provide written approval to each Proposer of the Credit Spreads to be assumed in the Proposer's Financial Model; provided, however, that if IFA has a clarification or issue regarding a Proposer's submittal, IFA may extend the date by which it must approve the Credit Spreads while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the Credit Spreads shall be included in the Proposal (and the delay in approval shall not affect the January 8, 2014 date above).

5.11 IFA Review of Post-Selection Deliverables

5.11.1 Documents to be Submitted Following Notification of Preferred Proposer

As a condition precedent to award of the PPA, the Preferred Proposer shall deliver the following (collectively, the "Post-Selection Deliverables") to IFA within seven days after notification that it is the Preferred Proposer, unless otherwise noted:

(a) Evidence of all Major Participants' (excluding Equity Members) qualification to do business in the State, dated no earlier than 30 days prior to the Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in Indiana along with a "certificate of good standing" (or equivalent) from the state of organization of the Person; (ii) a Certificate of Existence from the Indiana Secretary of State; or (iii) other evidence acceptable to IFA, in its sole discretion. Each such Person shall also provide a valid Indiana business license.

(b) If security for the Proposer's obligations under the PPA is required by IFA pursuant to Exhibit C, Section 2.0, the form of the proposed guarantees, which shall be in form and substance acceptable to IFA, in its sole discretion.

(c) Drafts of the deliverables identified in Section 6.1.1 for pre-approval by IFA.

(d) If not delivered with the Proposal pursuant to Exhibit B, Section 3.2.2, deliver copies of the final form of the Key Contract between Developer and Design-Builder and Developer and the Lead O&M Contractor; provided, however, if Proposer commits its Developer in the Proposal to self-perform the O&M Work under the PPA Documents in an amount no less than 30% of the O&M Work (excluding Rehabilitation Work and Handback Requirements Work, such amount to be measured by the aggregate value of O&M Work over the term of the PPA, as delineated in Form O-3), the final form of the Key Contract between Developer and the Lead O&M Contractor shall not be required.

(e) A redacted copy of its Proposal and SOQ to IFA no later than 48 hours after notification that it is the Preferred Proposer, with redactions limited to only those portions of the Proposal and SOQ that fall under a specific exemption of the Public Records Act (and

Proposers shall be required to submit, for IFA's review and approval, documentation identifying the specific exemption asserted and such other information requested by IFA in order for IFA to assess the eligibility of such portions of the Proposal and SOQ for exemption from publication). Notwithstanding any proposed redactions and/or claims of exemption asserted by the Proposer, IFA shall have sole discretion to determine the applicability of any exemptions under the Public Records Act and of the contents to be disclosed in response to a request thereunder. Failure of Proposer to submit a redacted form of its Proposal and SOQ, containing only those redactions consistent with IFA's determination as to the content that may be redacted, to IFA within 48 hours after notification that it is the Preferred Proposer constitute consent by Proposer to, and a waiver of any right to contest, disclosure by IFA of Proposer's Proposal and SOQ in their entirety, without redaction, in response to a request submitted under the Public Records Act. As between a Proposer and a third party requesting disclosure under the Public Records Act (as opposed to as between a Proposer and IFA exercising its sole discretion rights pursuant to this ITP), this Section 5.11.2 shall not constitute a waiver of the Proposer's rights under the Public Records Act.

5.11.2 IFA Comment on Post-Selection Deliverables

IFA shall provide comments on any Post-Selection Deliverable required to be delivered to IFA for review and approval hereunder, within seven Business Days after the date of IFA's receipt of such deliverable. IFA shall have four Business Days to review and respond to subsequent submittals of the deliverable.

5.11.3 Review of Escrowed Materials

IFA shall be entitled to access and review the Escrowed Materials of the Preferred Proposer following the notification of the Preferred Proposer, such review to be jointly undertaken with the Preferred Proposer in accordance with the Escrow Agreement (Form L). IFA's review shall assess the completeness and accuracy of the Escrowed Materials, and IFA and the Preferred Proposer shall jointly develop and countersign a detailed index and catalogue of the contents of the Escrowed Materials. Completion of such review and indexation – and incorporation of an amended exhibit to the Escrow Agreement listing the Escrowed Materials, as indexed - shall be a condition to award and execution of the PPA.

SECTION 6.0 AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution and Delivery of PPA Documents

The following are conditions precedent to final award of the PPA:

- (a) successful negotiation of the PPA,
- (b) concurrence in award by FHWA,
- (c) receipt by IFA of all of the documents required to be provided prior to execution of the PPA under Section 6.1.1,
- (d) review and indexation of the Escrowed Materials in accordance with Section 5.11.3; and
- (e) any other conditions to award set forth in the ITP or required by the Act.

Following the public hearing on the preliminary selection of the Preferred Proposer and the terms of the PPA, IFA shall make a determination (i) whether or not the Preferred Proposer should be designated as Developer under the PPA and, if not, to suspend or cease negotiations with the Preferred Proposer and commence negotiations with the Proposer who had the next highest Total Proposal Score, or (ii) to terminate the procurement process. If IFA determines to select the Preferred Proposer as Developer under the PPA, then such determination shall be submitted to the State Budget Committee and the Governor of the State, in turn. Following review of such determination by the State Budget Committee, the Governor may accept or reject the determination of IFA. If the Governor accepts the determination of IFA, the Governor shall designate the Preferred Proposer as Developer under the PPA. Following the designation by the Governor of the Preferred Proposer as Developer under the PPA, IFA shall publish notice of such designation in accordance with the Act and may execute and deliver the PPA following such publication.

Upon satisfaction of the foregoing conditions, IFA may deliver four sets of execution copies of the PPA and other documents to be executed in connection therewith ("Execution Documents") to the Preferred Proposer along with the number of sets of execution copies of the Execution Documents reasonably requested by the Preferred Proposer. The Preferred Proposer shall obtain all required signatures and deliver all of the execution sets of the Execution Documents to IFA within two Business Days after receipt, together with the required documents described in Section 6.1.1. If Developer is a joint venture or a partnership, the PPA must be executed by all joint venture members or general partners, as applicable.

Upon IFA's receipt of all such documents and satisfaction of all conditions precedent and provided that 22 days have elapsed since the date of publication of the notice of the designation of the Preferred Provider required under IC 8-15.5-4-11(b), IFA may, in its discretion, execute the Execution Documents. Unless extended pursuant to Section 1.7.3, final award and commercial close shall be deemed to have occurred as of the date of execution of the PPA and the other Execution Documents; provided that IFA has executed and

delivered all such documents and no procurement protest or action to contest the validity of the PPA is brought within the time period permitted by IC 8-15.5-4-12.

In the event of a procurement protest or an action to contest the validity of the PPA is brought within the period permitted by Indiana Code 8-15.5-4-12, then IFA, at its sole option and within the exercise of its sole discretion, may elect to move forward with commercial close, may delay commercial close or may terminate the procurement at no cost or penalty except, in such event, the Proposer shall be entitled to payment of a stipend upon satisfaction of the other conditions thereto as set forth in this ITP and the Stipend Agreement, if entered into. In no event may IFA delay commercial close beyond the 180 day Proposal validity period without the mutual agreement by the Preferred Proposer.

6.1.1 Documents To Be Delivered By Proposer With Executed PPA

The Preferred Proposer shall deliver to IFA the documents listed below concurrently with the executed sets of the Execution Documents as a condition to execution of the PPA by IFA.

(a) If not previously submitted, a copy of the executed organizational documents for Developer and, if Developer is a limited liability company, partnership or joint venture, the articles of incorporation/certificate of formation/charter/partnership agreement or registration for each member or partner of Developer. The executed form of the organizational documents for Developer may not differ substantially or materially from the draft organizational documents or indicative term sheets included with the Proposal.

(b) Evidence of approval of the final form of the PPA Documents, and of due authorization, execution, delivery and performance of the PPA Documents, by Developer. Such evidence shall be in form and substance reasonably satisfactory to IFA. If Developer is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Developer is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If Developer is a limited liability company, such evidence shall be in the form of (1) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, or (2) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (3) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If Developer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member.

(c) A written opinion or opinions from counsel for Developer, which counsel shall be approved by IFA in its reasonable discretion (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the state of the formation/organization of the Person for which the opinion is rendered (i.e., Developer, joint venture member, etc.) and the qualification to do business in Indiana and the enforceability opinion shall be provided by an attorney licensed in the State), in substantially the form attached hereto as Form M (with such additional opinions as are reasonably requested by IFA, such changes as agreed to by IFA, in its sole discretion, and

such qualifications and assumptions as agreed to by IFA, in its good faith discretion), provided, however, that (i) the organization/authorization/execution opinion for a Person formed or organized under the laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware but who will issue an opinion under Delaware law; and (ii) opinions from multiple legal counsel are acceptable as long as the letters in the aggregate provide the opinions required in Form M.

(d) Copies of an executed Design-Build Contract between Developer and the Design-Build Contractor, certified as accurate and complete by the Developer, which Design-Build Contract shall meet the requirements therefor in, and otherwise be consistent with the terms of, the PPA Documents.

(e) If the Performance Security will be in the form of bonds, a letter from an Eligible Surety, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond as described in Section 17.2 of the PPA and in form compliant with the requirements of this Section 6.1.1(e) and otherwise reasonably acceptable to IFA, in an amount equal to 25% of the Total Project Capital Cost. The commitment may be for either (a) a Performance Bond securing Developer's performance obligations under the PPA Documents respecting the D&C Work, or (b) Performance Bonds (i) from the Design-Build Contractor and (ii) from any other prime Contractor performing D&C Work, so that each such Performance Bond is security for performance of the respective Person's obligations under its Contract. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the PPA and issuance of NTP2 thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the PPA or the Technical Provisions following the date of the letter, but excluding any change orders and any changes or information reflected in the Proposal, such as ATCs and Proposer commitments. If the Design-Build Contractor or any other prime Contractor is to provide a bond, the Surety letter must commit to issuance of a bond on behalf of the Design-Build Contractor or other prime Contractor, as applicable, with respect to the Design-Build Contractor's or other prime Contractor's work under the respective Design-Build Contract(s) or prime Contract respecting the D&C Work, naming IFA as a dual obligee and otherwise substantially conforming to the requirements of this Section 6.1.1(e).

(f) If the Performance Security will be in the form of a letter of credit, a letter from an Eligible Financial Institution with an office in the United States at which the letter of credit can be presented for payment by facsimile or by electronic means, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a letter of credit as described in Section 17.3 of the PPA and in form compliant with the requirements of this Section 6.1.1(f) and otherwise reasonably acceptable to IFA, in the amount equal to 25% of the Total Project Capital Cost. The commitment may be for either (a) a letter of credit securing Developer's performance obligations under the PPA Documents respecting the D&C Work, or (b) multiple letters of credit (i) from the Design-Build Contractor and (ii) from any other prime Contractor performing D&C Work, so that each such letter of credit is security for performance of the respective Person's obligations under its Contract. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and

execution of the PPA and issuance of NTP2 thereunder; provided, however, that the Eligible Financial Institution may reserve in its letter the right to reasonably approve any material adverse changes made to the PPA or the Technical Provisions following the date of the letter, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments. If the Design-Build Contractor or any other prime Contractor is to provide a letter of credit, the bank or financial institution letter must commit to issuance of a letter of credit on behalf of the Design-Build Contractor or other prime Contractor, as applicable, with respect to the Design-Build Contractor's or other prime Contractor's work under the respective Design-Build Contract(s) or prime Contract respecting the D&C Work and otherwise substantially conforming to the requirements of this Section 6.1.1(f).

(g) A letter from an Eligible Surety, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Payment Bond as described in Section 17.2 of the PPA and in form compliant with the requirements of this Section 6.1.1(g) and otherwise reasonably acceptable to IFA, in an amount equal to 5% of the Total Project Capital Cost. The commitment may be for either (a) a Payment Bond securing Developer's payment obligations under the PPA Documents respecting the D&C Work, or (b) multiple Payment Bonds (i) from the Design-Build Contractor and (ii) from any other prime Contractor performing D&C Work, so that each such Payment Bond is security for payment to subcontractors and laborers under its Contract. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the PPA and issuance of NTP2 thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the PPA or the Technical Provisions following the date of the letter, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments. If the Design-Build Contractor or any other prime Contractor is to provide a bond, the Surety letter must commit to issuance of a bond on behalf of the Design-Build Contractor or other prime Contractor, as applicable, with respect to the Design-Build Contractor's or other prime Contractor's work under their respective Design-Build Contract(s) or prime Contract respecting the Design and Construction Work, naming IFA as a dual obligee and otherwise substantially conforming to the requirements of this Section 6.1.1(g).

(h) If security for the Proposer's obligations under the PPA is required by IFA pursuant to Exhibit C, Section 2.0.3(b), guarantees from Guarantor(s) in form and substance previously approved by IFA.

(i) Financial Close Security in accordance with the requirements of Section 6.6.

(j) The preliminary audit report(s) and Model Auditor opinion(s) pursuant to Section 5.10.2, in form and substance reasonably satisfactory to IFA.

(k) Evidence of Developer's qualification to do business in the State, dated no earlier than 15 days prior to the date of commercial close. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in Indiana along with a "certificate of good standing" (or equivalent) from the state of organization of the

Person; (ii) a Certificate of Existence from the Indiana Secretary of State; or (iii) other evidence acceptable to IFA, in its sole discretion. Each such Person shall also provide a valid Indiana business license.

(l) Any other requirements reasonably determined by IFA during pre-award negotiations.

6.1.2 Documents To Be Delivered By IFA to Proposer With Executed PPA

IFA shall deliver to the escrow held by IFA the documents listed below concurrently with the executed sets of the PPA and other Execution Documents

- (a) A copy of the executed Milestone Agreement;
- (b) A copy of the executed Use Agreement;
- (c) A copy of the executed Department MOU;
- (d) Executed copies of the Escrow Agreement(s) in the form attached hereto as Form L (with such changes as agreed to by IFA, in its sole discretion), as amended pursuant to Section 5.11.3.
- (e) One or more opinion(s) from IFA's counsel in favor of Developer addressing the PPA Documents, the Milestone Agreement and the Use Agreement, substantially in the form of Form Y, with such additional opinions and revisions as may be reasonably requested by the Preferred Proposer and agreed to by IFA and its counsel; and
- (f) One or more opinion(s) from the Attorney General of the State, as counsel to IFA and the Department, in favor of Developer addressing the PPA, the Milestone Agreement and the Use Agreement, substantially in the applicable form set forth in Form Y, with such additional opinions and revisions as may be reasonably requested by the Preferred Proposer and agreed to by IFA, IFA's counsel and the State Attorney General.

The documents will be released from escrow as of commercial close.

6.2 Debriefings

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided at the earliest feasible time after execution of the PPA Documents, as determined by IFA, in its sole discretion. The debriefing shall be conducted in Indianapolis and by a procurement official familiar with the rationale for the selection decision and PPA award.

Debriefings shall:

- (a) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;

(b) Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and

(c) Provide information on areas in which the unsuccessful Proposer's Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the TPEC and FPEC, but may include a summary of the rationale for the selection decision and PPA award.

6.3 Stipend Payment to Unsuccessful Proposers

6.3.1 Prior to Proposal Due Date

No Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as specified in the Stipend Agreement and this Section 6.3. Except as set forth in the Stipend Agreement and this Section 6.3, if IFA cancels the procurement after the issuance of this RFP up to and including the Proposal Due Date, then Proposers that have executed a Stipend Agreement are eligible to receive the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid by such Proposer, as determined by IFA in its good faith discretion, in preparing a Proposal in an amount not to exceed \$500,000.

If IFA cancels the procurement on or prior to the Proposal Due Date, then an invoice, waiver and release and the documentation of out-of-pocket development costs (which shall be subject to IFA's reasonable review and concurrence) may be submitted no earlier than the date of the notice of cancellation and no later than 90 days after the date of the notice of cancellation and the stipend (in an amount determined pursuant to this Section 6.3) shall be due and payable 60 days after the date the Proposer submits to IFA a compliant invoice and waiver and release.

The invoice shall be in a form reasonably acceptable to IFA, and must be accompanied by an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against IFA, in the form attached as Form T.

6.3.2 From and After Proposal Due Date

Except as set forth in the Stipend Agreement and this Section 6.3, each Proposer that has executed the Stipend Agreement and submits a timely and responsive, but unsuccessful, Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents shall be entitled to receive payment from IFA, on the terms and conditions described herein; provided, however, that a timely and responsive Proposal shall also be considered unsuccessful if IFA cancels the procurement without award after the Proposal Due Date; provided, further, that Proposers must be eligible for the payment. No Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as specified in the Stipend Agreement and this Section 6.3. The total amount available for a stipulated stipend payment per Proposer for this procurement is \$1,000,000.

If IFA cancels the procurement following the Proposal Due Date, and if a Proposer has executed the Stipend Agreement and submits a timely and responsive Proposal, then an invoice may be submitted no earlier than the date of the notice of cancellation and no later than 90 days after the date of the notice of cancellation and the total amount available for a stipend shall be due and payable 60 days after the date the Proposer submits to IFA the invoice and waiver and release.

If IFA does not cancel the procurement and final award and commercial close occurs, then the invoice may be submitted by an eligible Proposer no earlier than 30 days after IFA issues notice of intent to award to the Preferred Proposer and no later than 30 days after commercial close. The total amount available for a stipend shall be due and payable the later of (a) 60 days after the date the eligible Proposer submits to IFA the invoice and waiver and release or (b) 45 days after the date of commercial close.

The invoice shall be in a form reasonably acceptable to IFA, and must be accompanied by an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against IFA, in the form attached as Form T.

6.3.3 Eligibility

Notwithstanding the foregoing, no stipend shall be payable to a Proposer in the following circumstances:

- If such Proposer has not executed and delivered the Stipend Agreement to IFA on or before ten days after the date that IFA sends the Stipend Agreement to such Proposer with instructions to execute and return the Stipend Agreement to IFA; or
- If such Proposer withdraws from the procurement; or
- If such Proposer has not complied with the terms and conditions of the RFP Documents; or
- If such Proposer fails to satisfy the terms and conditions set forth in the Stipend Agreement or this Section 6.3, including delivering an invoice, all forms required by the State for payment of vendors and documentation of out-of-pocket costs pursuant to Section 6.3.1 within the time periods specified herein and the waiver and release as described herein; or
- If such Proposer has filed a protest of, or otherwise challenges, the procurement process, award or cancellation of the procurement process and such protest or challenge is dismissed or otherwise is unsuccessful; or
- If such Proposer was the Preferred Proposer and (a) it proceeds with commercial close and Financial Close (in which case, the terms of the PPA will control following commercial close) or (b) it fails to proceed with commercial close or Financial Close for any reason other than (1) the failure of one or more express closing contingencies that are set forth in the RFP Documents or the PPA, (2) the failure of

which do not arise out of or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or law or willful misconduct of the Preferred Proposer; or (3) IFA's election to cancel the procurement after the Proposal Due Date, which election does not arise out of or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or law or willful misconduct of the Preferred Proposer.

Any ideas and work product contained in such Proposer's Proposal and any work product that is not required to be returned to the Proposer under this RFP (e.g., ATCs, written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer) received prior to the cancellation of the procurement and/or contained in its Proposal will be the property of IFA without any requirement to make payment therefor.

6.3.4 Work Product

Each Proposer agrees that IFA shall own and be entitled to use all ideas and work product in its Proposal and all work product that is not required to be returned to the Proposer under this RFP (e.g., ATCs, written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer) received by IFA or the Department prior to the cancellation of the procurement and/or contained in its Proposal, in consideration for IFA's agreement to make payment as provided herein and in the Stipend Agreement, without any further compensation or consideration to Proposer.

In accordance with Section 3.5, IFA will have the right to inform the Preferred Proposer regarding the contents of the other Proposals after notification of the Preferred Proposer, and that the PPA may incorporate the above-described work product, ideas or concepts based thereon. Upon the Proposer's receipt of payment hereunder, this right shall extend to allow IFA and the Department to use such work product, ideas and concepts in the performance of its functions. Payment of the stipend to a Proposer shall operate as a release and waiver by Proposer of any and all claims challenging the procurement process, award and/or cancellation of the procurement process.

6.3.5 Stipend Agreement and Proposal Letter

Proposers accepting the foregoing terms in this Section 6.3 and the Stipend Agreement shall acknowledge such acceptance by execution of the Stipend Agreement on or after the date of issuance of this RFP. Once executed, the Stipend Agreement shall constitute the irrevocable election by Proposer to accept the stipend described therein and under this Section 6.3.

6.4 Disposition of Escrowed Materials Following Conclusion of Procurement Process

In accordance with the procedures set forth in the Escrow Agreement (Form L), each unsuccessful Proposer shall have the right to retrieve its Escrowed Materials after the PPA Documents have been executed and delivered and commercial close has occurred, after IFA rejects all of the Proposals or after IFA terminates this procurement. The escrowed materials

of Developer that were delivered into escrow under the Escrow Agreement (Form L) in connection with the Proposal Due Date shall be retained in escrow or otherwise handled as set forth in the Escrow Agreement (Form L).

6.5 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before award and execution of the PPA, including costs incurred for any interviews, costs associated with Post-Selection Deliverables and costs relating to the commercial close and finance process, shall be borne by the Proposer, except for any costs paid in accordance with Section 6.3.

6.6 Financial Close Security and Return of Proposal Security

At, and as a condition precedent to, commercial close, the Preferred Proposer shall submit either: (a) a financial close bond in an amount equal to \$15,000,000 and in the form of Form U-1 from an Eligible Surety or (b) a letter of credit in an amount equal to \$15,000,000 and in the form of Form U-2 issued by an Eligible Financial Institution that has an office in the United States at which the letter of credit can be presented for payment. At such time as IFA receives the Financial Close Security from the Preferred Proposer, the Preferred Proposer's Proposal Security shall be returned to it. Provisions addressing the forfeiture or return of the Financial Close Security are set forth in the PPA.

Except for any Proposal Security which has been forfeited, the Proposal Security as to each unsuccessful Proposer will be returned to the respective Proposers upon the earliest of (i) expiry of the Proposal validity period, as extended, (ii) ten (10) Business Days following commercial close and (iii) ten (10) Business Days following cancellation of the procurement by IFA. The Proposal Security for the Preferred Proposer shall be returned at such time as (i) the Proposer has satisfied all conditions of execution and award, including, without limitation, the conditions set forth in ITP Section 6.1, (ii) the Proposal validity period, as extended, has expired, or (iii) IFA cancels the procurement.

SECTION 7.0 PROTESTS

7.1 Applicability

This Section 7.0 sets forth the exclusive protest remedies available with respect to the RFP. These provisions prescribe the exclusive procedures for protests regarding:

- (a) allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed IFA's authority;
- (b) a determination as to whether a Proposal is responsive to the requirements of this RFP or as to whether a Proposal passes the pass/fail criteria set forth in the RFP, as applicable; and
- (c) award of the PPA and any other protest not addressed in clauses (a)-(b).

7.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 7.1(a) may be filed only after Proposer has informally discussed the nature and basis of the protest with IFA, following the procedures for those discussions prescribed in this Section 7.0. Informal discussions shall be initiated by a written request for a one-on-one meeting delivered to IFA's Authorized Representative. The written request shall include an agenda for the proposed one-on-one meeting. IFA will meet with the Proposer as soon as practicable to discuss the nature of the allegations. If necessary to address the issues raised in a protest, IFA may, in its sole discretion, make appropriate revisions to the RFP Documents by issuing addenda.

7.3 Deadlines for Protests

7.3.1 Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no later than 20 days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five Business Days after the Addendum is issued (but in any event, prior to the Proposal Due Date).

7.3.2 Protests concerning the issues described in Section 7.1(b) must be filed no later than five Business Days after receipt of the notification of non-responsiveness.

7.3.3 Protests concerning the issues described in Section 7.1(c) must be filed no later than ten days after notification of Preferred Proposer.

7.4 Content of Protest

Protests filed under Section 7.3 shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

7.5 Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to the Public Finance Director with copies to the IFA general counsel at Indiana Finance Authority and Public Finance Director of the State of Indiana, each at One North Capitol Avenue, Suite 900. Indianapolis, Indiana 46204 and the Department Chief Counsel at 100 North Senate Avenue, Room N758, Indianapolis, Indiana 46204-2248, Indiana, as soon as the basis for protest is known to Proposer. Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained by contacting IFA's Authorized Representative.

7.6 Comments from other Proposers

Other Proposers may file statements in support of or in opposition to the protest within seven days of the filing of the protest. IFA shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

7.7 Burden of Proof

The protestant shall have the burden of proving its protest. IFA may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

7.8 Decision on Protest

The Public Finance Director or his or her designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest under Section 7.4. The decision by the Public Finance Director shall be final. If necessary to address the issues raised in a protest, IFA may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda. The written decision shall be final, binding and not subject to appeal.

7.9 Protester's Payment of Costs

If a protest is denied, Proposer filing the protest shall be liable for IFA's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by IFA as a consequence of the protest.

7.10 Rights and Obligations of Proposers

Each Proposer, by submitting its Proposal, expressly recognizes and agrees to the limitation on its rights to protest provided in this Section 7.0, and expressly waives all other rights and remedies that may be available to Proposer under Law. These provisions are included in the RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section, it shall indemnify and hold IFA and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's

actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

SECTION 8.0 IFA RIGHTS AND DISCLAIMERS

8.1 IFA Rights

IFA may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform Developer's obligations under the PPA Documents. IFA reserves the right, in its sole discretion, to:

- (a) Develop the Project in any manner that it, in its sole discretion, deems necessary;
- (b) Reject any or all of the Proposals;
- (c) Modify any dates set or projected in this RFP and extend any deadlines;
- (d) Cancel, modify or withdraw the RFP in whole or in part at any time prior to the execution by IFA of a PPA, without incurring any cost obligations or liabilities, except as otherwise provided in Section 6.3 of the RFP;
- (e) Terminate this procurement and commence a new procurement for part or all of the Project;
- (f) Terminate evaluations of Proposals received at any time;
- (g) Suspend or terminate negotiations at any time, recommence negotiations with the Preferred Proposer after negotiations have been suspended, elect not to commence PPA negotiations with any responding Proposer, engage in negotiations with other than the highest ranked Proposer;
- (h) Modify the procurement process (with appropriate notice to Proposers);
- (i) Waive or permit corrections to data submitted with any response to this RFP until such time as IFA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (j) Permit submittal of addenda and supplements to data and information previously provided in a Proposal pursuant to a request for clarification issued by IFA until such time as IFA declares that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (k) Appoint evaluation committees to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- (l) Disclose information contained in a Proposal to the public as described herein;
- (m) Approve or disapprove changes in the Key Personnel identified in the SOQ;

- (n) Approve or disapprove changes in the Proposer's organization;
- (o) Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;
- (p) Consider information relating to a Proposer or Proposal based on information outside of the Proposal available to the evaluators, including the evaluators' personal experiences or knowledge;
- (q) Request Proposal Revisions as specified herein;
- (r) Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the PPA by a third party;
- (s) Not issue a notice to proceed after execution of the PPA Documents;
- (t) Not pursue a PABs allocation on behalf of the Proposers;
- (u) Develop some or all of the Project itself (including finance some or all of the Project itself);
- (v) Disqualify any Proposer that violates the terms of the RFP;
- (w) Determine a competitive range and conduct discussions with Proposers in the competitive range; and
- (x) Exercise any other right reserved or afforded to IFA under this RFP and applicable Law.

8.2 IFA Disclaimers

This RFP does not commit IFA to enter into any contract. Except as expressly set forth in the Stipend Agreement and Section 6.3 above, and the return of the Proposal Security to Proposer in accordance with the terms of this ITP, IFA assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall IFA be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the PPA Documents, in form and substance satisfactory to IFA, has been authorized and executed by IFA and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of IFA to the Proposers during the procurement process, which obligations are expressly set forth in these RFP Documents. In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

FORM A

INDIANA FINANCE AUTHORITY I-69 SECTION 5 PROJECT INSTRUCTIONS TO PROPOSERS

PROPOSAL LETTER

PROPOSER: _____

Proposal Date: January 21, 2014

The undersigned (“**Proposer**”) submits this proposal (this “**Proposal**”) in response to that certain Request for Proposals (as amended, the “**RFP**”) issued by the Indiana Finance Authority (“**IFA**”), an independent public corporation created under the laws of the State of Indiana, dated October 15, 2013, to develop, design, construct, finance, operate and maintain the I-69 Section 5 project (the “**Project**”), as more specifically described herein and in the documents provided with the RFP (the “**RFP Documents**”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Subject to the terms below, in consideration for IFA supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertake(s) [jointly and severally] ***[if Proposer team’s equity members have not formed the Proposer entity, then leave in words “jointly and severally...” and delete the brackets. Otherwise delete the entire phrase. The bracketed “jointly and severally...” language applies until a Proposer entity is formed, in which case, it will not apply unless the Developer is a joint venture or partnership]:***

a) subject to Section 4.6.2 of the ITP, to keep this Proposal open for acceptance initially for 180 days after the Proposal Due Date, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of IFA, in IFA’s sole discretion; and

b) if this Proposal is accepted, to provide security (including bonds, insurance and letters of credit) for the due performance of the Public-Private Agreement (“**Agreement**”) as stipulated in the Agreement and the RFP.

If IFA properly draws on Proposer’s Proposal Security in accordance with the terms, and subject to the conditions of the RFP Documents, and the surety or other financial institution providing the Proposal Security refuses to honor IFA’s proper draw thereon, by its signature(s) below, the undersigned undertakes, on behalf of Proposer’s Equity Members, and by such signature, Proposer’s Equity Members each assume, joint and several liability to IFA for the entire stated amount (in the case of a Proposal Letter of Credit) or penal sum (in the case of a Proposal Bond) of the Proposal Security.

If selected by IFA, Proposer agrees to do the following or to cause the Developer to do the following: (a) if requested by IFA in its sole discretion, enter into good faith negotiations with IFA regarding the terms of the Agreement with IFA in good faith and in accordance with the requirements of the RFP, (b) enter into the Agreement without varying or amending its terms (except for modifications agreed to by IFA, in its sole discretion) and satisfy all other conditions to award of the Agreement; and (c) perform its obligations as set forth in the ITP and Agreement, including compliance with all commitments contained in this Proposal.

The following individual(s) is/are authorized to enter into negotiations with IFA on behalf of the Proposer and Developer in connection with this RFP, the Project and the Agreement:
[insert names]

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Executive Summary
- Technical Proposal, including Proposer Information, Certifications and Documents, and Proposal Security
- Financial Proposal

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

Addenda issued:

November 26, 2013

December 20, 2013

[REDACTED]

Responses issued

November 26, 2013

December 20, 2013

[REDACTED]

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the Website and the FTP Site, the Addenda and responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by Developer and do not contain internal inconsistencies, errors or omissions; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted a Reasonable Investigation in preparing this Proposal; and that it has notified IFA in writing of any

deficiencies or errors in or omissions from any RFP Documents or other documents provided by IFA and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the SOQ previously delivered to IFA (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such SOQ, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer understands that IFA is not bound to award the Agreement to the best financial Proposal or any Proposal that IFA may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any stipend that Department may pay Proposer in accordance with the Stipend Agreement and ITP Section 6.3. Proposer acknowledges that it has executed the Stipend Agreement and, in doing so, has irrevocably elected to accept the stipend offered for such work product.

Subject to Proposer's rights under the Public Records Act, Proposer consents to IFA's disclosure of its Proposal pursuant to Indiana Code 8-15.5-4-6(c) and Indiana Code 8-15.5-4-13 to any Persons, in IFA's sole discretion, after award and execution of the Agreement by IFA and acknowledges and agrees to the provisions and deadlines set forth in Section 1.8.4. Proposer acknowledges and agrees to the disclosure terms of the ITP and that observers and individuals may conduct reviews on behalf of PABs with respect to the successful Proposal. Proposer expressly waives any right to contest such disclosures.

Proposer agrees that IFA will not be responsible for any errors, omissions, inaccuracies, inconsistencies or incomplete statements in this Proposal.

Proposer acknowledges the procurement protest procedures set forth in Section 7 of the ITP and agrees that if it files a protest of this procurement or award of an Agreement hereunder and that protest is denied or is otherwise unsuccessful, Proposer shall forfeit its Proposal stipend and shall be liable to IFA for IFA's costs incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by IFA as a consequence of the protest.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Indiana.

Proposer's business address:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

[insert appropriate signature block from following pages]

1. Sample signature block for corporation or limited liability company:

[Insert the Proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for consortium, partnership or any other form of joint venture:

[Insert the Proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

3. Sample signature block for attorney in fact:

[Insert the Proposer's name]

By: _____

Print Name: _____

Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

- A. If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation. If the Proposer is a limited liability company, enter the state or country of organization.
- B. Describe in detail the legal structure of the Proposer/Developer and Equity Members.
1. If Proposer/Developer/Equity Member is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for the Proposer/Developer/Equity Member and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.
 2. If Proposer/Developer/Equity Member is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.
 3. If Proposer/Developer/Equity Member is a consortium, joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Proposer/Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.
 4. If Proposer/Developer/Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Proposer/Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual. Attach evidence to the

Proposal Letter, in respect of the Proposal, and to each letter required under the Proposal Letter that the person signing has authority to do so. If any entity is not yet formed, so state and indicate that these documents will be provided as required by the ITP. For purposes of clarity, Proposer may append to the Proposal Letter a letter from each person signing the Proposal that such person has the authority to do so, which shall suffice for the purposes of the requirements set forth in this Section B.4.

5. If an Equity Member is an investment fund, acting by and through its fund manager, the incorporation, formation and organizational documents of the fund manager shall satisfy the requirements for organizational documents under this Section B.

For purposes of this Section B, the term “organizational documentation” in respect of an Equity Member shall mean such entity’s certificate of formation/articles of incorporation/certificate of partnership/joint venture agreement, or equivalent charter documentation; provided, further, that such entity shall provide its partnership agreement/operating agreement/bylaws/equivalent joint venture or investment fund internal governing organizational documentation prior to commercial close as required by the ITP.

- C. With respect to authorization of execution and delivery of the Proposal and validity thereof, if Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If Proposer is a consortium or other form of joint venture, such evidence shall be in the form of a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If Proposer is a consortium, joint venture or a partnership, the Proposal must be executed by all consortium or joint venture members or all general partners, as applicable.
- D. Developer’s partnership agreement, limited liability company operating agreement, charter or joint venture agreement, as applicable, must include an express provision satisfactory to IFA, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners, members or shareholders, as applicable, no joint venture member, partner, member or shareholder, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers should submit the applicable agreement to IFA and identify on a cover page where in the agreement the provision can be found. If Developer is not yet formed, provide draft organizational documents and indicate where the provision is found.

FORM B-1

IDENTIFICATION OF PROPOSER AND EQUITY MEMBERS

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, e- mail)	ROLE OF ENTITY IN PROPOSER ORGANIZATION	Indiana Contractor License (if applicable)	Description of Work/Services To Be Performed By Entity (if applicable)

The above information is true, correct and accurate.

Executed _____, 2014.

(Signature)

(Name Printed)

(Title)

(Proposer)

FORM B-2

INFORMATION ABOUT PROPOSER ORGANIZATION

1.0 Name of Proposer: _____
Name of Developer: _____

2.0 Type of entity: Proposer: _____
Developer: _____

3.0 Proposer's address: _____

Telephone

Facsimile

4.0 How many years (measured from the date of issuance of the RFQ) has Proposer, Developer and each Equity Member been in its current line of business and how many years (measured from the date of issuance of the RFQ) has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name

5.0 Under what other or former names has Proposer, Developer and Equity Members operated?

Proposer: _____

_____: _____

_____: _____

_____: _____

_____:

- 6.0 Proposer shall review its SOQ previously submitted to IFA and list below any Key Personnel and other key staff members and their relevant experience that have been approved by IFA since the submission of the SOQ. Except as updated by the following information, Proposer's SOQ is hereby incorporated as if set forth in full and Proposer represents and warrants to IFA that the information set forth in the SOQ, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information or omit to state a material fact necessary in order to make the information not misleading. Attach separate sheets if necessary.

- 7.0 List all Indiana licenses held by Proposer, Developer and any Equity Member. Attach copies of all Indiana licenses. Attach a separate sheet if necessary.

- 8.0 The Proposal shall include the following information regarding the Surety/Bonding companies or banking institutions committing to provide the Payment and Performance Bonds in accordance with Section 17.2 of the Agreement:

- (a) Name and address of bonding company(ies) that will provide the surety bonds required by the Agreement (must be an Eligible Surety)
- (b) Whether or not the listed bonding company has defaulted on any obligation within the past ten years (measured from the date of issuance of the RFQ), and, if so, a description and details of the circumstances and the outcome of such default.
- (c) If the performance security is in the form of a letter of credit, the name of the bank or financial institution issuing the letter of credit (must be an Eligible Financial Institution).

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed _____, 2014.

(Signature)

(Name Printed)

(Title)

(Proposer)

FORM B-3

INFORMATION ABOUT MAJOR PARTICIPANTS AND IDENTIFIED CONTRACTORS

[This form will be used to provide information about any Major Participants (excluding Equity Members that do not fall into categories (a) through (d) of the definition of Major Participants) and any other Contractors that have been identified as of the Proposal Due Date.]

Proposer Name _____

Name of Entity and Contact Information (address, representative, phone, fax, e-mail)	Address of Head Office	Indiana Contractor License (if applicable)	Description of Work/Services To Be Performed By Entity (if applicable)	Major Participant (Y/N)

If any Major Participant or Contactor identified above is a single purpose entity formed for the Project, complete the following matrix for each such single purpose entity:

Name of major Participant/Contractor	Form of Entity (partnership, joint venture, LLC, corporation, etc.)	Entities with Ownership Interest	Percentage of Ownership Interest
Ex: Contractor AB, JV	Joint venture	Contractor A	60%
		Contractor B	40%

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants resulting in an agreement to enter into any Contracts with respect to the Project, except for those listed above. Proposer agrees that it will follow applicable PPA Documents requirements with respect to Contractors. Proposer further declares that it has carefully examined the RFP Documents and acknowledges that IFA has determined that a Proposer's efforts to obtain participation by Contractors could reasonably be expected to produce 11% DBE participation of the Total Project Capital Cost for the professional services and construction portions of the Work.

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed _____, 2014.

(Signature)

(Name Printed)

(Title)

(Proposer)

FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: _____

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: _____

1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection.

The term "**affiliate**" means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years (measured from the date of issuance of the RFQ) have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years (measured from the date of issuance of the RFQ) in North America.

Within the past ten years (measured from the date of issuance of the RFQ), has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

- a) Been disqualified, removed, debarred or suspended from performing work for the federal government, any state or local government, or any foreign governmental entity?

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

- b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

- c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes ____ No ____

- e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

- f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

- g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

- h) Been indicted or convicted of any other felony or serious misdemeanor?

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

- i) Been found liable in a civil suit or found guilty in a criminal action for making any false claim or other material misrepresentation to a public entity?

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

- j) Performed or managed a construction project that involved repeated or multiple failures to comply with safety rules, regulations, or requirements?

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

- k) If not previously answered or included in a prior response on this form, been involved in any proceeding, claim, matter, suit, indictment, etc. currently pending against the firm that could result in the firm being found liable, guilty or in violation of the matters referenced above and/or subject to debarment, suspension, removal or disqualification by the federal government, any state or local government, or any foreign governmental entity?

If yes, please explain the circumstances. If no, so state.

Yes ____ No ____

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed _____, 2014.

(Signature)

(Name Printed)

(Title)

(Name of Organization)

FORM D

**INDUSTRIAL SAFETY RECORD
FOR EQUITY MEMBERS AND MAJOR PARTICIPANTS**

PROPOSER'S NAME: _____

NAME OF TEAM MEMBER: _____

ROLE OF TEAM MEMBER: _____

This form shall be filled out separately and provided for each Equity Member and Major Participant of Proposer's team that has undertaken work in the United States and will perform or supervise construction and installation Work for the Project, and including information for any entity affiliated with such team member that has undertaken work in the United States. Information must be provided with regard to all construction, installation and integration work undertaken in the United States (including the State of Indiana) by the entity, with separate statistics relative to the State of Indiana. For team members that are members of joint ventures, information as to the joint venture shall be provided as though 100% of the results were for the listed participant. Proposer may be requested to submit additional information or explanation of data which IFA may require for evaluating the safety record.

For purposes of this form, the term "affiliated" means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years (measured from the date of issuance of the RFQ) have engaged in business or investment in the United States. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in the United States.

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
1) Total Hours Worked (in thousands) Nationwide: Indiana:					
2) Number of fatalities:* Nationwide: Indiana:					
3) Number of lost workdays:* Nationwide: Indiana:					
4) Number of lost workdays* cases: Nationwide: Indiana:					
5) Number of injury/illness* cases: Nationwide: Indiana:					
6) Number of days of* restricted work activity due to injury/illness: Nationwide: Indiana:					

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
7) Incidence Rate** Lost Workday Cases Nationwide: Indiana: Days Lost Nationwide: Indiana:					
8) Worker's Compensation Experience Modifier Nationwide: Indiana:					

* The information required for these items is the same as required for columns 3 to 6, Code 10, Log and Summary of Occupational Injuries and Illnesses, OSHA Form 200.

** Incidence Rate = No. Injuries (Cases) x 200,000 / Total Hours Worked

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury under the laws of the State of Indiana that the information is true and accurate within the limitation of those records.

Name of Company (Print)

Signature

Address

Title

City

State and ZIP Code

Telephone Number

(or international address, if applicable)

FORM E

PERSONNEL WORK ASSIGNMENT FORM AND COMMITMENT OF AVAILABILITY

Name of Proposer: _____

Key Personnel Assignment	Name of Individual Assigned and Employer
Project Executive (if different than the Project Manager)	
Project Manager	
Deputy Project Manager(s)	
Financial Director (responsible for management and control of the Project finances)	
Public Information Coordinator	
DBE Coordinator	
Lead Engineer	
Engineer of Record	
Construction Manager	
Quality Manager	
Construction Quality Manager	
Design Quality Manager	
Utility Manager	
Safety Manager	
Environmental Compliance Manager	
Operations and Maintenance Manager	
Karst Specialist	

Erosion and Sediment Control Manager	
Maintenance of Traffic (MOT) Manager.	

Proposer's Name: _____ (the "Proposer")

Employer's Name: _____ (the "Employer") *[Note: duplicate as necessary to ensure all employers execute]*

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the Project and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: _____

Signed: _____

Printed Name: _____

Title: _____

Employer's Name: _____

Date: _____

FORM F

NON-COLLUSION AFFIDAVIT

STATE OF _____)
)SS:
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that:

- A. _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal.
- B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of Proposer or any other Proposer, or to fix any overhead, profit or cost element (including the Maximum Availability Payment or its components) included in the Proposal, or of that of any other Proposer, or to secure any advantage against IFA or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.
- C. Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

(Signature)

(Name Printed)

(Title)

(Signature)

(Name Printed)

(Title)

Subscribed and sworn to before me this ____ day of _____, 2014.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

[Duplicate or modify this form as necessary so that it accurately describes (i) the entity making the Proposal and so that it is signed by and on behalf of all partners, members, joint venture members, and (ii) Equity Members of the Proposer.]

FORM G

BUY AMERICA CERTIFICATION

(To be signed by authorized signatory(ies) of Proposer)

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) the following with regard to the Project:

- a. Proposer shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Agreement only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the design-build contract price.
- b. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.
- c. At Proposer's request, IFA may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by IFA.

Date: _____

Signature: _____

Title: _____

Proposer's Name: _____

FORM H
DBE CERTIFICATION

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

The following goal for participation by Disadvantaged Business Enterprises is established for professional services and construction work on the Project.

DBE

11%

DBE Certification

By signing the Proposal, the Proposer certifies that (1) the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Proposer will provide a good faith effort to substantiate the attempt to meet the goal; and (2) if awarded the Agreement, the Developer will submit a final DBE Performance Plan meeting the requirements set forth in Section 7.10.3 of the Agreement and the DBE Special Provisions attached as Exhibit 7 to the Agreement.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Bond provided by the Proposer will become property of IFA and the Proposer will be precluded from participating in any reprocurement of the Agreement for the Project.

[name]

[title]

FORM I

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Proposer's attention is directed to 23 CFR Part 636, Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposers are advised that in accordance with Section 2.10.2 of the Instructions to Proposers, certain firms will not be allowed to participate on any Proposer's team for the Project because of their work with IFA in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to Section 636.116(2)(v)

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Developer, the Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. If no disclosure is necessary, indicate "None".

Proposer should disclose (a) any current contractual relationships with IFA, (b) any past, present, or planned contractual or employment relationships with any IFA member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any IFA member, officer, or employee if Proposer is awarded the contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer should also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

_____, 2014
Date

FORM J
MAP PROPOSAL FORM

Base MAP as of Proposal Due Date: \$_____

Estimate of Maximum Availability Payment at date of Baseline Substantial Completion:
\$_____ (for reference purposes only and not for evaluation)

Date: _____, 2014

Proposer: _____

Signature: _____

Title: _____

FORM K
PROPOSAL SECURITY
(Separate Documents)

FORM K-1
PROPOSAL BOND

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the _____
[NOTE: insert name of Proposer as the Principal and delete this bracketed text], as Principal and _____, as Surety or as Co-Sureties, each a [corporation] duly organized under the laws of the state indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Indiana, are hereby jointly and severally held and firmly bound unto the Indiana Finance Authority ("IFA"), in the sum of \$10,000,000 **[NOTE: insert amount and delete this bracketed text-amount must be \$10,000,000 million if a single bond is provided; multiple bonds in lesser amounts may be provided if the sum equals \$10,000,000 million]** (the "Bonded Sum"). This Bonded Sum reflects a portion of the total amount payable to IFA by the Principal if it is identified as the apparent highest ranked proposer or awarded a contract based on its Proposal for the development, design and construction of the Project (the "Project"), for the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is herewith submitting its Proposal to develop, design, construct, finance, operate and maintain the Project through a Public-Private Agreement (the "Agreement"), which Proposal is incorporated herein by this reference and has been submitted pursuant to IFA's Request for Proposals dated as of October 15, 2013 (as amended or supplemented, the "RFP"), in accordance with the Instructions to Proposers ("ITP") included in the RFP (initially capitalized terms not otherwise defined herein shall have the meaning set forth in the ITP);

NOW, THEREFORE:

1. The condition of this bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to IFA as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the "Co-Sureties") of notice of such forfeiture from IFA:

(a) Principal's receipt of written notice from IFA that either (i) no Agreement for the Project will be awarded by IFA pursuant to the RFP, or (ii) IFA has awarded an Agreement for the Project, has received the executed Agreement and other required documents, and does not intend to award the Agreement to Principal;

(b) Except as expressly provided otherwise in the RFP and/or agreed to by IFA in writing, Principal's performance of its obligations to achieve commercial close by the applicable deadline, as such deadline may be extended in accordance with the RFP; or

(c) if IFA has not previously delivered notice of forfeiture hereunder, failure of IFA to notify Principal that it is the Preferred Proposer within 180 days after the Proposal Due Date.

2. The Principal and the Surety or Co-Sureties hereby agree to pay to IFA the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after occurrence of any of the following events:

(a) Principal withdraws any part or all of its Proposal prior to the time allowed for execution of the Agreement under the ITP, as such time may be extended (including withdrawing, repudiating or otherwise indicating in writing that it will not meet any commitment made in its Proposal), without IFA's consent;

(b) Principal is selected for negotiations and fails to engage in good faith negotiations with IFA as set forth in ITP Section 5.10.1;

(c) Principal fails to achieve commercial close by the deadline set forth in the ITP, unless such failure is excused in accordance with ITP Section 4.7(d)(i)-(viii);

(d) Principal is the Preferred Proposer and fails to satisfy the conditions to award and execution of the Agreement, including, without limitation, providing the documents required under ITP Section 5.11.1 and ITP Section 6.1.1 by the deadline set forth in the ITP, without excuse under ITP Section 4.7;

(e) The Preferred Proposer fails to provide the access to or fails to participate in the review of the Escrowed Materials as set forth in ITP Section 5.11.3;

(f) Principal fails to release its Core Lender(s), Lead Underwriter(s) and Private Placement Agent from exclusivity pursuant to Section 2.13; or

(g) Principal withdraws, repudiates or otherwise indicates prior to execution of the Agreement that it will not meet certain commitments made in its Proposal.

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate IFA for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of IFA's transportation improvement program, including with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that IFA would incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order

to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this bond:

(a) This Proposal Bond shall not be subject to forfeiture in the event that IFA disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.

(b) If suit is brought on this bond by IFA and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by IFA in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.

(c) Any extension(s) of the time for award of the PPA that Principal may grant in accordance with the PPA or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.

(d) Correspondence or claims relating to this bond should be sent to Surety at the following address:

SIGNED and SEALED this _____ day of [REDACTED], 2014

Principal

By:_____

Co-Surety

By:_____

Attorney in Fact

By:_____

Co-Surety

By:_____

Attorney in Fact

By:_____

By:_____

Co-Surety

By:_____

Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

FORM K-2

Form of Letter of Credit (Proposal)

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

PLACE FOR PRESENTATION OF DRAFT:(Name and Address of Bank/Branch)

APPLICANT:

BENEFICIARY: Indiana Finance Authority
One North Capital, Suite 900
Indianapolis, IN 46204

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT: Ten Million Dollars (\$10,000,000) ***[Note: The amount of a single letter of credit may be less, on the condition that Proposer provides more than one letter of credit that total \$10,000,000 in the aggregate]***

EXPIRATION DATE: _____ ***[Insert date that is 180 days after the Proposal Due Date and delete this bracketed text]***

The Issuer hereby issues this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of the Indiana Finance Authority ("IFA"), for any sum or sums up to the aggregate amount of **Ten Million United States Dollars (US\$10,000,000)**, available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. Be accompanied by a certificate, executed by an authorized signatory of the Beneficiary, stating that:
 - (a) the person signing the certificate is an authorized signatory of the Beneficiary; and
 - (b) "This drawing is due to _____(Applicant's Name)_____'s failure to perform certain obligations under the Instructions to Proposers included in the Request for Proposals to develop, design, construct, finance, operate and maintain the Project issued on October 15, 2013 by the Indiana Finance Authority."

All drafts will be honored if presented to _____(Bank/Branch - Name & Address)_____ on or before _____(Expiration Date)_____.

This Letter of Credit shall be canceled on the earlier of (i) the stated "Expiration Date" (above) and (ii) the date of receipt by the Issuer of a letter, signed by the Beneficiary, stating that this Letter of Credit may be canceled and accompanied by the original Letter of Credit and any original amendments(s), (if any).

This Letter of Credit is subject to the rules of the "International Standby Practices" ISP98. For matters not addressed by ISP98, this Letter of Credit shall be governed by New York law.

Issuer:

By: _____ (Authorized signature of Issuer)

FORM L
ESCROW AGREEMENT

[see attached]

ESCROW AGREEMENT – FORM L
(I-69 Section 5 Project)

THIS ESCROW AGREEMENT (this “Agreement”) is made and entered into as of this [REDACTED], 2014 (the “Effective Date”), by and between [REDACTED], a [REDACTED] (“Depositor”), and [REDACTED], a [REDACTED] (“Escrow Agent”), to and for the benefit of the Indiana Finance Authority, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the State of Indiana (“IFA”). Each of Depositor, IFA and Escrow Agent are a “Party” (and collectively, the “Parties”), as context may require. Initially capitalized terms not defined herein shall have the meanings set forth in the RFP.

RECITALS

A. IFA has issued a Request for Proposals, dated as of October 15, 2013, (as amended, the “RFP”) for the I-69 Section 5 Project (the “Project”).

B. Depositor wishes to submit to IFA a proposal (the “Proposal”) in response to the RFP.

C. In accordance with Section 4.4.3 of the Instructions to Depositors, as amended (“ITP”), Depositor is submitting certain materials (as more fully set forth in Section 4.4.3 of the ITP and Exhibit A to this Agreement, the “Escrowed Materials”) to Escrow Agent to be held in a secure location and available for review by IFA as specified herein.

D. Depositor wishes to employ the services of Escrow Agent to act as the escrow holder with regard to the Escrowed Materials, and future deposit of additional Escrowed Materials, for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, (i) the Parties hereby agree as follows:

AGREEMENT

1. Designation of Authorized Representatives. Depositor hereby designates [REDACTED] as its authorized representative for purposes of this Agreement. IFA hereby designates [REDACTED] as its authorized representative for purposes of this Agreement. IFA may change its authorized representative at any time by providing written notice to Depositor and Escrow Agent. Depositor may change its authorized representative at any time by providing written notice to IFA and Escrow Agent.

2. Deposit; No Liens.

(a) Depositor hereby deposits with Escrow Agent the Escrowed Materials, Line 1 of Exhibit A, consisting of [REDACTED] ([REDACTED]) separately sealed boxes, each labeled pursuant to

Section 4.4.3 of the ITP and numbered serially “1 of [REDACTED],” etc. (the “Initial Escrowed Materials”).

(b) Escrow Agent hereby acknowledges receipt of the Initial Escrowed Materials, and agrees to hold the Initial Escrowed Materials and all other Escrowed Materials, as and when delivered to Escrow Agent, in safekeeping under the terms and conditions of this Agreement.

(c) Escrow Agent shall provide a signed delivery receipt of the Escrowed Materials promptly upon Depositor’s request evincing receipt of any Escrowed Materials.

(d) Additional information, documents or other materials may be added to the Escrowed Materials pursuant to the requirements identified in the ITP, RFP or the PPA Documents (as such latter term is defined in the PPA), including pursuant to Sections 23.5 and Section 23.6 of the PPA. In connection with deposit of such additional information, documents or other materials, Escrow Agent and Depositor shall prepare an amended Exhibit A, describing such information, documents or materials (to include indicia of quantity, substantially in the form of this Section 2(a)), as additional lines to Exhibit A. Depositor shall sign each proposed amendment Exhibit A, and such signature shall constitute Depositor’s representation and warranty that such proposed-amended Exhibit A is true, accurate and complete. All such additional information, documents or other materials, if deposited by Depositor pursuant to the PPA Documents, shall conform to the requirements thereunder as to content and manner of submission. Upon IFA’s written approval, which shall not be unreasonably withheld, conditioned or delayed, such amended Exhibit A shall become part of this Agreement, and upon the deposit, such additional information, documents or other materials shall be, and deemed to be, “Escrowed Materials” for purposes of this Agreement.

(e) All Escrowed Materials shall be delivered by Depositor to Escrow Agent free and clear of any lien or encumbrance, except as permitted by the PPA, and Depositor agrees that it will not pledge, hypothecate or otherwise encumber any of the Escrowed Materials or grant any option or create any other right with respect thereto.

3. Escrow Agent Covenants

(a) Manner of Holding of Escrowed Materials. During the Term:

(i) Escrow Agent shall hold the Escrowed Materials in a designated area on the premises of Escrow Agent located at [REDACTED], Indianapolis, Indiana, or such other address within a ten-mile radius of 1 North Capitol Ave., Ste. 900, Indianapolis, Indiana, as is specified to IFA and Depositor in writing not later than fifteen (15) business days prior to the time such Escrowed Materials are to be relocated to such new location.

(ii) Escrow Agent shall place the Escrowed Materials in a segregated vault or such other secure location such that the Escrowed Materials shall be stored in an area that is locked at all times. Escrow Agent shall maintain the Escrowed Materials in the strictest confidence.

(iii) Escrow Agent shall make the Escrowed Materials available for joint review by IFA and Depositor during regular business hours (Monday through Friday, 8 AM to 5 PM, ET), upon receipt of 24-hour advanced written notice from IFA, or, upon receipt of 48-hour advanced written notice, at a time other than during regular business hours.

(iv) Escrow Agent shall allow access to the Escrowed Materials only to those individuals identified by Depositor's and IFA's Authorized Representatives as having need for access. Such access shall include the ready ability of IFA to temporarily install and run computerized programs, applications, data and electronic files that are included in the Escrowed Materials on a stand-alone secure personal computer. Escrow Agent shall have no duty to supply any computers, printers or other devices necessary to access, review or verify the Escrowed Materials. In no event shall IFA, Depositor or any person or entity selected or appointed by them have the right to access, connect to or otherwise use any computer or other network of Escrow Agent, other than to have access to electricity.

(v) No access shall be given to any representative of Depositor without the presence of an IFA-authorized Person. No access shall be given to any representative of IFA without the presence of a Depositor-authorized Person. No third party, including the employees of Escrow Agent, shall be allowed access to the Escrowed Materials. For purposes of clarity, the Cost and Pricing Data of any of Depositor's "Contractors" (as such term is defined in the PPA Documents) shall only be available for review jointly by Depositor, IFA and the relevant Contractor whose Cost and Pricing Data is the subject of the review, and Cost and Pricing Data shall only be available in connection with consideration of the Project Schedule, Relief Events, Change Orders, Termination Compensation and resolution of Claims or Disputes under the PPA Documents (as such terms are defined under the PPA Documents); provided, however, if the Depositor or any Contractor refuses to participate in any review or does not respond to notice from IFA as set forth in Section 3(a)(iii) above, review may be undertaken by IFA without the Depositor or Contractor..

(b) Escrow Agent shall use its best efforts to ensure the security of the Escrowed Materials, and Escrow Agent agrees to perform its duties hereunder with the same degree of care exercised by Escrow Agent in connection with its own property, in no case less than a reasonable standard of care;

(c) Escrow Agent, for the Term, shall not have nor obtain a financial or other interest in, or relationship with, Depositor, Depositor's team members identified to Escrow Agent, or either of their respective Equity Members, principals or officers, except as a depository for accounts or escrowed documents.

4. Intellectual Property-Related Provisions.

(a) Prior to each delivery of Intellectual Property to Escrow Agent, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Intellectual Property are written or stored. Additionally, for purposes of Depositor's obligations under Section 2(d), Depositor shall list each such tangible media by the item label description, the type of media and the quantity, and the identity of the owner of the Intellectual Property (whether Depositor or a software supplier).

(b) Within three business days after Escrow Agent receives Intellectual Property into the Escrowed Materials, Escrow Agent shall conduct a deposit inspection by visually matching the labeling of the tangible media containing the Intellectual Property to the item descriptions and quantity listed on the modified Exhibit A. In addition to the deposit inspection, IFA may elect to cause a verification of the Intellectual Property in accordance with Section 4(d) below.

(c) Promptly upon completion of each deposit inspection, if Escrow Agent determines that the labeling of the tangible media matches the item descriptions and quantity on the modified Exhibit A, Escrow Agent shall date and sign a copy of the amended Exhibit A and mail a copy thereof to Depositor and IFA. If Escrow Agent determines that the labeling does not match the item descriptions or quantity on the modified Exhibit A, then Escrow Agent shall (a) note the discrepancies in writing on the proposed-amended Exhibit A; (b) date and sign the proposed-amended Exhibit A with the exceptions noted; and (c) mail a copy of the proposed-amended Exhibit A to Depositor and IFA. Escrow Agent's acceptance of the deposit occurs upon the signing of the proposed-amended Exhibit A by Escrow Agent. Delivery of the signed proposed-amended Exhibit A to IFA is IFA's notice that the Intellectual Property have been received and accepted by Escrow Agent.

(d) IFA shall have the right, without cost to Depositor or the Escrow Agent, to cause a verification of any Intellectual Property in the Escrowed Materials. IFA shall notify Depositor and Escrow Agent of IFA's request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Escrowed Materials. If a verification is elected after the Escrowed Materials have been delivered to Escrow Agent, then only IFA, or at IFA's election an independent person or company selected and supervised by IFA and approved by Depositor, may perform the verification. Such verification shall determine the relevance, completeness, currency, accuracy and functionality of the Intellectual Property in the Escrowed Materials. Any verification shall take place either at Escrow Agent's location or an agreed upon location during Escrow Agent's regular business hours. If IFA elects to have an independent person or company perform the verification, then such entity shall adhere to the confidentiality requirements of the PPA Documents.

5. Release of Escrowed Materials.

(a) Escrow Agent shall release the Escrowed Materials deposited hereunder:

(i) to Depositor, only upon receipt by Escrow Agent of a certificate signed by IFA's Authorized Representative certifying that IFA has determined not to enter into a contract with Depositor and has executed a Public-Private Agreement ("PPA") with another Person, in which event the Escrowed Materials shall be released as directed by Depositor;

(ii) to Depositor, only upon receipt by Escrow Agent of a certificate signed by IFA's Authorized Representative certifying that IFA has decided to reject all proposals (including the Proposal by Depositor) and to terminate the procurement of the Project, in which event the Escrowed Materials shall be released as directed by Depositor;

(iii) to IFA, upon receipt by Escrow Agent of a certificate signed by IFA's Authorized Representative certifying that Depositor has suffered an Escrow Default;

(iv) pursuant to joint instructions delivered to Escrow Agent, only if such joint instructions are signed by the authorized representatives of Depositor and IFA directing release of the Escrowed Materials, in which event the Escrowed Materials shall be released as provided therein.

(b) If IFA and Depositor enter into a PPA, the Escrowed Materials shall continue to be held by Escrow Agent for the Term, or until Escrow Agent receives joint instructions from the authorized representatives of Depositor and IFA directing the Escrowed Materials to be transferred to (a) separate escrow agent(s), pursuant to either or both of a separate Intellectual Property Escrow (as defined in the PPA) and a Financial Escrow (as defined in the PPA). in each case subject to escrow agreements in form and substance prescribed by IFA, in its sole discretion, or (b) the co-located project office and maintained in accordance with the terms and conditions set forth in the PPA.

6. Patriot Act Information. Prior to or concurrent with its delivery of its Escrowed Materials and original copies of this Escrow Agreement to Escrow Agent in accordance with Section 4.4.2 of the ITP, Depositor shall provide all Patriot Act information required by Escrow Agent; provided, however, that such requirement shall not apply to Depositor if it is a publicly-traded company subject to SEC oversight.

7. Rights of Escrow Agent. If (i) conflicting demands are made or notices served upon Escrow Agent with respect to this Agreement, or (ii) if a dispute should arise between IFA and Depositor as to whether any of the Escrowed Materials should be released or whether a Person should have access to the Escrowed Materials pursuant to the terms of this Agreement, then Escrow Agent shall refuse to deliver (or to provide such access to) the Escrowed Materials, except upon written directions from both IFA and Depositor, and Escrow Agent shall have the absolute right at its election to do any of the following, if directions resulting from resolution of such conflicting demands or dispute is not forthcoming within sixty (60) days of Escrow Agent's original receipt of such conflicting demands or knowledge of such dispute:

(a) withhold and stop all further proceedings in, and performance of this Agreement (excepting its obligation to hold the Escrow Materials in safekeeping in accordance with Sections 3(a) and (b));

(b) file a suit in interpleader in the Marion County, Indiana Circuit/Superior Court and obtain an order from such court requiring the Parties to interplead and litigate in such court their several claims and rights amongst themselves; or

(c) deliver all Escrowed Materials with seals intact to another location meeting the requirements of Section 3 above, to be selected by Depositor within 30 days after Escrow Agent delivers notice thereof to IFA and to Depositor, and as such location is approved by IFA, and upon obtaining a judgment by the court or an order binding the parties, shall be relieved of further duties and obligations hereunder.

8. Fees. Depositor shall pay all fees and expenses in connection with Escrow Agent's obligations under this Agreement, as set forth on Exhibit B attached hereto.

9. Liability of Escrow Agent.

(a) Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for either of Depositor or IFA or any other Person. Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document, including without limitation any Proposal or the PPA (except with respect to incorporations thereof herein). This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of Escrow Agent shall be inferred from the terms of this Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

(b) Escrow Agent shall have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any notices, requests, securities, checks, or other documents or instruments submitted to it in connection with its duties hereunder, in each case, which it in good faith believes to be genuine and provided in accordance with the provisions hereof. Escrow Agent shall be entitled to deem the signatories of any documents or instruments submitted to it hereunder as being those purported to be authorized to sign such documents or instruments on behalf of Depositor or IFA, and shall be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind, which it in good faith believes to be genuine and provided in accordance with the provisions hereof.

10. Indemnification of Escrow Agent. Escrow Agent shall be, and hereby is, indemnified and saved harmless by Depositor from and against any and all losses, liabilities, damages, costs and expenses, including without limitation attorneys' fees and expenses, which may be incurred by it (a) as a result of its acceptance of the Escrowed Materials, (b) arising from the performance of its duties hereunder or (c) in connection with any action between IFA and Depositor arising out of or in connection with this Agreement, in each case, unless such losses, liabilities, damages, costs and expenses shall have been finally adjudicated to have primarily resulted from the bad faith, gross negligence or willful misconduct of either Escrow Agent or IFA, and such indemnification shall survive the resignation or removal of Escrow Agent or the termination of this Agreement. For purposes of clarity, the exercise by IFA of any of its rights under this Agreement shall not be, nor be deemed to be, an act or omission in bad faith, gross negligence or willful misconduct.

11. Resignation of Escrow Agent. Escrow Agent may resign as such following the giving of ninety (90) calendar days prior written notice to Depositor and IFA. In such event, the duties of Escrow Agent shall terminate ninety (90) days after receipt of such notice (or as of such earlier date as may be mutually agreeable); and Escrow Agent shall then deliver the balance of

the Escrowed Materials then in its possession to a successor escrow agent as shall be appointed by Depositor and acceptable to IFA, in its sole discretion, as evidenced by a written notice filed with Escrow Agent. If Depositor has failed to appoint a successor or IFA has failed to accept such successor escrow agent, or both, prior to the expiration of ninety (90) calendar days following receipt of the notice of resignation, Escrow Agent may petition the Marion County, Indiana Circuit/Superior Court for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the Parties. For purposes of clarity, Escrow Agent's duties shall persist, notwithstanding its resignation, until Depositor and IFA enter into a subsequent escrow agreement with the successor escrow agent, or until such date as is otherwise expressly ordered by such court.

12. Successor Escrow Agent Entity. Any banking association or corporation into which Escrow Agent may be merged, converted or with which Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Escrow Agent shall be, at the effective date of such merger, conversion, consolidation, a party to this Agreement, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the Parties, anything herein to the contrary notwithstanding. Any banking association or corporation to which all or substantially all of the corporate trust business of Escrow Agent shall be sold or otherwise transferred, shall succeed to all Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the Parties, anything herein to the contrary notwithstanding.

13. Court Orders. If any Escrowed Materials is attached, garnished or levied upon by any court order, or the delivery thereof is stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrowed Materials deposited under this Agreement, then Escrow Agent shall provide IFA and Depositor with written notice within 10 days after the occurrence of such event, or at such earlier time as not to prejudice either of IFA's or Depositor's rights hereunder. Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and if Escrow Agent obeys or complies with any such writ order or decree, then it shall not be liable to any of the Parties or to any other Person by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

14. Representations and Warranties.

(a) Depositor represents and warrants to Escrow Agent and to IFA that:

(i) Depositor is a [REDACTED], duly organized under the laws of, and in good standing with, the [State]/[Commonwealth] of [REDACTED], qualified to conduct business in Indiana, validly existing and in respect of which no action relating to insolvency, liquidation or general suspension of payments by Depositor to its creditors generally has, to the knowledge of Contractor, been taken;

(ii) Depositor has all necessary power and authority to conduct its business, own its properties and to execute, deliver and perform its obligations under this Agreement;

(iii) The execution, delivery and performance of this Agreement by Depositor has been duly authorized by all necessary action on the part of Depositor and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Depositor or any other party to any other agreement with Depositor or any of its Equity Members;

(iv) This Agreement has been duly executed and delivered by Depositor and constitutes the legal, valid, binding and enforceable obligation of Depositor;

(v) None of the execution, delivery and performance of this Agreement, the consummation of the transactions herein contemplated, or compliance with the terms and provisions hereof, shall conflict with or result in a violation or breach of the terms, conditions or provisions of, or require any consent under, the organizational documents of Depositor, any applicable Law, any agreement, contract, indenture or other instrument to which Depositor, or any of its Equity Members, is a party or by which it or its assets are bound or to which it or its assets are subject, or constitute a default under any such agreement or instrument; and

(vi) Neither Depositor nor any member of its team has a financial or other interest in, or relation with, Escrow Agent or its principals or officers, except that Escrow Agent may be the depository for accounts or escrowed documents maintained by such entities.

(b) Escrow Agent represents and warrants to Depositor and IFA that:

(i) Escrow Agent does not have an interest in the Escrowed Materials and has possession thereof only as escrow holder in accordance with the terms of this Escrow Agreement;

(ii) Escrow Agent is not a "holder" of any of the Escrowed Materials as that term is used under the Uniform Commercial Code of the State of Indiana, and, as such, Escrow Agent acknowledges and agrees that the Escrowed Materials may not be subject to any existing or hereafter filed and perfected security interests in any of the property of Escrow Agent held by any now or hereafter existing creditors of Escrow Agent; and

(iii) Escrow Agent does not have a financial or other interest in, or relationship with, Depositor, Depositor's team members identified to Escrow Agent, or either of their respective Equity Members, principals or officers, except as a depository for accounts or escrowed documents.

15. Escrow Defaults. As used in this Agreement, "Escrow Default" shall mean with respect to Depositor and the Escrowed Materials any of the following:

(a) Depositor commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, seeks the appointment of a trustee, receiver,

liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(b) An involuntary case is commenced against Depositor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Depositor or Depositor's debts under any U.S. or foreign bankruptcy, insolvency or other similar law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Depositor or any substantial part of Depositor's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Depositor in good faith or shall remain undismissed and unstayed for a period of 60 days;

(c) Any voluntary or involuntary case or other act or event described in Sections 15(a) and 15(b) shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (i) any partner or joint venture member of Depositor with a material financial obligation owing to Depositor for equity or loan contributions, (ii) any partner or joint venture member of Depositor for whom transfer of ownership or management authority would constitute a Change of Control, or (iii) any Guarantor (as defined in the PPA) of material Depositor obligations to IFA under the PPA Documents, unless another Guarantor of the same material Depositor obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty; provided, however, that Depositor may cure the Escrow Default set forth in this clause (c) within a period of ten (10) days from the date of the occurrence of the Escrow Default if it commences diligent efforts to cure, and within thirty (30) days, effects cure of such default by providing a letter of credit or payment to IFA or the Collateral Agent for the benefit of the Project, in the amount of, as applicable, (a) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of Depositor or (b) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor.

(d) Depositor fails to provide necessary and commercially feasible updates and maintenance releases for any software or other Escrowed Materials owned or developed by Depositor; provided, however, that Depositor may cure the Escrow Default set forth in this clause (d) within a period of thirty (30) days from the date IFA provides Depositor notice of the Escrow Default;

(e) The PPA is terminated because of a Depositor Default;

(f) Depositor is dissolved, liquidated or otherwise ceases to do business in the ordinary course;

(g) Depositor or its successor or representative including any trustee in a bankruptcy proceeding relating to Depositor rejects or elects to terminate the PPA or under any state receivership, insolvency or other similar proceeding; or

(h) Depositor (as debtor in possession) or any trustee in a bankruptcy proceeding relating to the Depositor fails to assume the obligations under the PPA on or prior to the deadline for assumption or rejection of executory contracts in such bankruptcy proceeding pursuant to 11 U.S.C. § 365.

16.Third-Party Rights. Except as set forth in the next sentence: (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no Person that is not a Party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and such Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. This Agreement may be modified or amended only by an instrument in writing signed and duly executed by authorized officers of the Parties.

17.Term. This Agreement shall remain in effect from and after the Effective Date unless and until all Escrowed Materials are released by Escrow Agent to, and accepted by, either or both IFA and Depositor upon the earliest of (a) a release in accordance with Section 5(a) or (b) a resignation of Escrow Agent in accordance with Section 11 (the "Term").

18.Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

19.Assignment. The provisions of this Agreement shall inure to the benefit of the heirs, successors and assigns the Parties. Reference to successors and assigns used herein means only those individuals or entities that obtain any or the right, title or interest of IFA and Depositor in or to the Escrowed Materials. Escrow Agent shall not assign, subcontract or otherwise transfer any of its rights or duties under this Agreement without the prior written consent of IFA and Depositor. No assignment of the interest of Depositor or IFA shall be binding upon Escrow Agent unless and until written notice of such assignment shall be delivered to and acknowledged by Escrow Agent.

20.Notices. Any communication, notice or demand of any kind whatsoever under this Agreement shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by facsimile or electronic-mail (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Depositor:

[_____]
[_____]
[_____]

Attn: [_____]
Telephone: [_____]
Facsimile: [_____]
Email: [_____]

If to Escrow Agent:

[_____]
[_____]
[_____]

Attn: [_____]
Telephone: [_____]
Facsimile: [_____]
Email: [_____]

If to IFA:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: Public Finance Director
Telephone: (317) 233-4332
Facsimile: (317) 232-6786
E-mail: ifa@ifa.in.gov

(for IFA) with copy to:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: General Counsel
Telephone: (317) 233-4332
Facsimile: (317) 232-6786
E-mail: ifa@ifa.in.gov

or to such other addresses and such other places as any Party may from time to time designate by written notice to the others.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 20 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

21. Waiver. No delay or omission by the Parties in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy nor shall it be construed as a bar to or waiver of any such right or remedy on any future occasion. All waivers shall be in writing, designated a waiver, and signed by the waiving Party, and shall recite the rights waived. Any such waiver shall be deemed to extend only to the particular breach waived and shall not limit or otherwise affect any rights that a party may have with respect to any other or future breach. No waiver shall be permitted or effective without the written approval of IFA, in its sole discretion.

22. Consent to Jurisdiction. Each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings brought in connection with this Agreement may be brought in the state or federal district court of the United States located in Marion County, Indiana and by execution and delivery of this Agreement, each of the Parties hereby (a) accepts the non-exclusive jurisdiction of the foregoing court, (b) irrevocably agrees to be bound by any final judgment (after any appeal) of such court with respect thereto, and (c) irrevocably waives, to the fullest extent permitted by applicable Law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to this Agreement brought in such court, and further irrevocably waives to the fullest extent permitted by applicable Law any claim that any such suit, action or proceeding brought in such court has been brought in

an inconvenient forum. Each of the Parties agrees that a final judgment (after any appeal) in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner to the extent provided by applicable Law.

23. Governing Law. This Agreement and all matters arising hereunder or in connection herewith shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to conflicts of law principles.

24. No Partnership Created. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities.

25. Survival. All provisions of this Agreement that by their nature survive the expiration or earlier termination of this Agreement in order to give full force and effect to the intent of the Parties (including representations and warranties of Escrow Agent and Depositor) shall survive the Termination of this Agreement for the longer of (a) six (6) years following the end of the Term and (b) the applicable statute of limitations under Indiana Law.

26. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future applicable Law, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision, as may be possible and be legal, valid and enforceable.

27. Good Faith Dealings; Further Assurances. The Parties undertake to act fairly and in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its purposes and objectives. The Parties each agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

28. Duties and Remedies. Except as provided herein where an exclusive remedy is expressly provided, the duties and obligations imposed by this Agreement and the rights and remedies available hereunder will be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available at law or in equity to the Parties.

29. Advice of Counsel. Escrow Agent shall have the right, but not the obligation, to consult with counsel of choice and shall not be liable for action taken or omitted to be taken by Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to Escrow Agent. Escrow Agent shall have the

right to perform any of its duties hereunder through its agents, attorneys, custodians or nominees.

30. Counterparts. This Agreement may be executed by Depositor and Escrow Agent (and acknowledged by IFA) in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

[remainder of page intentionally blank; signatures on following page]

IN WITNESS WHEREOF, each of Depositor and Escrow Agent, each intending to be legally bound by this writing, and IFA, acknowledging its rights as third-party beneficiary hereof with certain approval and other rights set forth herein, have caused this Agreement to be executed the date first above written.

DEPOSITOR:_____

By:_____

Name;_____

Title:_____

ESCROW AGENT:_____

By:_____

Name;_____

Title:_____

IFA: INDIANA FINANCE AUTHORITY

By:_____

Name;_____

Title:_____

Exhibit A to Escrow Agreement
Escrowed Materials
[to be provided]

1. [REDACTED];
2. [REDACTED].

Exhibit B to Escrow Agreement
List of Fees to be Paid by Depositor
[to be provided]

FORM M

OPINION OF COUNSEL

[LETTERHEAD OF INDEPENDENT LAW FIRM OR IN-HOUSE COUNSEL – SEE SECTION 6.1.1(c) OF THE ITP FOR LEGAL COUNSEL REQUIREMENTS]

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204

Re: Public-Private Agreement (“PPA”) for Project dated as of [REDACTED], 2014, by
and between Indiana Finance Authority and [REDACTED] (the “Developer”)

Ladies and Gentlemen:

[Describe relationship to Developer and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize delivery and execution of the PPA] This letter is provided to you pursuant to Section 6.1.1(c) of the Instructions to Proposers of that certain Request for Proposals issued by the Indiana Finance Authority (“IFA”) on October 15, 2013, as amended.

In giving this opinion, we have examined [REDACTED]. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable. [if certificate used/obtained from Developer or Guarantor, such certificate should also run in favor of IFA and should be attached to opinion]

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding organization/formation and existence of Developer and that Developer has corporate power to own its properties and assets, carry on its business, enter into the PPA Documents and to perform its obligations under the PPA] [if Developer is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

2. [opinion regarding good standing and qualification to do business in State of Indiana for Developer] [if Developer is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

3. [opinion regarding organization/formation and existence of Guarantor and that Guarantor has corporate power to own its properties and assets, to carry on its business, to enter into the Guaranty and to perform its obligations under the Guaranty] [if Guarantor is a

partnership/joint venture, these opinions are also required for each of its joint venture members and general partners] [if there is no Guaranty, this opinion may be omitted]

4. [opinion that the PPA Documents, each Key Contract to which the Developer is a party and the Escrow Agreement have been duly authorized by all necessary corporate action on the part of Developer and the PPA Documents and such Key Contracts have been duly executed and delivered by Developer] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "Developer"]

5. [opinion that Guaranty has been duly authorized by all necessary corporate action on the part of Guarantor and the Guaranty has been duly executed and delivered by Guarantor] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "Guarantor"] [if there is no Guaranty, this opinion may be omitted]

6. [opinion that the PPA Documents, each Key Contract to which the Developer is a party and the Escrow Agreement constitute a legal, valid and binding obligation of Developer enforceable against Developer in accordance with their respective terms] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the second "Developer"]

7. [opinion that the Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms; [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the second "Guarantor"] [if there is no Guaranty, this opinion may be omitted]

8. [opinion that there is no action, suit, proceeding, investigation or litigation pending and served on Developer or overtly threatened in writing against the Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the PPA Documents, the Key Contracts to which Developer is a party and the Escrow Agreement, or which challenges the authority of Developer's representative executing the PPA Documents, such Key Contracts and the Escrow Agreement]

9. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the PPA Documents, the Key Contracts to which Developer is a party and the Escrow Agreement; and that none of the PPA Documents, the Key Contracts to which Developer is a party or the Escrow Agreement conflict with any agreements to which Developer is a party [if Developer is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Developer is bound [if Developer is a partnership/joint venture, add: and its joint venture members/general partners are bound]]

10. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Guaranty; and that the Guaranty does not conflict with any agreements to which Guarantor is a party [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Guarantor is bound] [if Guarantor is a partnership/joint venture, add: and

its joint venture members/general partners are bound] [if there is no Guaranty, this opinion may be omitted]

11. [opinion that execution, delivery and performance of all obligations by Developer under the PPA Documents, the Key Contracts to which Developer is a party and the Escrow Agreement do not conflict with, and are authorized by, the articles of incorporation and bylaws of Developer [if Developer is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if Developer is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Developer is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation]

12. [opinion that execution, delivery and performance of all obligations by Guarantor under the Guaranty does not conflict with, and is authorized by, the articles of incorporation and bylaws of Guarantor] [if Guarantor is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if Guarantor is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Guarantor is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation] [if there is no Guaranty, this opinion may be omitted]

13. [opinion that execution and delivery by Developer of the PPA Documents, the Key Contracts to which Developer is a party and the Escrow Agreement do not, and Developer's performance of its obligations under the PPA Documents, the Key Contracts to which Developer is a party and the Escrow Agreement will not, violate any statute, rule or regulation applicable to Developer or to transactions of the type contemplated by the PPA Documents, the Key Contracts to which Developer is a party or the Escrow Agreement that are valid and in effect on the date of execution and delivery].

14. [opinion that execution and delivery by the Guarantor of the Guaranty do not, and the Guarantor's performance of its obligations under the Guaranty will not, violate any statute, rule or regulation applicable to the Guarantor or to transactions of the type contemplated by the Guaranty that are valid and in effect on the date of execution and delivery] [if there is no Guaranty, this opinion may be omitted]

[NOTE THAT, IN ADDITION TO PROVIDING AN UPDATED OPINION AT FINANCIAL CLOSE, OPINIONS 4, 6, 8, 9, 11 AND 13 WILL ALSO BE REQUIRED AT FINANCIAL CLOSE WITH RESPECT TO THE LENDER'S DIRECT AGREEMENT]

FORM N

COMPLETION DEADLINES

**Milestone Schedule
For Project**

IFA Last Allowable Dates:

Milestone	Deadline
Baseline Substantial Completion	October 31, 2016
Financial Close Deadline	the date established by the Developer for Financial Close in its Proposal, as such date may be extended by IFA as provided in the PPA, but in no event earlier than May 27, 2014
Long Stop Date	12 months after Baseline Substantial Completion
Final Acceptance Deadline	120 days after Substantial Completion Date

Proposal Commitment Dates (cannot exceed the above table):

Milestone	Deadline
Satisfaction of NTP1 Conditions	_____ [insert number] calendar days after the execution of the PPA
Satisfaction of NTP2 Conditions	_____ [insert number] calendar days after the date IFA issues NTP1
Financial Close Deadline	[insert date for achieving Financial Close]
Commencement of Construction	[insert date no later than 90 calendar days after the date IFA issues NTP2]
Baseline Substantial Completion	[insert date [not later than October 31, 2016]]
Long Stop Date	[insert date 12 months after Substantial Completion]
Final Acceptance Deadline	[insert date 120 days after Substantial Completion Date]

FORM O

SUMMARY COST TABLE FORM

Summary Cost Table Form instructions:

- a) In Form O – 1 Capital Cost Table, indicate, in figures, the lump sum labor and non-labor capital cost for each Project element listed.
- b) In Form O – 2 Cumulative Cost Table, provide a cumulative quarterly curve of cost expenditures.
- e) In Form O – 3 Operations Phase Cost Table indicate, in figures, the expected annual lump sum costs for each element listed.

Form O – 1 Design and Construction Capital Cost Table

<u>Cost Category</u>	<u>Capital Cost</u>	
Project Management (including project oversight costs and Developer cost/overhead)		
Design and Construction management and general activities		
Design		
Environmental		
Roadways Construction		
Structures Construction		
Utilities		
O&M During Construction		
Public Information and Coordination		
Contingency and Profit		
	Labor Cost	Non-Labor Cost
Subtotals	\$	\$
Totals	\$_____ (Total Project Capital Costs)	

Form O – 2 Cumulative Design and Construction Capital Cost Table

<u>Cost Category</u>	<u>Quarter</u>	<u>Capital Cost</u>
Construction Year 1	Quarter 1	
	Quarter 2	
	Quarter 3	
	Quarter 4	
Construction Year 2	Quarter 1	
	Quarter 2	
	Quarter 3	
	Quarter 4	
Construction Year 3	Quarter 1	
	Quarter 2	
	Quarter 3	
	Quarter 4	
[Continue as needed]		
Totals		\$_____
		(Total Capital Cost for Project)

Form O – 3 Operating Period Cost Table										
<u>Cost Category</u>	<u>Annual Expenditure Plan</u>									
	<u>Yr 1</u>	<u>Yr 2</u>	<u>Yr 3</u>	<u>Yr 4</u>	<u>Yr 5</u>	<u>Yr 6</u>	<u>Yr 7</u>	<u>Yr 8</u>	<u>Yr 9</u>	<u>Yr 10</u>
Project Management and General Activities										
Operations										
Insurance										
Roadway and Structure Maintenance										
Rehabilitation Work										
Totals										

Form O – 3 Operating Period Cost Table										
<u>Cost Category</u>	<u>Annual Expenditure Plan</u>									
	<u>Yr 11</u>	<u>Yr 12</u>	<u>Yr 13</u>	<u>Yr 14</u>	<u>Yr 15</u>	<u>Yr 16</u>	<u>Yr 17</u>	<u>Yr 18</u>	<u>Yr 19</u>	<u>Yr 20</u>
Project Management and General Activities										
Operations										
Insurance										
Roadway and Structure Maintenance										
Rehabilitation Work										
Totals										

Form O – 3 Operating Period Cost Table										
<u>Cost Category</u>	<u>Annual Expenditure Plan</u>									
	<u>Yr 21</u>	<u>Yr 22</u>	<u>Yr 23</u>	<u>Yr 24</u>	<u>Yr 25</u>	<u>Yr 26</u>	<u>Yr 27</u>	<u>Yr 28</u>	<u>Yr 29</u>	<u>Yr 30</u>
Project Management and General Activities										
Operations										
Insurance										
Roadway and Structure Maintenance										
Rehabilitation Work										
Totals										

Form O – 3 Operating Period Cost Table										
<u>Cost Category</u>	<u>Annual Expenditure Plan</u>									
	<u>Yr 31</u>	<u>Yr 32</u>	<u>Yr 33</u>	<u>Yr 34</u>	<u>Yr 35</u>					
Project Management and General Activities										
Operations										
Insurance										
Roadway and Structure Maintenance										
Rehabilitation Work										
Totals										

FORM P

FINANCIAL PLAN SUMMARY

1. SOURCES AND USES OF FUNDS

Sources of Funds	Total	Percent of total
Bank / Bond (Non-PAB)		0%
PABs		
Equity		0%
Interest earned on accounts		0%
Current Period Operational Revenue		0%
Milestone Payments		0%
□		0%
Total Sources of Funds	-	0%

Model reference

Uses of Funds	Total	Percent of total
Project Development Costs		0%
Development and Capital Costs		0%
Contingencies		0%
Financing Costs		0%
Working Capital		0%
Reserves (Describe)		0%
Reserve 1 (As Needed)		0%
Reserve 2 (As Needed)		0%
Reserve 3 (As Needed)		0%
Reserve 4 (As Needed)		0%
Tax paid / (refunded)		0%
□		0%
□		0%
Total Uses of Funds	-	0%

Model reference

2. EQUITY INVESTMENT ANALYSIS AND DESCRIPTION

Firm / consortium member	Equity investment		Amount (D)	Model reference
	Amount (E)	% over total equity		
		0%		
		0%		
		0%		
		0%		
		0%		
		0%		
		0%		
TOTAL	-	0%	-	

3. FINANCING DATA

3.1. KEY FINANCING DATA

Key financing data	Value	Model reference
NPV of project cash flows at 5%		
Nominal post-SPV-tax project IRR		
Real post-SPV-tax project IRR		
Nominal pre-SPV-tax project IRR		
Real pre-SPV-tax project IRR		
Nominal post-SPV-tax equity IRR		
Real post-SPV-tax equity IRR		
Nominal pre-SPV-tax equity IRR		
Real pre-SPV-tax equity IRR		
Nominal debt IRR		
Real debt IRR		
Minimum DSCR		
Average DSCR		
Minimum PLCR		
Average PLCR		
Minimum LLCR		
Average LLCR		

Debt type *	Amount	Base rate **

5. PROPOSAL DEVELOPMENT COSTS

Cost Item	Total	Model reference
Proposer's Financial Advisor		
Proposer's Development Fee		
Proposer's Legal Advisor		
Proposer's Project Company set-up costs		
Proposer's Tax & Accounting Advisor		
Proposer's Insurance Advisor		
Proposer's Model Audit Costs		
Finance - Legal Costs		
Finance - Technical Advisor		
Finance - Insurance Advisor		
Finance - Credit Rating Costs		
TOTAL		

6. BENCHMARK RATES AND CREDIT SPREADS

Facility	Benchmark identification / description	Benchmark Rate (A%)	Credit Spread (credit margin) (B%)	Total Interest Rate (A% + B%)	Assumed Ratings	Approximate Average Life of the Financing Instruments
[#name, facility #1]						
[#name, facility #2]						
etc.						

7. MAP ESCALATION

Percentage of MAP subject to fixed escalation of 2.5%

Proposer to insert percentage of MAP to be subject to fixed escalation of 2.5% as set forth in the equation set forth in Section 2.2 of Exhibit 10 of the Agreement

Percentage of MAP subject to CPI escalation

Proposer to insert percentage of MAP to be subject to CPI escalation as set forth in the equation set forth in Section 2.2 of Exhibit 10 of the Agreement

Proposer: _____

Date: _____

Signature: _____

Title: _____

FORM Q

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of _____, that:
(Name of entity making certification)

[check one of the following boxes]

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Non-Equity Members or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

FORM R

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer ____ Equity Member ____ Major Participant ____ proposed Contractor ____ certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The undersigned shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject

to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

Date: _____

Firm/Entity: _____

Signature: _____

Title: _____

Proposer: _____

[Copy this form and modify as needed for execution by Proposer, Equity Members, Major Participants, and all proposed Contractors]

FORM S

DEBARMENT AND SUSPENSION CERTIFICATION

The undersigned Proposer certifies on behalf of itself and all Equity Members, Major Participants and Contractors the following:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not within a 3-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where Proposer is unable to certify to any of the statements in this certification, it shall attach a certification to its Proposal or bid stating that it is unable to provide the certification and explaining the reasons for such inability.

Date: _____

Proposer: _____

Signature: _____

Title: _____

FORM T

FORM OF WAIVER AND RELEASE RE: STIPEND

WORK PRODUCT TRANSFER OF RIGHTS AND RELEASE OF CLAIMS

The undersigned certifies and agrees on behalf of Proposer, its Major Participants and all other members of the Proposer team, that:

[check ALL of the following boxes]

- ☐ It has reviewed the provisions set forth in this Work Product Transfer of Rights and Release of Claims and expressly recognizes and agrees to be bound by the provisions set forth herein.
- ☐ It (a) has received and agreed to an offer from the Indiana Finance Authority ("IFA") for the payment of a stipend in an amount, under certain circumstances, and subject to the terms and conditions of the Stipend Agreement and the Instructions to Proposals issued by IFA on October 15, 2013 (as amended, the "ITP"), in respect of the I-69 Section 5 Project, including Section 6.3 thereof, and (b) is eligible to receive all or a portion of the total amount available for a stipend from IFA for work product received by IFA or the Indiana Department of Transportation ("INDOT") pursuant to the Stipend Agreement and the ITP.
- ☐ It has reviewed the provisions set forth in this Work Product Transfer of Rights and Release of Claims and hereby, upon receipt of the amount of the stipend as prescribed under the Stipend Agreement and Section 6.3 of the ITP: (a) transfers all rights to its work product to IFA and INDOT; (b) waives all rights to protest the procurement of the Project; and (c) fully, unconditionally and irrevocably releases and waives all claims against IFA and INDOT arising out of or relating to the use of the work product.

Upon Proposer's receipt of any stipend amount, and in consideration thereof, IFA and INDOT shall each have all right to, and be entitled to use all work product submitted by Proposer to IFA during the procurement (including ATCs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications) and any work product contained in its Proposal, if submitted, without any further compensation or consideration to Proposer. The foregoing rights of IFA and INDOT shall not apply to work product that is expressly required to be returned to the Proposer under the RFP. Upon Proposer's receipt of any stipend amount, this right shall extend to allow IFA and INDOT to use such work product in the performance of its functions. Capitalized terms used, but not defined, herein shall have the meanings ascribed in the ITP.

Proposer: _____

Date: _____

Signature: _____

Title: _____

FORM U-1

FORM OF FINANCIAL CLOSE BOND

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the _____ **[NOTE: insert name of Proposer as the Principal and delete this bracketed text]**, as Principal and _____, as Surety or as Co-Sureties, each a [corporation] duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the state indicated on the attached page, and authorized as a surety in the State of Indiana, are hereby jointly and severally held and firmly bound unto the Indiana Finance Authority ("IFA"), in the sum of \$15,000,000 (the "Bonded Sum").

WHEREAS, the Principal has entered into a Public-Private Partnership Agreement with IFA dated as of [REDACTED], 2014 (the "PPA") **[NOTE: insert date of PPA and delete this bracketed text]** to develop, design, construct, finance, operate and maintain the I-69 Section 5 Project (the "Project");

NOW, THEREFORE,

1. The condition of this bond is such that this obligation shall be null and void upon Principal (a) achieving financial close for the Project by the Financial Close Deadline, as set forth in the PPA; or (b) Principal's receipt of written notice from IFA that the Agreement is terminated pursuant to Article 20 of the PPA; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to IFA as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the "Co-Sureties") of notice of such forfeiture from IFA:

2. The Principal and the Surety or Co-Sureties hereby agree to pay to IFA the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after Principal fails to achieve financial close by the Project Financial Close Deadline set forth in the PPA, unless such failure is excused in accordance with the PPA

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate IFA for damages it will incur as a result of Principal's failure to satisfy the obligations under the PPA. Such damages include potential harm to the credibility and reputation of IFA's finance and transportation improvement programs, including the PPA program, with policy makers and with the general public, delays to or termination of the Project and additional procurement costs (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and

evaluations as to the actual potential damages that IFA would incur as a result of Principal's failure to satisfy the obligation under the PPA to achieve financial close, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this bond:

(a) If suit is brought on this bond by IFA and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by IFA in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.

(b) Any extension of time for financial close beyond the extension allowed by the PPA that is agreed to by IFA and Principal shall be subject to the reasonable approval of Surety or Co-Sureties.

(c) Correspondence or claims relating to this bond should be sent to Surety at the following address:

SIGNED and SEALED this _____ day of _____, 2014

Principal _____

By: _____

Co-Surety **[Note: if only one Surety is used, replace “Co-Surety” with “Surety” on this line and delete Co-Surety blocks below.]**

By: _____
Attorney in Fact

By: _____

Co-Surety

By: _____
Attorney in Fact

By: _____

Co-Surety

By: _____
Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

FORM U-2

FORM OF FINANCIAL CLOSE SECURITY

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

PLACE FOR PRESENTATION OF DRAFT:(Name and Address of Bank/Branch)

APPLICANT:

BENEFICIARY: Indiana Finance Authority

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT:\$15,000,000 *[Note: The amount of a single letter of credit may be less, on the condition that Proposer provides more than one letter of credit that total \$15,000,000 in the aggregate]*

STATED EXPIRATION DATE:_____ **[NOTE: Insert date that is 270 days from the Effective Date of the PPA]**

The Issuer hereby issues this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of the Indiana Finance Authority ("IFA"), for the amount of \$15,000,000, available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. Be accompanied by a certificate, executed by an authorized signatory of the Beneficiary, stating that:
 - (a) the person signing the certificate is an authorized signatory of the Beneficiary; and
 - (b) "This drawing is due to _____'s failure to achieve financial close by the Financial Close Deadline set forth in the Public Private Agreement between _____ and IFA dated as of [REDACTED], 2014 (the "PPA"), without excuse under the PPA".

All drafts will be honored if presented to _____ (Bank/Branch - Name & Address) on or before the Stated Expiration Date described above.

This Letter of Credit shall be canceled on the earlier of (i) the stated "Expiration Date" (above) and (ii) the date of receipt by the Issuer of a letter, signed by the Beneficiary, stating that this Letter of Credit may be canceled and accompanied by the original Letter of Credit and any original amendments(s), (if any).

This Letter of Credit is subject to the rules of the "International Standby Practices" ISP98. For matters not addressed by ISP98, this Letter of Credit shall be governed by New York law.

Issuer:

By: _____

(Authorized signature of Issuer)

FORM V

TERMINATION FOR CONVENIENCE CALCULATION METHOD

Should IFA terminate the Agreement according to Section 20.1 of the Agreement, the undersigned Proposer hereby chooses to be paid a compensation amount equal to the ***[Proposer to insert “Backward Looking Termination for Convenience Amount” or “Forward Looking Termination for Convenience Amount”]***, and irrevocably and unconditionally renounces and waives any right to claim the ***[Proposer to insert “Forward Looking Termination for Convenience Amount” or “Backward Looking Termination for Convenience Amount”]***.

Date: _____

Proposer: _____

Signature: _____

Title: _____

FORM W
RFP COMMENT FORM

Proposer: _____

Comment Sheet_ of _____ Sheets

No.	Document and Section Number	Category	Comment(s)	Reserved for IFA Response

FORM X

FORM OF STIPEND AGREEMENT

**STIPEND AGREEMENT
(Project)**

THIS STIPEND AGREEMENT is made and entered into as of this [] day of 2014, by and between the Indiana Finance Authority, a body corporate and politic ("IFA") and [], a [] ("Proposer"), with reference to the following facts:

A. Proposer is one of the proposers shortlisted to submit Proposals for the I-69 Section 5 Project (the "Project"), and wishes to submit a Proposal in response to the Request for Proposals for the I-69 Section 5 Project issued by IFA on October 15, 2013 (as amended, the "RFP"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

B. The RFP provides for the execution and delivery of a Stipend Agreement between IFA and each Proposer.

NOW, THEREFORE, the Proposer hereby agrees as follows:

1. SERVICES AND PERFORMANCE

(a) By executing this Agreement, Proposer has irrevocably elected to accept payment of a stipend subject to the terms hereof.

(b) IFA hereby retains Proposer to actively participate in good faith in the procurement process and to prepare a responsive and compliant Proposal in response to the RFP. Responsiveness and compliance shall be determined pursuant to the ITP. Proposer shall be considered a vendor for purposes of payment of the stipend.

(c) Subject to the provisions of the RFP Documents regarding ownership of the Proposal and Proposer work product, all work product submitted by Proposer to IFA during the procurement and in connection with the Proposal (including all ATCs, written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer for the purpose of developing its Proposal during this procurement process) shall be considered work for hire, and the products of such work shall become the property of IFA and INDOT without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Stipend Agreement. The foregoing rights of IFA and INDOT shall not apply to work product that is expressly required to be returned to the Proposer under the RFP.

2. TERM

Unless otherwise provided herein, the provisions of this Stipend Agreement shall remain in full force and effect until the earlier to occur of (a) 12 months from the date of the execution of this Stipend Agreement or (b) the date payment is delivered hereunder; provided that if payment has not been made under this Stipend Agreement prior to the date referred to in clause (a) above, this Stipend Agreement shall continue in full force and effect until the date on which such payment has been made by IFA and received by the Proposer. Work pursuant to this Stipend Agreement is authorized to commence effective upon the execution date of this Stipend Agreement, and the work product is due and must be delivered to IFA no later than the earlier of (i) 15 days after delivery to Proposer of notice by IFA of the cancellation by IFA of this procurement or (ii) the Proposal Due Date.

3. COMPENSATION AND PAYMENT

(a) Except as set forth in Section 6.3 of the ITP, if IFA cancels the procurement after the issuance of the RFP up to and including the Proposal Due Date, then, notwithstanding that Proposer has not submitted a responsive Proposal, Proposer is eligible to receive, and IFA shall pay to Proposer (or as it may direct), the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid by Proposer, as determined by IFA, in its good faith discretion, in participating in the procurement process and preparing a Proposal in an amount not to exceed \$500,000; and provided, further, that Proposer must be eligible for the payment pursuant to the terms of this Stipend Agreement and the ITP. Amounts that may be considered for payment under this Section 3(a) include such amounts that were incurred from and after the notification of shortlisted Proposers following the RFQ.

(b) Except as set forth in Section 6.3 of the ITP, if Proposer submits a timely and responsive, but unsuccessful, Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents and Proposer is eligible for the payment pursuant to the terms of this Stipend Agreement and the ITP, IFA shall pay to Proposer (or as it may direct) a stipulated stipend payment for this procurement of \$1,000,000. A timely and responsive Proposal shall also be considered unsuccessful if (i) IFA cancels the procurement without award after the Proposal Due Date; (ii) IFA fails to execute the PPA upon satisfaction by Proposer of all conditions to award and execution that are set forth in the ITP; and (iii) IFA does not award the PPA and achieve commercial close prior to the date on which the validity period of the Proposal expires. No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in Section 6.3 of the ITP.

(c) If IFA awards the PPA to Proposer and commercial close, as defined under the ITP, occurs, Proposer will not be entitled to compensation hereunder, including, without limitation, payments under Section 3(a) or Section 3(b).

(d) Proposer shall be eligible to receive a stipend hereunder only to the extent permitted by this Stipend Agreement and Section 6.3.3 of the ITP.

(e) Invoice, waiver and release submittal requirements concerning payment of the stipend and the timing of payment of the stipend owing hereunder are addressed in Section 6.3 of the ITP. The form of invoice submitted by the Proposer shall be as set forth in Exhibit 1 hereto.

4. INDEMNITIES AND SURETYSHIP

(a) Proposer agrees that it will indemnify, defend, and hold harmless IFA and all of IFA's board members, officers, agents, representatives, employees, successors and assigns from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including attorneys' fees and costs) asserted, incurred, suffered or awarded as a result of or that relate to any third party claims, suits, actions, allegations or proceedings arising out of or caused by any acts, actions, negligence, omissions, fault, willful misconduct, violation of law or breach of contract by Proposer, its Equity Members, Major Participants, other team members or their respective agents, employees, or representatives arising out of or relating to the work product performed hereunder or in connection with or contained in the Proposal, whether direct or indirect, and whether to any person or property to which IFA or said parties may be subject, except that Proposer shall not be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence or willful misconduct of IFA or any of its board members, officers, agents, representatives or employees. The foregoing indemnity shall survive the expiration or termination of this Stipend Agreement and shall expressly apply to and include all third party claims, suits, actions or allegations of infringement, confidential information, domestic or foreign patent rights, copyrights, intellectual property rights, moral rights, trade secrets, proprietary rights, licensing rights and unauthorized use. Notwithstanding the foregoing, except for such matters covered by the preceding sentence, the indemnity shall not cover use by the IFA of such work product performed under this Stipend Agreement after award of the Agreement. Should the Proposer become the Developer under the Agreement, the indemnity under this Section 4(a) shall continue to apply in accordance with its terms and be additive to any indemnifications set forth in the Agreement.

(b) Proposer's obligation to indemnify, defend, and pay for the defense or at IFA's option, to participate and associate with IFA in defense of any claim and any related settlement negotiations, shall be triggered by IFA's notice of claim for indemnification to Proposer. Only a final and unappealable adjudication or judgment specifically finding sole negligence or willful misconduct of IFA or any of its board members, officers, agents, representatives or employees shall excuse performance of this provision. Proposer shall pay all costs and fees related to this obligation and its enforcement by IFA. IFA's failure to notify Proposer of a claim shall not release Proposer of the above duty to defend.

(c) For purposes of this Section 4, "third party" means any Person (as defined in the Agreement) other than an Indemnified Party (as defined in the Agreement) and Proposer, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim that is (a) against an Indemnified Party, (b) within the

scope of the indemnities and (c) not covered by the Indemnified Party's worker's compensation program.

5. COMPLIANCE WITH LAWS

(a) Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to IFA during this procurement process, are, upon their receipt by IFA, the property of IFA and are subject to the Public Records Act.

(b) Proposer shall comply with all federal, state, and local laws; ordinances; rules; and regulations applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Stipend Agreement. Proposer shall also comply with all customary vendor payment requirements of the State of Indiana, including completion of a W-8 form.

(c) Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Stipend Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Stipend Agreement.

6. ASSIGNMENT

Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement without IFA's prior written consent, in its sole discretion; provided that this Stipend Agreement may be assigned to the special purpose vehicle formed by the Proposer for purposes of the Project without the prior written consent of the IFA but upon written notice to the IFA. Any assignment of this Stipend Agreement without the required consent of IFA shall be null and void and may, in IFA's sole discretion, disqualify Proposer from further consideration for the procurement process and the Project.

IFA may assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement (a) without the Proposer's consent, to INDOT and any other Person that succeeds to the governmental powers and authority of IFA, and (b) to others with the prior written consent of Proposer. Where consent is required but not given, any assignment of this Stipend Agreement shall be null and void.

7. MISCELLANEOUS

(a) Proposer and IFA agree that Proposer, its Equity Members, Major Participants and other team members and their respective employees are not agents or representatives of IFA as a result of this Stipend Agreement.

(b) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

(c) This Stipend Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Stipend Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.

(d) It is understood and agreed by the parties hereto that if any part, term, or provision of this Stipend Agreement is by the courts held to be illegal or in conflict with any law of the State of Indiana, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Stipend Agreement did not contain the particular part, term, or provisions to be invalid.

(e) This Stipend Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. The venue for any proceeding relating to this Stipend Agreement shall be in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana.

(f) This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(g) As required by IC 5-22-3-7, Proposer, on behalf of itself and the Equity Members certifies that, (i) in accordance with IC 5-22-3-7 (A) Proposer, except for de minimis and nonsystematic violations, has not violated the terms of (1) IC 24-4.7 (Telephone Solicitation Of Consumers), (2) IC 24-5-12 (Telephone Solicitations), or (3) IC 24-5-14 (Regulation of Automatic Dialing Machines) in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) Proposer will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law; and (ii) an Affiliate or principal of Proposer and any agent acting on behalf of Proposer or on behalf of an Affiliate or principal of Proposer (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal Law; and (B) will not violate the terms of IC 24-4.7 for the duration of this Stipend Agreement, even if IC 24-4.7 is preempted by federal Law.

(h) Proposer and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with IFA or the State, as set forth in IC 4-2-6 et seq., IC 4-2-7 et seq., the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004. If Proposer is not familiar with these ethical requirements, Developer should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<[<http://www.in.gov/ethics/>>>](http://www.in.gov/ethics/)>>>. If Proposer or its agents violate any applicable ethical standards, the Proposer may be

subject to penalties under IC 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable Laws.

(i) Proposer and its agents shall abide by all requirements of IC 8-15.5-13-7 in respect of the prohibition on political contributions by Proposer. Neither Proposer nor any individual who has an interest in Proposer, may make any contribution to any candidate, or committee, during and up to and including three (3) years following the term of this Stipend Agreement.

(j) The parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of this Stipend Agreement shall be the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana.

IN WITNESS WHEREOF, this Stipend Agreement has been executed and delivered as of the day and year first above written.

INDIANA FINANCE AUTHORITY

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT 1
FORM OF INVOICE

[see attached]

FORM OF INVOICE FOR STIPEND AMOUNT

Reference is made to that Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the I-69 Section 5 Project through a Public-Private Agreement issued on October 15, 2013 (as amended, the "ITP") by the Indiana Finance Authority ("IFA").

Reference is also made to that certain Stipend Agreement (the "Stipend Agreement") dated as of [REDACTED], 2014, by and between IFA and [REDACTED] ("Proposer").

Capitalized terms used, but not defined, herein shall have the meanings ascribed in the ITP.

[Proposer to select, as appropriate, from the two paragraphs below]

[Pursuant to Section 6.3.1 of the ITP and the Stipend Agreement, Proposer hereby requests payment of [REDACTED] U.S. dollars (\$[REDACTED]), reflecting the lesser of (a) \$500,000 and (b) the full amount of Proposer's actual, reasonable and documented out-of-pocket development costs actually incurred and paid by such Proposer with respect to preparing Proposer's Proposal.] Attached to this invoice are (a) an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against IFA, in the form of Form T to the ITP and (b) supporting documentation for such costs. Proposer represents and warrants to IFA that Proposer is eligible for payment pursuant to Section 6.3.3 of the ITP.]

[Pursuant to Section 6.3.2 of the ITP and the Stipend Agreement, Proposer hereby requests payment of one million U.S. dollars (\$1,000,000)]. Attached to this invoice is an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against IFA, in the form of Form T to the ITP. Proposer represents and warrants to IFA that (a) Proposer submitted to IFA a timely and responsive, but unsuccessful, Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents and (b) Proposer is eligible for payment pursuant to Section 6.3.3 of the ITP.]

Proposer acknowledges that submission of this invoice, and payment by IFA of any amount in response to this invoice, is in all respect subject to the terms and conditions of the ITP, Stipend Agreement and the other RFP Documents.

CERTIFICATION

The undersigned Proposer hereby certifies that (a) the Proposer is entitled to payment of the stipend pursuant to the terms of the ITP and the Stipend Agreement; (b) the irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against IFA, in the form of Form T to the ITP, has been executed and delivered to IFA and is in full force and effect and (c) that this entire invoice and all other supporting documentation are each, and collectively, true, correct and complete.

PROPOSER: _____

By: _____

Name: _____

Title: _____

FORM Y

FORMS OF LEGAL OPINION

[See attached]

OPINION REGARDING PPA

[see attached]

SUBJECT TO INTERNAL OPINIONS COMMITTEE REVIEW

**FORM OF LEGAL OPINION OF INDIANA COUNSEL TO THE
INDIANA FINANCE AUTHORITY
RE: PUBLIC-PRIVATE AGREEMENT**

[See attached]

[LETTERHEAD OF ICE MILLER]

_____, 2014

Ladies and Gentlemen:

We have acted as special Indiana counsel to the Indiana Finance Authority (the "IFA") in connection with its procurement for the I-69 Section 5 Project (the "Transaction") pursuant to the Public-Private Agreement, dated as of _____, 2014 (the "Agreement"), between IFA and _____ (the "Developer" and collectively with IFA, the "Parties"). Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of the Agreement. In rendering our opinion, we have also examined originals or copies, certified or otherwise identified to our satisfaction, of the following (collectively, the "Authorization Documents"): (i) a certificate executed by the Chairman of the IFA and the Public Finance Director of the State of Indiana of even date herewith as to certain matters (the "Certificate") and (ii) resolutions of the IFA adopted on _____ and _____, approving the Agreement.

In rendering our opinion, we also have examined such certificates of public officials, organizational documents and records and other certificates and instruments as we have deemed necessary for the purposes of the opinion herein expressed and, with your permission, have relied upon and assumed the truth, completeness and accuracy of such certificates, documents, records and instruments. We have made such examination of the laws of the State of Indiana, including IC 4-4-10.9, IC 4-4-11 and IC 8-15.5, as we deemed relevant for purposes of this opinion, but we have not made a review of, and express no opinion concerning, the laws of the United States or of any jurisdiction other than the State of Indiana or any local laws in the State of Indiana.

We have with your permission relied upon and assumed the truth, completeness and accuracy of the representations, certifications and warranties made in the Authorization Documents and the Agreement, and have not made any independent investigation or verification of any factual matters stated or represented therein. Whenever our opinion or confirmation herein with respect to the existence or absence of facts is indicated to be based upon our knowledge or belief, it is intended to signify that, during the course of our representation of the IFA no information has come to the

attention of the attorneys who participated in the representation which would give us actual knowledge of the existence or absence of such facts. Except to the extent expressly set forth herein, we have not undertaken any independent investigation to determine the existence or absence of such facts or circumstances or the assumed facts set forth herein or of any actions filed as of this date in any court of competent jurisdiction challenging the Agreement, we accept no responsibility to make any such investigation, and no inference as to our knowledge of the existence or absence of such facts or circumstances or of our having made any independent review thereof should be drawn from our representation of the IFA.

In connection with the opinions expressed in this letter, we note that (i) certain doctrines of law and equity and various statutory provisions (the "Provisions") create defenses to challenges to actions of the IFA with regard to the matters addressed in this opinion with the passage of time and we have relied upon the application of those Provisions in rendering this opinion; (ii) the IFA has no obligation under the Agreement to indemnify the Developer; (iii) payments to the Developer by IFA under the Agreement are payable solely as described in the Agreement; and (iv) the Agreement expressly states that the obligations to make such payments do not constitute an indebtedness or lending the credit of the State of Indiana within the meaning or application of any constitutional provision or limitation.

In rendering this opinion to you, we have assumed with your permission:

(a) The genuineness of all signatures, the legal capacity and competency of natural persons executing the Agreement, whether on behalf of themselves or other persons or entities, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies, and the authenticity of the originals of such copies, and the completeness of all records of corporate proceedings provided to us.

(b) All official public records (including their proper indexing and filing) furnished to or obtained by us, electronically or otherwise, are accurate, complete and authentic.

(c) The documents that have been or will be executed and delivered in consummation of the Transaction are or will be identical in all material and relevant respects with the copies of the documents we have examined and on which this opinion is based.

(d) Developer (i) has been organized, is validly existing, and where applicable is in good standing under its jurisdiction of incorporation, (ii) has full power and authority to enter into, execute, deliver, receive and perform the Agreement, and (iii) is qualified to the extent that qualification is necessary, and authorized to do business in the State of Indiana.

(e) The entry into, execution, delivery, receipt, and performance of the Agreement by Developer has been duly authorized by all requisite action on the part of Developer.

(f) The Agreement will be duly entered into, executed, received and delivered by Developer, and upon such execution and delivery constitutes the legal, valid and binding obligation of Developer, so that the Agreement has mutuality of binding effect.

(g) The execution and delivery of the Agreement by the Parties will be free of intentional or unintentional mistake, misrepresentation, concealment, fraud, undue influence, duress or criminal activity.

(h) The Agreement has not been amended or modified by oral or written agreement or by conduct of the Parties.

(i) Developer will at all times exercise its rights and remedies under the Agreement in good faith and in a manner that is commercially reasonable.

Based on and subject to the foregoing and the qualifications, exceptions and limitations referred to below, we are of the opinion that, on the date hereof:

(1) The IFA has been duly created and is a validly existing separate body corporate and politic under and by virtue of the laws of the State of Indiana, specifically Indiana Code 4-4-11 et seq.

(2) The execution and delivery of the Agreement by the IFA and the performance by the IFA of its obligations contained in the Agreement have been duly authorized by all requisite corporate action on the part of the IFA. The IFA has the corporate power and corporate authority under Indiana law to enter into the Agreement and to perform its obligations under the Agreement.

(3) The Agreement constitutes the legal, valid and binding obligation of the IFA and is enforceable against the IFA in accordance with the terms thereof.

Each of the opinions set forth above is limited by its terms and subject to the reliance set forth and the assumptions hereinabove stated and is further subject to the following qualifications, exceptions and limitations, none of which shall limit the generality of any other assumption, qualification, exception or limitation.

A. The legality, validity and enforceability of the Agreement and the opinion expressed in paragraph 3 above may be limited or otherwise affected by:

(i) bankruptcy, insolvency, reorganization, liquidation, readjustment of debt, receivership, moratorium, fraudulent conveyance,

equitable subordination, equity of redemption, recharacterization or other similar legal principles now or hereafter in effect governing or affecting the rights and remedies of debtors and creditors generally, or general principles of equity, regardless of whether considered in a proceeding at law or in equity;

(ii) the valid exercise of the constitutional powers of the State of Indiana and the United States of America;

(iii) applicable laws or judicial decisions of the State of Indiana which may render certain of the rights, remedies, waivers, and attorney-in-fact appointments contained therein unenforceable or ineffective, but the inclusion of which do not render the Agreement invalid as a whole or make the remedies generally afforded thereunder inadequate for the practical realization of the principal benefits intended to be provided by those documents; and/or

(iv) the concepts of good faith and fair dealing, materiality and reasonableness, regardless of whether considered in a proceeding at law or in equity.

Notwithstanding the foregoing and without limiting the generality of the foregoing exceptions, limitations, assumptions or qualifications, we express no opinion with respect to (a) the availability of the remedies of specific performance or injunctive relief, (b) the availability of ex parte remedies and other self-help or non-judicial relief, (c) the availability or enforceability of set-off rights or (d) the legality, validity, binding effect, or enforceability of provisions that provide for an event of default or availability of remedies predicated solely upon commencement of bankruptcy, reorganization or similar proceedings with respect to the IFA.

B. We wish to advise you that, under Indiana law, contractual indemnification and hold harmless provisions seeking to cover the indemnified party's own negligence, strict liability or other acts or omissions may not be enforceable to the extent the contract does not clearly and unequivocally specify that the indemnity or exculpation covers claims, losses, expenses or other liabilities arising or alleged to arise, in whole or in part, from the negligence, strict liability or other acts or omissions of the indemnified party. At least one Indiana case, Wilson Leasing Co. v. Gadberry, 437 N.E.2d 500 (Ind. Ct. App. 1982), states that indemnification clauses generally are strictly construed and that the terms must be set forth clearly and unequivocally. Another Indiana case, Powell v. American Health Fitness Center, 694 N.E.2d 757 (Ind. Ct. App. 1998), states that exculpatory clauses must both specifically and explicitly refer to the negligence of the party seeking release from liability. Further, indemnification or exculpation as against certain claims, losses, expenses, or other liabilities arising as the result of the indemnified party's violation of federal or state statutes, or the indemnified party's own tort liability when performing a public or quasi-public duty, or other acts or omissions, may be considered contrary to public policy and

therefore invalid and/or unenforceable. To the extent that any provisions of the Agreement may be interpreted as requiring the IFA to indemnify or hold harmless Developer or any other person, our opinions are limited by and subject to the Wilson Leasing and Powell decisions and these principles.

C. Without limiting the generality of any other exception, limitation or qualification, we express no opinion with respect to (i) the application of any law, statute, rule or regulation relating to the environment, health or safety; (ii) any law, statute, rule, or regulation that may apply to any party as a result of its activities in the State of Indiana that are not directly related to the transactions contemplated by the Agreement; (iii) the enforceability of any provision of the Agreement pertaining to consent to jurisdiction in so far as it relates to Federal courts or agreements stating that failure to exercise or delay in exercising rights will not operate as a waiver of the right or remedy; (iv) the enforceability of any provisions of the Agreement to the extent that any recovery of attorneys' fees is not limited to reasonable attorneys' fees; and (v) the validity or enforceability of any purported waiver or purported consent relating to any other rights of any party, or duties owed to any of them, existing as a matter of law, including without limitation the purported waiver of any party's right to a jury trial.

D. We have not considered and do not express an opinion with respect to (i) any Federal or state (including Indiana) securities, tax or antitrust laws and regulations, (ii) the power and authority of Developer to enter into the Agreement or to carry out the Transaction, or (iii) the possible application of or compliance with various building codes, zoning ordinances, permit requirements, environmental, health or safety laws and other similar statutes, laws, ordinances, codes and regulations affecting the construction, condition and/or use of the project described in the Agreement. Our opinions set forth above are expressly subject to the effect of the application of all Federal and state (including Indiana) securities, tax and antitrust laws and regulations.

E. We express no opinion as to the applicability to the transactions contemplated by the Agreement of Section 548 of the United States Bankruptcy Code or Ind. Code 32-18-2 relating to fraudulent transfers or obligations, and the opinions expressed herein are limited by and subject to the application of those statutes.

The opinions expressed herein are matters of professional judgment, are not a guarantee of result and are effective only as of the date hereof. We do not undertake to advise you of any matter within the scope of this opinion than comes to our attention after the date of this opinion and disclaim any responsibility to advise you of any future changes in law or fact that may affect the opinions set forth herein. We express no opinion other than as hereinbefore expressly set forth. No expansion of the opinions expressed herein may or should be made by implication or otherwise.

We are informed that you are relying on this opinion in connection with the consummation of the actions contemplated by the Agreement and Transaction. The

foregoing opinion shall not be relied upon for any other purpose or by any other party; provided that you may use, publish or otherwise communicate this opinion to the extent required by applicable laws and may provide a copy of this opinion to potential and actual Lenders in connection with the closing of any Developer indebtedness. The use or reliance upon this opinion by any other person or entity without our prior written consent is strictly prohibited.

Very truly yours,

**OPINION REGARDING MILESTONE PAYMENT AGREEMENT AND USE
AGREEMENT (IFA)**

[See attached]

SUBJECT TO INTERNAL OPINIONS COMMITTEE REVIEW

**FORM OF LEGAL OPINION OF COUNSEL TO THE
INDIANA FINANCE AUTHORITY
RE: IFA AGREEMENTS**

[LETTERHEAD OF ICE MILLER]

_____, 2014

Ladies and Gentlemen:

We have acted as special Indiana counsel to the Indiana Finance Authority (the "IFA") in connection with its procurement for the I-69 Section 5 Project (the "Transaction"). The IFA has executed the following documents, inter alia, in connection with the Transaction: (1) Public-Private Agreement dated as of _____, 2014, (the "PPA"), between the IFA and _____ (the "Developer"), (2) Milestone Payment Agreement dated as of _____, 2014 (the "Milestone Agreement"), between the IFA and the Indiana Department of Transportation (the "Department"), and (3) Master Use Agreement dated as of _____, 2014, between the IFA and the Department (the "Use Agreement"). Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the PPA.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of the Milestone Agreement, and the Use Agreement (collectively, the "IFA Agreements"). In rendering our opinion, we have also examined originals or copies, certified or otherwise identified to our satisfaction, of (a) the PPA and (b) the following (collectively, the "Authorization Documents"): (i) a certificate executed by the Chairman of the IFA and the Public Finance Director of the State of Indiana of even date herewith as to certain matters (the "Certificate") and (ii) a resolution of the IFA adopted on _____, approving the IFA Agreements.

In rendering our opinion, we also have examined such certificates of public officials, organizational documents and records and other certificates and instruments as we have deemed necessary for the purposes of the opinion herein expressed and, with your permission, have relied upon and assumed the truth, completeness and accuracy of such certificates, documents, records and instruments. We have made such examination of the laws of the State of Indiana, including IC 4-4-10.9, IC 4-4-11 and IC 8-15.5, as we deemed relevant for purposes of this opinion, but we have not made a

review of, and express no opinion concerning, the laws of the United States or of any jurisdiction other than the State of Indiana or any local laws in the State of Indiana.

We have with your permission relied upon and assumed the truth, completeness and accuracy of the representations, certifications and warranties made in the Authorization Documents, the PPA and the IFA Agreements, and have not made any independent investigation or verification of any factual matters stated or represented therein. Whenever our opinion or confirmation herein with respect to the existence or absence of facts is indicated to be based upon our knowledge or belief, it is intended to signify that, during the course of our representation of the IFA no information has come to the attention of the attorneys who participated in the representation which would give us actual knowledge of the existence or absence of such facts. Except to the extent expressly set forth herein, we have not undertaken any independent investigation to determine the existence or absence of such facts or circumstances or the assumed facts set forth herein or of any actions filed as of this date in any court of competent jurisdiction challenging the PPA or the IFA Agreements, we accept no responsibility to make any such investigation, and no inference as to our knowledge of the existence or absence of such facts or circumstances or of our having made any independent review thereof should be drawn from our representation of the IFA.

In connection with the opinions expressed in this letter, we note that (i) certain doctrines of law and equity and various statutory provisions (the "Provisions") create defenses to challenges to actions of the IFA with regard to the matters addressed in this opinion with the passage of time and we have relied upon the application of those Provisions in rendering this opinion, (ii) payments to the Developer by the IFA under the PPA are payable as described in the PPA, and (iii) the PPA expressly states that the obligations to make such payments, and the Milestone Agreement and the Use Agreement expressly state that INDOT's obligation to make its payments to IFA thereunder, do not constitute an indebtedness or lending the credit of the State of Indiana within the meaning or application of any constitutional provision or limitation.

In rendering this opinion to you, we have assumed with your permission:

(a) The genuineness of all signatures, the legal capacity and competency of natural persons executing the IFA Agreements, whether on behalf of themselves or other persons or entities, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies, and the authenticity of the originals of such copies, and the completeness of all records of corporate proceedings provided to us.

(b) All official public records (including their proper indexing and filing) furnished to or obtained by us, electronically or otherwise, are accurate, complete and authentic.

(c) The documents that have been or will be executed and delivered in consummation of the Transaction are or will be identical in all

material and relevant respects with the copies of the documents we have examined and on which this opinion is based.

(d) The Department has full power and authority to enter into, execute, deliver, receive and perform the IFA Agreements.

(e) The entry into, execution, delivery, receipt, and performance of the IFA Agreements to which it is a party by the Department has been duly authorized by all requisite action on the part of the Department.

(f) Each of the IFA Agreements will be duly entered into, executed, received and delivered by the other party thereto, and upon such execution and delivery constitutes the legal, valid and binding obligation of the other party thereto, so that each of the IFA Agreements has mutuality of binding effect.

(g) The execution and delivery of each of the IFA Agreements by the parties thereto will be free of intentional or unintentional mistake, misrepresentation, concealment, fraud, undue influence, duress or criminal activity.

The IFA Agreements have not been amended or modified by oral or written agreement or by conduct of the parties thereto.

Each party to the IFA Agreements will at all times exercise its rights and remedies thereunder in good faith and in a manner that is commercially reasonable.

Based on and subject to the foregoing and the qualifications, exceptions and limitations referred to below, we are of the opinion that, on the date hereof:

(1) The IFA has been duly created and is a validly existing separate body corporate and politic under and by virtue of the laws of the State of Indiana, specifically Indiana Code 4-4-11 et seq.

(2) The execution and delivery of the IFA Agreements by the IFA and the performance by the IFA of its obligations contained in the IFA Agreements has been duly authorized by all requisite corporate action on the part of the IFA. The IFA has the corporate power and corporate authority under Indiana law to enter into the IFA Agreements and to perform its obligations under the IFA Agreements.

(3) Each of the IFA Agreements constitutes the legal, valid and binding obligation of the IFA, and is enforceable against the IFA in accordance with the terms thereof.

Each of the opinions set forth above is limited by its terms and subject to the reliance set forth and the assumptions hereinabove stated and is further subject to the

following qualifications, exceptions and limitations, none of which shall limit the generality of any other assumption, qualification, exception or limitation.

A. The legality, validity and enforceability of the IFA Agreements and the opinion expressed in paragraph 3 above may be limited or otherwise affected by:

(i) bankruptcy, insolvency, reorganization, liquidation, readjustment of debt, receivership, moratorium, fraudulent conveyance, equitable subordination, equity of redemption, recharacterization or other similar legal principles now or hereafter in effect governing or affecting the rights and remedies of debtors and creditors generally, or general principles of equity, regardless of whether considered in a proceeding at law or in equity;

(ii) the valid exercise of the constitutional powers of the State of Indiana and the United States of America;

(iii) applicable laws or judicial decisions of the State of Indiana which may render certain of the rights, remedies, waivers, and attorney-in-fact appointments contained therein unenforceable or ineffective, but the inclusion of which do not render the IFA Agreement invalid as a whole or make the remedies generally afforded thereunder inadequate for the practical realization of the principal benefits intended to be provided by those documents; and/or

(iv) the concepts of good faith and fair dealing, materiality and reasonableness, regardless of whether considered in a proceeding at law or in equity.

Notwithstanding the foregoing and without limiting the generality of the foregoing exceptions, limitations, assumptions or qualifications, we express no opinion with respect to (a) the availability of the remedies of specific performance or injunctive relief, (b) the availability of ex parte remedies and other self-help or non-judicial relief, (c) the availability or enforceability of set-off rights or (d) the legality, validity, binding effect, or enforceability of provisions that provide for an event of default or availability of remedies predicated solely upon commencement of bankruptcy, reorganization or similar proceedings with respect to the IFA.

B. We wish to advise you that under Indiana law, contractual indemnification and hold harmless provisions seeking to cover the indemnified party's own negligence, strict liability or other acts or omissions may not be enforceable to the extent the contract does not clearly and unequivocally specify that the indemnity or exculpation covers claims, losses, expenses or other liabilities arising or alleged to arise, in whole or in part, from the negligence, strict liability or other acts or omissions of the indemnified party. At least one Indiana

case, Wilson Leasing Co. v. Gadberry, 437 N.E.2d 500 (Ind. Ct. App. 1982), states that indemnification clauses generally are strictly construed and that the terms must be set forth clearly and unequivocally. Another Indiana case, Powell v. American Health Fitness Center, 694 N.E.2d 757 (Ind. Ct. App. 1998), states that exculpatory clauses must both specifically and explicitly refer to the negligence of the party seeking release from liability. Further, indemnification or exculpation as against certain claims, losses, expenses, or other liabilities arising as the result of the indemnified party's violation of federal or state statutes, or the indemnified party's own tort liability when performing a public or quasi-public duty, or other acts or omissions, may be considered contrary to public policy and therefore invalid and/or unenforceable. To the extent that any provisions of an IFA Agreement may be interpreted as requiring the IFA to indemnify or hold harmless Developer or any other person, our opinions set forth above are limited by and subject to the Wilson Leasing and Powell decisions and these principles.

C. Without limiting the generality of any other exception, limitation or qualification, we express no opinion with respect to (i) the application of any law, statute, rule or regulation relating to the environment, health or safety; (ii) any law, statute, rule, or regulation that may apply to any party as a result of its activities in the State of Indiana that are not directly related to the transactions contemplated by the IFA Agreements; (iii) the enforceability of any provision of any of the IFA Agreements pertaining to consent to jurisdiction in so far as it relates to Federal courts or agreements stating that failure to exercise or delay in exercising rights will not operate as a waiver of the right or remedy; (iv) the enforceability of any provisions of any of the IFA Agreements to the extent that any recovery of attorneys' fees is not limited to reasonable attorneys' fees; and (v) the validity or enforceability of any purported waiver or purported consent relating to any other rights of any party, or duties owed to any of them, existing as a matter of law, including without limitation the purported waiver of any party's right to a jury trial.

D. We have not considered and do not express an opinion with respect to (i) any Federal or state (including Indiana) securities, tax or antitrust laws and regulations, (ii) the power and authority of either the Department to enter into the applicable IFA Agreement or to carry out the Transaction, or (iii) the possible application of or compliance with various building codes, zoning ordinances, permit requirements, environmental, health or safety laws and other similar statutes, laws, ordinances, codes and regulations affecting the construction, condition and/or use of the project described in the IFA Agreements. Our opinions set forth above are expressly subject to the effect of the application of all Federal and state (including Indiana) securities, tax and antitrust laws and regulations.

E. We express no opinion as to the applicability to the transactions contemplated by the IFA Agreements and the Transaction of Section 548 of the United States Bankruptcy Code or Ind. Code 32-18-2 relating to fraudulent

transfers or obligations, and the opinions expressed herein are limited by and subject to the application of those statutes.

The opinions expressed herein are matters of professional judgment, are not a guarantee of result and are effective only as of the date hereof. We do not undertake to advise you of any matter within the scope of this opinion than comes to our attention after the date of this opinion and disclaim any responsibility to advise you of any future changes in law or fact that may affect the opinions set forth herein. We express no opinion other than as hereinbefore expressly set forth. No expansion of the opinions expressed herein may or should be made by implication or otherwise.

We are informed that you are relying on this opinion in connection with the consummation of the actions contemplated by the IFA Agreements and Transaction. The foregoing opinion shall not be relied upon for any other purpose or by any other party; provided that you may use, publish or otherwise communicate this opinion to the extent required by applicable laws and may provide a copy of this opinion to potential and actual Lenders in connection with the closing of any Developer indebtedness. The use or reliance upon this opinion by any other person or entity without our prior written consent is strictly prohibited.

Very truly yours,

[NOTE THAT IN ADDITION TO PROVIDING AN UPDATED OPINION AT FINANCIAL CLOSE, OPINIONS IN PARAGRAPHS 2 AND 3 WILL ALSO BE REQUIRED AT FINANCIAL CLOSE WITH RESPECT TO THE LENDER'S DIRECT AGREEMENT]

**OPINION REGARDING MILESTONE PAYMENT AGREEMENT AND USE
AGREEMENT (INDOT AND IFA)**

[See attached]

_____, 2014

Indiana Department of Transportation
Indianapolis, Indiana

Indiana Finance Authority
Indianapolis, Indiana

Ice Miller LLP
Indianapolis, Indiana

_____ as Developer

Ladies and Gentlemen:

As Deputy Attorney General in the Office of the Attorney General of the State of Indiana, serving as counsel to the Indiana Department of Transportation ("INDOT") and the Indiana Finance Authority ("IFA"), I am generally familiar with the records and affairs of INDOT and the IFA. Terms used herein and not otherwise defined shall have the meaning set forth in a Public-Private Agreement dated the date hereof between IFA and _____, as Developer (the "PPA").

In furtherance of its obligations with respect to the I-69 Section 5 Project (the "Project"), the IFA has undertaken a procurement for design, financing, construction, and operation and maintenance of the Project under IC 8-15.5, pursuant to the PPA. Under the PPA, the IFA is obligated to pay to the Developer certain Milestone Payments, Termination Compensation and payments for Relief Events (collectively, the "PPA/MP Payments"). Under the PPA, the IFA is obligated to pay the Developer certain Availability Payments, Termination Compensation and payments for Relief Events, all on the terms and conditions set forth in the PPA (collectively, the "PPA/AP Payments" and together with the PPA/MP Payments, and any other obligations of the IFA in the PPA, the "PPA Payments"). IFA and INDOT have entered into a Milestone Payment Agreement, dated the date hereof, as supplemented (the "Milestone Agreement") which provides for the payment to IFA by INDOT of Department Milestone Payments (as defined therein) to be used by IFA to make the PPA/MP Payments and pay related costs. IFA and INDOT have entered into Master Use Agreement, dated as of the date hereof, as supplemented (the "Use Agreement") providing for use of the Project by INDOT which provides for the Payment to IFA by INDOT of the Use Payments (as defined therein) to be used by IFA to make the PPA/AP Payments and pay certain related costs. The Use Agreement will become effective when the Project has achieved Substantial Completion, as provided in the PPA, at which point INDOT will be obligated to make the Use Payments to IFA, as provided in the Use Agreement. In connection

with entry into the PPA, IFA will enter into an Escrow Agreement dated _____, 2014 (the "Escrow Agreement") with the Developer.

The various agreements referred to in the preceding paragraph are referred to herein as the "Transaction Documents", and the transactions referenced in the Transaction Documents and the Project are collectively referred to herein as the "Transaction." The Milestone Agreement and the Use Agreement, collectively, are referred to herein as the "INDOT Agreements", and the INDOT Agreements, with the PPA and the Escrow Agreement, collectively, are referred to herein as the "IFA Agreements".

In addition, the IFA and INDOT have entered into a Memorandum of Understanding dated _____, 2014 with respect to the respective rights, obligations and duties of such parties pertaining to the Transaction.

In connection with the participation of INDOT and the IFA in the Transaction, I have examined the following:

- a. The Constitution of the State of Indiana and Indiana Code 4-4-10.9, 4-4-11, 8-15.5 and 8-23, along with such other statutes as we have considered relevant (collectively, the "Act");
- b. The execution-version Transaction Documents;
- c. A certified transcript of proceedings related to the Transaction Documents, including certain certificates of the Commissioner of INDOT and of authorized representatives of the IFA (the "Transcript"); and
- d. The proceedings of the IFA authorizing, among other things, the execution and delivery of the IFA Agreements, including Resolution _____, Resolution _____ and Resolution _____ to that effect (the "Resolutions").

In giving this opinion, I have assumed (i) that all items submitted to me or reviewed by me are genuine, accurate, and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine; (ii) the authenticity of all other documents and records examined by me; (iii) the conformity to authentic original documents and records of all documents and records provided to me as certified, conformed, photostatic or electronic copies; and (iv) the additional assumptions set forth in Exhibit B hereto. I have also relied, without independent investigation or verification of any kind, on the representations and warranties of the parties contained in the Transcript with respect to the accuracy of factual matters contained therein.

Subject to the foregoing, to such other information and documents as I believe necessary to enable me to render this opinion, and to the qualifications hereinafter set forth, I am of the opinion that:

(1) The IFA is a duly organized body corporate and politic, separate from the State of Indiana, and validly existing under the laws of Indiana, including the Act, and has full power and authority to carry out and consummate all the transactions contemplated for it by the Transaction Documents.

(2) The meetings of the IFA relating to the proceedings described in (d) above were duly called and held, and each of the Resolutions was duly and properly adopted.

(3) The IFA has full right, power and authority to adopt each of the Resolutions and such by laws and other rules and regulations as are now in force, and the Resolutions each are in full force and effect.

(4) The IFA has the full right, power and authority for, and has taken all steps necessary to authorize the entering into, execution, delivery, adoption and performance of each of the IFA Agreements.

(5) The IFA Agreements have each been duly authorized, executed and delivered by the IFA, and constitute legal, valid and binding obligations of the IFA, enforceable against the IFA in accordance with their respective terms, subject to the applicable bankruptcy, insolvency and other laws affecting creditors' rights and remedies generally.

(6) INDOT has the right, power and authority for, and has taken all steps necessary to authorize, the execution, delivery and performance of the INDOT Agreements.

(7) The INDOT Agreements have been duly authorized, executed and delivered by INDOT, with a signatory or signatories who is/are statutorily empowered to execute and deliver the INDOT Agreements, and the INDOT Agreements are in full force and effect, and are the legal, valid and binding obligations of INDOT, enforceable against INDOT in accordance with their respective terms, subject to applicable bankruptcy, insolvency and other laws affecting creditors' rights and remedies generally.

(8) All consents, approvals, authorizations, registrations and declarations required under any Indiana statute, rule or regulation applicable to INDOT or the IFA have been obtained with respect to (a) the execution and delivery by INDOT of its certificates contained in the Transcript and the INDOT Agreements, (b) the execution and delivery by the IFA of its certificates contained in the Transcript and the IFA Agreements. The opinion in this paragraph 8 relates only to statutes, rules and regulations that this office, in the exercise of customary professional diligence, would reasonably recognize as being directly applicable to INDOT or the IFA with respect to the Transaction as contemplated under the Transaction Documents.

(9) All consents, approvals, authorizations, registrations and declarations required under any Indiana statute, rule or regulation applicable to

INDOT that are both (a) INDOT's obligation to obtain pursuant to the terms of the Transaction Documents and (b) necessary in order for INDOT to perform its obligations under the INDOT Agreements have been obtained, except for approvals contemplated to be obtained after execution and delivery of the INDOT Agreements and the Transcript. All consents, approvals, authorizations registrations and declarations required under any Indiana statute, rule or regulation applicable to the IFA that are necessary for the IFA to perform its obligations under the Transaction Documents have been obtained, except for those that are necessary for the IFA to obtain in the ordinary of course of business in respect to the Transaction. The opinion in this paragraph 9 relates only to statutes, rules and regulations that this office, in the exercise of customary professional diligence, would reasonably recognize as being directly applicable to INDOT or the IFA with respect to the Transaction contemplated under the Transaction Documents.

(10) Neither the execution and delivery by INDOT of its certificates contained in the Transcript or the INDOT Agreements, nor performance by INDOT of its obligations thereunder, nor the consummation of the portions of the Transaction contemplated thereby, will at the time of execution (a) violate or contravene any Indiana statute, rule or regulation applicable to INDOT, or, to the best of my knowledge, any judgment, decree, injunction or order of any federal court, Indiana court, governmental agency or authority binding upon INDOT as in effect on the date hereof; (b) to the best of my knowledge require any approvals under any agreement to which INDOT is a party, other than approvals that have been previously obtained; or (c) to the best of my knowledge conflict with any agreement to which INDOT is a party. The opinion in the preceding clause (a) of this paragraph (10) relates only to statutes, rules and regulations that this office, in the exercise of customary professional diligence, would reasonably recognize as being directly applicable to INDOT with respect to the Transaction contemplated under the Transaction Documents.

(11) Neither the execution and delivery by the IFA of the IFA Agreements, nor performance by the IFA of its obligations thereunder, nor the consummation of the portions of the Transaction contemplated thereby, will at the time of execution (a) violate or contravene any Indiana statute, rule or regulation applicable to the IFA, or, to the best of my knowledge, any judgment, decree, injunction or order of any federal court, Indiana court, governmental agency or authority binding upon the IFA as in effect on the date hereof; (b) to the best of my knowledge require any approvals under any agreement to which the IFA is a party, other than approvals that have been previously obtained; or (c) to the best of my knowledge conflict with any agreement to which the IFA is a party. The opinion in the preceding clause (a) of this paragraph (11) relates only to statutes, rules and regulations that this office, in the exercise of customary professional diligence, would reasonably recognize as being directly applicable to the IFA with respect to the Transaction contemplated under the Transaction Documents.

(12) Except as disclosed in Exhibit A attached hereto, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of my knowledge, threatened against the IFA, seeking to prohibit, restrain or enjoin the execution or delivery of the IFA Agreements by the IFA, or in any way contesting or affecting the validity or enforceability of any of the Resolutions, IFA Agreements against the IFA, or contesting any authority for the execution, issuance or delivery of any of the IFA Agreements by the IFA, or the adoption of any of the Resolutions, nor, to the best of my knowledge, is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect in a material manner the validity or enforceability of any of the IFA Agreements against the IFA.

(13) Except as disclosed in Exhibit A attached hereto, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of my knowledge, threatened against INDOT, seeking to prohibit, restrain or enjoin the execution or delivery of the INDOT Agreements by INDOT, INDOT Agreements against INDOT, or contesting any authority for the execution, issuance or delivery of any of the INDOT Agreements by INDOT, nor, to the best of my knowledge, is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect in a material manner the validity or enforceability of any of the INDOT Agreements against INDOT.

This letter and the matters addressed herein are as of the date hereof, and I undertake no, and hereby disclaim any, obligation to advise you of any subsequent change in any matter set forth therein, whether based on a change in law, a change in any fact relating to the parties or any other person, a change in any fact relating to the Transaction or the Transcript or a change in any other circumstance. This letter is limited to the matters expressly stated herein, and no opinions or other matters are to be inferred or may be implied beyond the opinions expressly set forth herein. This letter represents this office's only expressions of legal opinions to you in connection with relevant portions of the Transaction, and this letter may not be contradicted or supplemented by evidence of any prior, contemporaneous or subsequent communication by me to you, your counsel or others other than subsequent written communications that specifically refer hereto. You may not rely upon any such other communications other than as specified in the preceding sentence.

I am authorized to practice law only in the State of Indiana, and express no opinion as to the laws of any jurisdiction other than the State of Indiana. This opinion may only be relied upon by the addressees hereto.

This opinion is furnished solely to you for your benefit in connection with the Transcript and the transactions contemplated therein. This opinion may not be used or relied upon by, or published or communicated to, any person other than the addressees hereof for any purpose whatsoever without, in each instance, my prior written consent; provided that you may use, publish or otherwise communicate this opinion to the extent required by applicable laws and may provide a copy of this opinion to potential and

actual Lenders in connection with the closing of any Developer indebtedness. The foregoing does not restrict the right or discretion of this office, INDOT or the IFA to circulate, quote, publish or refer to this opinion. This opinion does not constitute a warranty or guarantee or an opinion as to matters of fact, and should not be construed or relied upon as such.

Very Truly Yours,

Office of the Attorney General

[NOTE THAT IN ADDITION TO PROVIDING AN UPDATED OPINION AT FINANCIAL CLOSE, OPINIONS IN PARAGRAPHS 1, 2, 4, 5, 8, 9, 11, and 12 WILL ALSO BE REQUIRED AT FINANCIAL CLOSE WITH RESPECT TO THE LENDER'S DIRECT AGREEMENT

EXHIBIT A

EXHIBIT B

ADDITIONAL ASSUMPTIONS

In addition to the assumptions contained in the letter to which this Exhibit B is attached, I have, without any inquiry or other investigation, made and relied upon the following assumptions:

1. The legal capacity of the natural persons executing the Transaction Documents and all other documents, instruments, and certificates I have reviewed.
2. The due authorization, execution and delivery of the Transaction Documents by all Parties thereto other than INDOT and the IFA.
3. The correctness and truthfulness of all the statements of fact contained in all documents and records examined by us.
4. With respect to the opinions expressed in opinion paragraphs (5) and (7) of the letter to which this Exhibit B is attached, no undue influence, duress, fraud, or deceit exists with respect to the transactions contemplated in the applicable Transaction Documents and there has not been any mutual mistake of fact with respect to the same.
5. With respect to the opinions expressed in opinion paragraphs (5) and (7) of the letter to which this Exhibit B is attached, the conduct of the Parties to the Transaction Documents has complied with, and will comply with, any requirement of good faith, fair dealing and conscionability.
6. With respect to the opinions expressed in the letter to which this Exhibit B is attached, to the extent that such opinions are based on currently effective statutes and ordinances enacted by an official legislative body and/or rules and regulations promulgated or issued by an official administrative body, I have assumed that such statutes, ordinances, rules and regulations were validly enacted and are constitutional.
7. With respect to the opinions expressed in opinion paragraphs (10)(b) and (11)(a) and (b) of the letter to which this Exhibit B is attached, each Party to the Transaction Documents will not in the future take any discretionary action (including a decision not to act) permitted under the Transaction Documents that would result in a violation of law or any court and administrative orders, writs, judgment or decrees.
8. Except with respect to the opinion expressed in opinion paragraph (8) of the letter to which this Exhibit B is attached, all authorizations, consents or other approvals of, or registrations, declarations or other filings with, any governmental authority or body, domestic or foreign, required by the Transaction Documents to be obtained by the Developer, for its execution or delivery of, or performance of its obligations under, PPA have been (or will have been) obtained or made and

are (or will be) in full force and effect, and valid and sufficient for their intended purposes, at the times for the actions by such Party to which they are requisite.

9. Developer (i) is a limited liability company, duly formed, validly existing and in good standing under the laws of Delaware, and (ii) has all requisite power and authority and has taken all actions necessary as conditions precedent to execute, deliver and perform its obligations under the PPA and related agreements.

FORM Z

LETTER FROM INDEPENDENT INSURANCE BROKER/CONSULTANT

[REDACTED], 2014

Ms. Silvia Perez
Project Manager
Indiana Finance Authority
One North Capitol Street, Suite 900
Indianapolis, IN 46204

Re: [REDACTED] **[Insert Proposer Name]** Proposal
with respect to Insurance Policies, I-69 Section 5 Project

Dear Ms. Perez,

Reference is made to that certain Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the I-69 Section 5 Project issued by the Indiana Finance Authority ("IFA") on October 15, 2013 (as amended, the "RFP," and its "Instructions to Proposers," the "ITP"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the current RFP version of the Public-Private Agreement, to be entered into between the Preferred Proposer (as "Developer") and IFA (the "PPA"), in accordance with the RFP.

As part of the Proposal by [REDACTED] **[Insert Proposer Name]** ("Proposer"), and with respect to Section 5.3.2(g) of the ITP, Section 7.0 of Exhibit C to the ITP, Form Z to the ITP, and Section 17.1.9 and Section 17.1.9.6 of the PPA, I hereby confirm that

1. The Proposal (with respect to Insurance Policies) conforms to the requirements of the PPA and, in particular, Article 17 thereof and Exhibit 18 thereto;

2. The amount proposed by Proposer in its Financial Proposal for the premiums and cost of such Insurance Policies for the first year after the Substantial Completion Date, as shown in the Financial Model and related Financial Model data, reflects the current and fair market cost of providing all such Insurance Policies, collectively and as to each individually; and

3. I am a licensed insurance **[broker]/[consultant]** **[Proposer to use correct term for signatory's role/title]** in the State of _____ **[Insert State(s) Licensed]**. I have been retained by Proposer to serve as its independent insurance **[broker]/[consultant]** with respect to the Project and for the purposes of

making this confirmation. I have been duly authorized by Proposer and my firm to make such confirmation to IFA, recognizing that IFA intends to rely on the same for purposes of evaluation of the Proposals and for application under the PPA.

Very truly yours,

[_____] ***[Title]***

Exhibit A

DEFINITIONS AND ACRONYMS

“Addenda/Addendum” means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

“Advance Construction Project” has the meaning set forth in ITP Section 1.4.4.

“Aesthetic and Landscape Concept Master Plan” means the plan submitted pursuant to Section 4.2.1.3 of Exhibit B to the ITP.

“Alternative Technical Concepts” or **“ATC”** has the meaning set forth in ITP Section 2.1.

“Assumptions Book” means the data book Proposers must submit with their Financial Models, pursuant to Section 5.3 of Exhibit C to the ITP, which must fully describe all assumptions underlying the financial projections within the Financial Model.

“Authorized Representative” has the meaning set forth in ITP Section 2.2.1.

“Bank Debt Financing” has the meaning set forth in Exhibit C, Section 3.4.

“Base MAP” means shall mean the amount identified as the “Base MAP” on Form J to the ITP.

“Benchmark Rate(s)” means the rates reflected in Table 6 on Form P, which must be pre-approved by IFA pursuant to Section 5.10.3 of the ITP.

“Board” means the Board of the IFA.

“Bond Financing” has the meaning set forth in Exhibit C, Section 3.4.

“Confidential” or **“confidential”** has the meaning set forth in ITP Section 2.3.1.

“Conflict of Interest Disclosure Statement” means the certificate, executed by or on behalf of Proposer, delivered with its Proposal and conforming to Form I to the ITP.

“Core Lender(s)” means (i) at least one but no more than four experienced project finance lenders (bank and/or financial institution) who are identified in a Proposer’s Financial Proposal pursuant to the requirements of Section 3.2 of Exhibit C; and/or (ii) proposed purchasers of Proposer’s debt securities sold pursuant to an exemption under Section 4(a)(2) of the Securities Act of 1933, as amended.

“Cost and Pricing Data” has the meaning set forth in Exhibit C, Section 6.0.

“Credit Spread” means the credit spread(s) reflected in Table 6 on Form P, which must be pre-approved by IFA pursuant to Section 5.10.4 of the ITP.

“Design-Build Contractor” shall mean the entity with primary responsibility for the construction of the Project.

“Developer” shall mean the successful Proposer that enters into the PPA with IFA pursuant to this RFP. See also ITP Section 1.1.

“Disadvantaged Business Enterprise” or **“DBE”** has the meaning set forth in 49 CFR Part 26. See also ITP Section 1.2.

“Eligible Financial Institution” means a bank or financial institution with a long-term, unsecured debt ratings of not less than “A-/A3” from one of the major national rating agencies (Fitch Ratings, Moody’s Investor Service and Standard & Poor’s).

“Eligible Surety” means a bonding surety licensed in the State, listed on the U.S. Department of the Treasury’s “Listing and Approved Sureties” (found at www.fms.treas.gov/c570/c570.html), rated “A” or higher by at least two nationally-recognized rating agencies (Fitch Ratings, Moody’s Investor Service and Standard & Poor’s) or rated least A-, X or higher according to A.M. Best’s Financial Strength Rating and Financial Size Category.

“Equity Member” means (a) each entity with a direct equity interest in the Proposer (whether as a member, partner, joint venture member, or otherwise), and (b) each entity proposed to have a direct equity interest in the Developer.

“Escrow Agreement” means the agreement entered into between the Proposer and escrow agent, with IFA as a named, intended third party beneficiary, concerning Escrowed Materials and conforming to Form L to the ITP.

“Escrowed Materials” means the Cost and Pricing Data placed into escrow.

“Execution Documents” shall have the meaning set forth in ITP Section 6.1.

“FHWA” means the Federal Highway Administration.

“Financial Close Deadline” means the deadline set forth in Section 13.7.2 of the PPA.

“Financial Close Security” means the security described in ITP Section 6.6.

“Financial Model” means the tool described at Section 5.0 of Exhibit C to the ITP that a Proposer will use to calculate projections in support of its Financial Proposal.

“Financial Plan” means the information that Proposers must provide pursuant to Section 3.0 of Exhibit C to the ITP, which must describe the strength of financial commitments from Core Lender(s), Lead Underwriter(s) and equity investors in detail, including information about timing, amount, terms, and conditions of each commitment.

“Financial Plan Executive Summary” means the plan submitted pursuant to Section 3.1 Exhibit C to the ITP.

“Financial Proposal” means that part of the Proposal described in Exhibit C of the ITP.

“Financial Proposal Evaluation Committee” or **“FPEC”** means the committee that performs the review and evaluation of the Financial Proposal as set forth in ITP Section 5.0.

“Financial Proposal Feasibility Score” means the evaluation score relating to the feasibility of the Financial Proposal, as determined pursuant to ITP Section 5.5.1.

“Financial Score” means the score for evaluation of the Proposal as determined pursuant to Section 5.2.1 of the ITP.

“Financially Responsible Party” has the meaning set forth in Exhibit C, Section 2.0.

“Financial Proposal” means that part of the Proposal described in Exhibit C of the ITP.

“FOIA” means Freedom of Information Act.

“FTP Site” has the meaning set forth in ITP Section 1.5.

“Governmental Entity” means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than IFA.

“Guarantor” means a Financially Responsible Party that will guarantee all the obligations of an Equity Member.

“IFRS” mean International Financial Reporting Standards.

“Instructions Guide” means the step by step instructions on the procedure to run and to optimize the Financial Model that Proposers must submit with their Financial Models, pursuant to Section 5.4 of Exhibit C to the ITP.

“Instructions to Proposers” or **“ITP”** means those documents, including exhibits and forms in Exhibit D, included in the RFP containing directions for the preparation and submittal of information by the Proposers in response to the RFP. See also ITP Section 1.1.

“Key Personnel” means those personnel identified in Exhibit B, Section 3.2.5 and Form E.

“Lead Engineering Firm” shall mean the entity with primary responsibility for design of the Project (which entity may be a consortium, partnership or any other form of joint venture).

“Lead O&M Contractor” shall mean the entity primary responsibility for operations and maintenance for the Project (which entity may be a consortium, partnership or any other form of joint venture).

“Lead Underwriter(s)” has the meaning set forth in ITP Section 1.9.3.

“Major Participant” means each Equity Member and (a) the Lead Engineering Firm; (b) the Design-Build Contractor; (c) the Lead O&M Contractor; and (d) a proposed Key Contractor

with a contract valued at greater than or equal to \$25 million (excluding contracts with Suppliers).

“MAP Score” means the score for evaluation of the Proposal as determined pursuant to Section 5.2.1 of the ITP.

“Model Auditor” has the meaning set forth in ITP Section 5.10.2.

“MPO” or **“Metropolitan Planning Organization”** has the meaning set forth in ITP Section 1.3.

“Non-Collusion Affidavit” means the affidavit, executed by or on behalf of Proposer and its Equity Members, delivered with its Proposal and conforming to Form F to the ITP.

“On-the-job” or **“OJT”** has the meaning set forth in ITP Section 1.2(L).

“Original Equity IRR” has the meaning set forth in Exhibit C, Section 5.2.3.

“Post-Selection Deliverables” has the meaning set forth in ITP Section 5.11.1.

“PPA” has the meaning set forth in ITP Section 1.1.

“Preferred Proposer” means the apparent best value Proposer, as evidenced by being the highest scoring Proposer based on the best value determination pursuant to ITP Section 5.2.

“Preliminary DBE Performance Plan” means the plan submitted pursuant to Section 4.1.3 of Exhibit B to the ITP.

“Preliminary Design-Build Plan” means the plan submitted pursuant to Section 4.2 of Exhibit B to the ITP.

“Preliminary Design-Build Quality Management Plan” means the plan submitted pursuant to Section 4.2.3 of Exhibit B to the ITP.

“Preliminary Operations and Maintenance Plan” means the plan submitted pursuant to Section 4.3 of Exhibit B to the ITP.

“Preliminary Performance Plans” means the Preliminary Project Management Plan, the Preliminary Design-Build Plan and the Preliminary Operations and Maintenance Plan.

“Preliminary Project Baseline Schedule” means the Project schedule for design and construction required to be submitted with the Proposal and meeting the requirements set forth in Section 4.1.2 of Exhibit B to the ITP.

“Preliminary Project Management Plan” means the plan submitted pursuant to Section 4.1 of Exhibit B to the ITP.

“Preliminary Workforce Diversity and Small Business Performance Plan” means the plan submitted pursuant to Section 4.1.4 of Exhibit B to the ITP.

“Pre-Proposal Submittal” has the meaning set forth in ITP Section 2.4.

“Private Placement” means the sale of debt securities by the Proposer/Developer pursuant to an exemption under Section 4(a)(2) of the Securities Act of 1933, as amended.

“Private Placement Agent” means a nationally-recognized firm with experience in transportation infrastructure finance that is properly registered as a broker-dealer with the Securities and Exchange Commission, the National Association of Securities Dealers and applicable state securities commissions.

“Private Placement Memorandum” means the documentation provided by the Proposer/Developer to prospective purchasers in a Private Placement.

“Project” has the meaning set forth in ITP Section 1.1. See more fulsome definition in the PPA Documents.

“Project Sponsors” has the meaning set forth in ITP Section 1.3.

“Proposal” shall have the meaning set forth in ITP Sections 1.1 and 1.8.

“Proposal Bond” shall have the meaning set forth in Section 3.3.1 of Exhibit B to the ITP.

“Proposal Due Date” means the deadline for submission of Proposals identified in ITP Section 1.7.1.

“Proposal Letter” means the letter, executed by or on behalf of Proposer, delivered with its Proposal and conforming to Form A to the ITP.

“Proposal Letter of Credit” shall have the meaning set forth in Section 3.3.2 of Exhibit B to the ITP.

“Proposal Price Date” means the date on which all aspects of the Proposal priced in 2014 dollars are to be priced. The Proposal Price Date is January 21, 2014.

“Proposal Revision” has the meaning set forth in ITP Section 5.8.

“Proposal Security” means the proposal bond or letter of credit as described in Section 3.3 of Exhibit B to the ITP. For purposes of clarity, the Proposal Security shall be either a conforming Proposal Bond or conforming Proposal Letter of Credit, but not both.

“Proposer” means the entity submitting a Proposal for the Project in response to this RFP.

“Proposer Authorized Representative” has the meaning set forth in ITP Section 2.2.2.

“Public Records Act” shall have the meaning set forth in ITP Section 1.8.4.

“Reference Information Documents” means the documents and information included in Volume III and described in ITP Section 1.5.

“Request for Qualifications” or **“RFQ”** means IFA’s Request for Qualifications issued on May 23, 2013, as amended.

“Request for Proposals” or **“RFP”** means the set of documents identifying the Project and its Work to be performed and materials to be furnished in response to which a Proposal may be submitted by a Proposer/Developer. The RFP includes the ITP, PPA Documents, and Reference Documents. The RFP is issued only to Proposers that have been shortlisted following RFQ review. See also ITP Section 1.1.

“Restricted Property” has the meaning set forth in ITP Section 2.2.4.

“RFP Documents” has the meaning set forth in ITP Section 1.5.

“Standard & Poor’s” means Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business, part of McGraw Hill Financial.

“Stakeholder” means parties that may have a stake in the Project by virtue of their location or funding, including the Department, City of Bloomington, IN, Bloomington MPO, City of Bloomington, Morgan County, Monroe County, Town of Ellettsville, City of Martinsville and FHWA.

“State” means State of Indiana.

“Statement of Qualification” or **“SOQ”** means the submission made by a Proposer in response to the RFQ, including all clarifications thereto submitted in response to requests by IFA. See also ITP Section 1.1.

“Stipend Agreement” means the agreement entered into between IFA and Proposer and in the form of Form X to the ITP.

“Surety” means the individual or entity committing to provide any of the bonds identified in the RFP.

“Technical Proposal” means that part of the Proposal described in Exhibit B of the ITP.

“Technical Proposal Evaluation Committee” or **“TPEC”** means the committee that performs the review and evaluation of the Technical Proposal as set forth in ITP Section 5.1.

“Technical Proposal Score” means the score for evaluation of the Proposal as determined pursuant to Section 5.2.2 of the ITP.

“Technical Score” means the score for evaluation of the Proposal as determined pursuant to Section 5.2.2 of the ITP.

“Total Project Capital Cost” means the amount set forth on the “Totals” line of Form O-1.

“Total Proposal Score” means the score for evaluation of the Proposal as determined pursuant to Section 5.2 of the ITP.

“USDOT” means the United States Department of Transportation.

“Website” has the meaning set forth in ITP Section 2.8.1.

For definitions of other initially capitalized terms, see Exhibit 1 of the PPA Documents.

Exhibit B

TECHNICAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit B describes the submission format for Technical Proposals and outlines the required information that will comprise a Technical Proposal.

Proposers shall submit the information required by this Exhibit B in the organization and format specified herein. The Technical Proposal shall be organized in the order listed in Exhibit E (except for appendices that may be included in the appropriate volume), and shall be clearly indexed. Each component of the Technical Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

Evidence of signature authority shall be provided for all individuals signing forms. Item B on page 5 of Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other signatories.

2.0 Format

The Technical Proposal shall be limited to an aggregate of 90 pages (if double-sided, 45 sheets), plus the executive summary, resumes, appendices, and exhibits containing required forms, graphs, matrices, drawings, and other pertinent data. The materials required by Exhibit B, Sections 3.1 through 3.5 shall not be included in the 90 page limit).

The Technical Proposal shall be contained in two volumes: Volume 1-Executive Summary, Administrative Materials and Forms and Volume 2-Preliminary Performance Plans.

3.0 Contents of the Technical Proposal

The required contents and organization of the Technical Proposal are presented in this Exhibit B and summarized in the Proposal checklist provided in Exhibit E. Proposers must provide all the information set out in this Exhibit B. A copy of the checklist for the Technical Proposal shall be included in each volume of the Technical Proposal. Proposers shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal. The Technical Proposal shall not contain any information relating to Project development costs or the MAP.

The Technical Proposal shall consist of the following major elements:

- (A) Executive Summary (in Volume 1);
- (B) Proposal Security (in Volume 1);

(C) Proposer Information, Certifications, and Documents (including required Forms A through I, and Q through S, U and V) (in Volume 1 unless otherwise noted);

(D) Preliminary Performance Plans (including Form N) (in Volume 2).

3.1 Executive Summary

The Executive Summary shall be written in a non-technical style and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with the Proposal and Proposer's ability to satisfy the financial and technical requirements of the Project. The Executive Summary shall not exceed 10 single-sided pages. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

- (A) An explanation of the organization and contents of the Proposal;
- (B) A summary of any changes to the information submitted in the Proposer's SOQ;
- (C) A summary of any changes in the Proposer's organization, Equity Members, Major Non-Equity Members and Key Personnel since submission of the SOQ;
- (D) A summary of the proposed management, decision making, and day-to-day operation structure of the Proposer, and a statement that each Major Non-Equity Member has committed to provide the specified people;
- (E) A summary of the Preliminary Project Management Plan;
- (F) A summary of the Proposer's approach to addressing community relations and interaction with the Project;
- (G) A summary of the Proposer's approach to addressing environmental sensitivity, safety, traffic management, and construction staging;
- (H) A summary of the Proposer's approach to satisfying the applicable DBE requirements and additional measures that will be taken to involve minority and female owned business enterprises;
- (I) A summary of any innovative concepts and approved ATCs included (including the listing of the ATC number);
- (J) A summary describing the Proposer's approach for working with IFA, the Department and third parties, including the approach to resolving conflicts;
- (K) A summary of the Proposer's conceptual project schedule, key milestones, anticipated milestones for development, design, construction, and operations and maintenance of the Project; and

- (L) A summary of the Proposer's approach to operations, maintenance, and capital improvements, replacements, and handback.

Each Proposer shall attach to the Executive Summary the following two organization charts:

- (1) A table indicating the roles of the Equity Members and Major Participants (other than Equity Members) and their shares of ownership of any joint venture or other entities; and
- (2) A table showing the relationship between any of the Equity Members and Major Participants (other than Equity Members) and any Guarantors and Financially Responsible Parties.

These charts will not be counted towards the page limit for the Executive Summary.

The Executive Summary shall be contained in Volume 1.

3.2 Proposer Information, Certifications, and Documents

All materials in Section 3.2 shall be contained in Volume 1 unless otherwise noted.

If a form required hereunder calls for execution or information concerning a Major Participant and that Major Participant is a consortium, partnership or joint venture (such as the Design-Build Contractor), the form must be provided for both the consortium, partnership or joint venture entity, as well as the individual members of the consortium partnership or joint venture; provided, however, that execution of the form, if required, on behalf of the consortium partnership or joint venture need only be by an authorized signatory of the consortium partnership or joint venture.

3.2.1 Proposal Letter

The Proposal shall include the Proposal Letter (Form A). The Proposer shall attach to the Proposal Letter evidence of authorization to execute and deliver the Proposal, the PPA and all other documents required to be executed by the Proposer or Developer in connection with the PPA and award of the PPA, and shall identify its authorized representative(s). If Proposer is a consortium, partnership or any other form of joint venture, then the Equity Members of Proposer may each execute a single document authorizing a nominated and identified representative to execute documents on each of their behalf in respect of the Proposer.

3.2.2 Information About the Proposer, Major Participants, and Other Contractors

The Proposal shall include a completed chart on Form B-1, including the names, contact information, role in organization, licensing information, and description of work (if applicable) for the Proposer and Equity Members.

The Proposal shall include a completed Form B-2 providing information about the Proposer and its team as specified therein.

The Proposal shall include a completed Form B-3 providing information regarding (i) each Major Participant (excluding Equity Members that do not fall into clauses (a) through (d) of the definition of Major Participants); and (ii) all other Contractors identified by the Proposer as of the Proposal Due Date, including those included in the Proposer's SOQ.

The Proposal shall include copies of organizational documentation described in pages 5 and 6 of Form A for Proposer and Equity Members, as well as other documentation required by Form B-2. If any modification to the organizational documents for such entity is contemplated prior to award or, if Proposer intends to form an affiliated entity to be Developer, Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in pages 5 and 6 of Form A) for such proposed entity.

If Proposer is a consortium, partnership or any other form of joint venture, the Proposal shall contain an executed teaming agreement or, if the entities making up the Proposer have not executed a teaming agreement, a summary of the key terms of the anticipated agreement.

If the Developer is to be a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the Proposal shall contain a letter signed by each Equity Member and any other member who will make up the Developer indicating they will accept joint and several liability for the Developer's obligations under the PPA. If the Developer is not a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, such a letter shall not be required.

The Proposal shall contain executed contracts, or if a contract has not been executed, detailed, signed term sheets or heads of terms outlining the key commercial and required Key Contract terms between:

- Proposer and Design-Build Contractor; and
- Proposer and Lead O&M Contractor (provided, however, if the Developer shall, and commits in the Proposal to, self-perform the O&M Work under the PPA Documents in an amount no less than 30% of the O&M Work (excluding Rehabilitation Work and Handback Requirements Work, such amount to be measured by the aggregate value of O&M Work over the term of the PPA, as delineated in Form O-3), the foregoing items relating to the Key Contract between the Developer and the Lead O&M Contractor shall not be required).

The Proposal shall also contain a detailed, signed term sheet or heads of terms outlining the key commercial required Key Contract terms between Proposer or Design-Build Contractor and Lead Engineering Firm.

3.2.3 Responsible Proposer and Major Participant Questionnaire

The Proposal shall include Form C, the "Responsible Proposer and Major Participant Questionnaire," signed by the Proposer. As noted on the form, it may be provided by a Proposer on its own behalf and on behalf of Proposer, Equity Members and other Major Participants, or it may be provided by a Proposer on its own behalf and the individual Equity Members and other Major Participants may provide their own form individually. The form

executed by a Proposer shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed by Equity Members and other Major Participants shall be signed by an authorized representative of such Equity Member or other Major Participant, as applicable, and the Proposal shall include evidence of signature authorization for such individual(s).

3.2.4 Industrial Safety Record

The Proposal shall include an industrial safety record on Form D for each Equity Member and Major Participant of a Proposer's team that will perform or supervise installation and/or construction on the Project. If any such entity does not have an industrial safety history (for example if the firm is newly formed), Form D is not required for such entity, but a statement shall be provided explaining why the form is not included. If any such entity does not have an industrial safety history for as long as indicated in Form D, Form D is required for such entity for the applicable years, but a statement shall be provided explaining why all years on the form are not included. Should any of these parties have been a member of a joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D.

3.2.5 Key Personnel

The Proposal shall contain copies of resumes for each Key Personnel listed in this Exhibit B, Section 3.2.5 (which must contain the individual's qualifications and relevant work experience). Resumes shall be contained in an appendix in Volume 2.

Key Personnel:

- Project Executive (if different than the Project Manager)
- Project Manager
- Deputy Project Manager(s)
- Financial Director (responsible for the project finances);
- Public Information Coordinator;
- DBE Coordinator;
- Lead Engineer;
- Engineer of Record;
- Construction Manager;
- Quality Manager;
- Construction Quality Manager;
- Design Quality Manager;

- Utility Manager;
- Safety Manager;
- Environmental Compliance Manager;
- Operations and Maintenance Manager;
- Karst Specialist; and
- Erosion and Sediment Control Manager; and
- Maintenance of Traffic (MOT) Manager.

The Proposal shall identify the Key Personnel and shall include Form E identifying personnel work assignments, as well as a statement signed by the Proposer and the employer of each designated key person, committing to maintain such individual's availability for and active involvement in the Project. Several of the Key Personnel are intended to be full-time positions as indicated in Section 1.5.3.2 of the Technical Provisions. The Proposal shall contain written confirmation that these staff will be committed exclusively to the Project, and will have no other conflicting project assignments during the periods indicated in the Technical Provisions. Refer to Section 7.4.3 of the PPA Documents for information regarding time commitment requirements for Key Personnel and IFA rights if it is determined that any such personnel are not devoting sufficient time to the prosecution and performance of the Work required for the Project.

Form E shall be signed by the Proposer and the employer of each of the Key Personnel.

A Proposer may not make any changes in its Key Personnel identified in its SOQ except as provided in ITP Section 2.11.

3.2.6 Letter Approving Pre-Proposal Submittals

The Proposal shall include the following:

- a. IFA's approval letter of Proposer's Lead Underwriter(s) and counsel to the Lead Underwriter(s) provided under ITP Section 1.9.3;
- b. If a Proposer's organization or Key Personnel have changed since submission of the SOQ, the Proposer shall specifically describe such changes and, if applicable, include a copy of IFA's approval letter provided under ITP Section 2.11;
- c. A copy of IFA's approval letter provided under ITP Section 2.11.3;
- d. IFA's approval letter(s) regarding any ATCs used by Proposer in the Proposal provided under ITP Section 3.2;

- e. IFA's approval letter regarding the Model Auditor provided under ITP Section 5.10.2; and
- f. IFA's approval letter regarding the Benchmark Rates and Credit Spreads provided under ITP Section 5.10.4

3.2.7 Non-Collusion Affidavit

The Proposal shall include Form F, certifying that the Proposal is not the result of and has not been influenced by collusion.

Form F shall be executed by each Proposer on its behalf and by each of the Equity Members separately on their own behalves.

3.2.8 Certification Regarding Buy America

The Proposal shall include Form G, regarding Buy America requirements.

3.2.9 DBE Certification

The Proposal shall include a Certification of DBE Goal Attainment or Good Faith Efforts (Form H) confirming that the Proposer will obtain DBE commitments equal to or exceeding the DBE participation goal or will exercise good faith efforts to meet the goal and shall substantiate and document its good faith efforts. This Certification shall apply to the entire Project.

3.2.10 Surety/Financial Institution Information

The Proposal shall include the following information regarding the Payment Bonds and Performance Security to be provided in accordance with Section 17.2 of the PPA:

- Name of Surety (which must be an Eligible Surety) and the name and address of the agent.
- Whether the listed Surety defaulted on any obligation within the past ten years (measured from the date of issuance of the RFQ), and the details in the event of such default.
- If the performance security is in the form of a letter of credit, then the name of the Eligible Financial Institution issuing such letter of credit and the name or address of a point of contact.
- A letter from the Surety indicating that the Surety has reviewed the PPA Documents, including Article 17 of the PPA, and is prepared to issue the Performance Bond(s) and Payment Bond(s) in the form and amount required by the PPA. The letter must specifically state that the Surety has read the RFP (including the ITP) and any addenda and has evaluated the backlog and work in progress for the entity for which it will provide the bonds in determining its willingness to issue the Performance Bond(s) and Payment Bond(s). The letter may include no conditions, qualifications, or reservations

for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the PPA and issuance of NTP2 thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the PPA or the Technical Provisions following the date of the letter, but excluding any change orders and any changes or information reflected in the Proposal, such as ATCs and Proposer commitments. Separate letters for one or more of the individual Equity Members or other Major Participants are acceptable, as is a single letter covering all Proposer team members. If more than one letter is provided, each letter shall set forth the portion of the bond amount the Surety will be issuing.

- If a letter of credit in lieu of the Performance Bond is proposed, include a letter from the bank/financial institution indicating a willingness to issue a letter(s) of credit in the form and amount set forth in Exhibit 19 to the PPA, covering the performance requirements. The bank/financial institution letter shall state the unsecured debt rating of the issuing institution. Proposers must meet the Payment Bond requirements with a surety bond. IFA will not accept a letter of credit from Proposers for the Payment Bond requirements. The letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the PPA and issuance of NTP2 thereunder; provided, however, that the Eligible Financial Institution may reserve in its letter the right to reasonably approve any material adverse changes made to the PPA or the Technical Provisions following the date of the letter, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments.
- In instances where the response to Exhibit C, Section 2.0.3(e) contains descriptions of proposed or anticipated changes in the financial condition of Proposer or any other entity for which financial information is submitted as required hereby for the next reporting period, a certification that the Surety's/bank's/financial institution's analysis specifically incorporates a review of the factors surrounding such changes and identifying any special conditions which may be imposed before issuance of surety bonds for the Project.

3.2.11 Conflict of Interest Disclosure

Attention is directed to Section 2.10.2 of the ITP. Proposers' attention is also directed to 23 CFR Part 636 Subpart A.

Each Proposer, on behalf of itself and all entities on the Proposer's team, shall voluntarily disclose to the IFA, in writing, any fact that may provide it with an unfair competitive advantage and/or potential or actual conflict of interest. The Proposal shall include a certification on Form I by Proposer, on behalf of itself and all entities on the Proposer's team, describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest. Each Proposer, on behalf of itself and all entities on the Proposer's team, shall complete and deliver a certification on Form I even if Proposer, on behalf of itself and all entities on the Proposer's team, has nothing to disclose, in which case, Proposer shall so indicate on Form I.

If Proposer made a disclosure regarding conflicts of interest in its SOQ, Proposer shall complete and deliver the Form I certification, appending its RFQ response to Form I.

IFA may preclude or disqualify a Proposer from participation in the procurement and subsequent PPA if the Proposer is deemed to have an unfair competitive advantage or a conflict of interest under applicable state or federal law.

3.2.12 Certification Regarding Equal Employment Opportunity

The Proposal shall include Form Q, regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports.

A Form Q shall be provided by the Proposer, each Equity Member, Major Participant, and each proposed contractor.

3.2.13 Use of Contract Funds for Lobbying Certification

The Proposal shall include executed copies of Form R, regarding use of contract funds for lobbying. One copy of Form R must be executed by each of the Proposer, each Equity Member, and each Major Participant and any proposed contractors.

Form R should be modified and duplicated as needed and must be executed by Proposer, Equity Members, Major Participants, and all proposed contractors.

3.2.14 Debarment and Suspension Certification

The Proposal shall include an executed copy of Form S, regarding debarment and suspension of contractors. The form is to be signed by the Proposer's authorized representative as defined in ITP Section 2.2.2

3.2.15 Insurance

The Proposal shall contain certificates of insurance policies evidencing proof of insurance coverages as required by the PPA, or written evidence from an insurance company(ies), broker(s) or agent(s) that such company(ies), broker(s) or agent(s) will place all such insurance coverages for Proposer (should they become Developer). For the on-site project-specific coverages, the signatories must indicate expressly that they have read the PPA and insurance requirements set forth therein and that the entities required to obtain insurance under the PPA have the capability of obtaining such insurance in the coverages and under the conditions listed in the PPA.

3.2.16 Confidential Contents Index

A page executed by the Proposer that sets forth the specific items (and the section and page numbers within the Proposal at which such items are located) that the Proposer deems to be a trade secret or other confidential information protected from disclosure by an exception in the Public Records Act. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for IFA to treat the entire Proposal as public information.

Notwithstanding the foregoing, the list required under this Exhibit B, Section 3.2.16 is intended to provide input to IFA as to the confidential nature of a Proposer's Proposal, but in no event shall such list be binding on IFA, determinative of any issue relating to confidentiality or a request under the Public Records Act or override or modify the provisions of the Public Records Act or IFA's responsibilities thereunder.

3.3 Proposal Security

The Proposal shall include either a Proposal Bond or one or more Proposal Letters of Credit as specified below. A combination of Proposal Bond and Proposal Letter(s) of Credit are not permitted.

Forfeiture of Proposal Security in accordance with Section 4.7 of the ITP will constitute liquidated damages. By submitting its Proposal, the Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate IFA for damages it will incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of the Project, IFA's transportation improvement program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). By submitting its Proposal, Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that IFA would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal, and do not constitute a penalty. By submitting its Proposal, Proposer agrees to such liquidated damages in order to fix and limit Proposer's costs and to avoid later disputes over what amounts of damages are properly chargeable to Proposer.

3.3.1 Proposal Bond

If a proposal bond is provided, it shall be in the amount of \$10 million and in the form of Form K-1 ("Proposal Bond") and shall be issued by an Eligible Surety. The Proposal Bond shall be subject to forfeiture in accordance with ITP Section 4.7.

3.3.2 Proposal Letter of Credit

If a letter of credit is provided it shall be in the amount of \$10 million, which shall be in the form of Form K-2 ("Proposal Letter of Credit") issued by an Eligible Financial Institution that has an office in the United States at which the Proposal Letter of Credit can be presented for payment (including, if elected by Proposer, to be an electronic or "paperless" letter of credit, by facsimile or by electronic means). More than one Proposal Letter of Credit may be provided so long as the aggregate value of such Proposal Letters of Credit equal \$10 million. The Proposer shall attach to each Proposal Letter of Credit (or present with each electronic or "paperless" letter of credit) evidence of the issuer's long-term unsecured debt rating current as of 30 days before

provision of the Proposal Letter of Credit. The Proposal Letter of Credit shall be subject to forfeiture in accordance with ITP Section 4.7. Proposers may submit more than one Proposal Letter of Credit in the form provided in Form K-2, provided that the Proposal Letters of Credit total \$10 million in the aggregate. A Proposal Letter of Credit submitted by a Proposer shall be valid for no less than 180 days after the Proposal Due Date.

3.4 Election of Termination for Convenience Calculation Method

Exhibit 21 of the PPA includes two options for the calculation of the termination compensation in the event of a termination for convenience. Each Proposer shall indicate its option on Form V.

3.5 Escrow Agreement

The Proposal shall include an executed version of the Escrow Agreement substantially in the form of Form L, with such escrow company in Indianapolis, Indiana as Proposer may select. As noted in Form L, the escrow agent's offices must be located within a ten-mile radius of 1 North Capitol Ave., Ste. 900, Indianapolis, Indiana.

4.0 Preliminary Performance Plans

The Technical Proposal shall contain the following preliminary performance plans:

- (A) Preliminary Project Management Plan (Exhibit B, Section 4.1);
- (B) Preliminary Design-Build Plan (Exhibit B, Section 4.2); and
- (C) Preliminary Operations and Maintenance Plan (Exhibit B, Section 4.3)

The Preliminary Performance Plans shall describe the project management philosophy, the plan, and schedule for executing the Project and any related PPA administration, and how Proposer plans to achieve and satisfy the Project requirements.

The Preliminary Performance Plans of the Preferred Proposer shall be appended to the PPA in the following PPA Exhibits: Exhibit 2-A Developer's Schematic Design; Exhibit 2-B Preliminary Project Baseline Schedule; Exhibit 2-E Preliminary Project Management Plan; Exhibit 2-F Preliminary Design-Build Plan; and Exhibit 2-G Preliminary Operations and Maintenance Plan.

4.1 Preliminary Project Management Plan

Proposer shall present a Preliminary Project Management Plan, which shall consist of several management plans and components that describes the Developer's managerial approach. The Preliminary Project Management Plan shall describe the project management philosophy, the plan, and schedule for executing the Project and any related PPA administration, and how Proposer plans to achieve and satisfy the requirements of the PPA Documents. Except as noted in this Exhibit B, Section 4.1, the contents of the Preliminary Project Management Plan shall be appended to the PPA as Exhibit 2-E.

4.1.1 Project Management Approach

The Preliminary Project Management Plan shall provide a description of the proposed approaches to managing all Project design, construction, operations and maintenance activities throughout the Term. A responsive expression of the proposed management approaches shall include an overview of the management sections included in the Preliminary Design-Build Plan and the Preliminary Operations and Maintenance Plan.

- a. Management Structure and Personnel - Describe the proposed overall project management organization for design, construction and operations and maintenance during construction, identifying participating firms/organizations and individuals. It shall include:
 - i. An organization chart outlining the structure of Proposer's project management organization for design, construction and operations and maintenance (including the design, construction, and operations and maintenance during construction quality sub-organizations) and a description of the roles allocated, responsibilities, interrelation and Work to be accomplished by each member of the management team and each sub-organization, including identified subcontractors and suppliers (at all tiers);
 - ii. Information describing how each of the Key Personnel involved with design, construction and operations and maintenance during construction will fit into the organization, including a description of each key person's function and responsibility relative to the Project, and indicating the percent of time that he/she will devote to the Project;
 - iii. Qualification and experience required for task managers in each sub-organization reporting to the Key Personnel involved with design, construction and operations and maintenance during construction; and
 - iv. Information regarding the current and projected workload and backlog of Proposer team (including all Major Participants), and a description of Proposer's plan and overall ability to provide the experienced personnel, equipment, and facilities required to successfully complete all aspects of the Project on a timely basis and within any applicable time frames set forth in the PPA Documents.
- b. Internal Organization Systems - Describe the organizational systems to be used by Proposer, which shall include:
 - i. A description of Proposer's team decision-making process, how internal disputes between team members will be resolved, and how the Proposer will avoid adverse impacts to the Project (cost, schedule, or quality) in the event of such disputes;

- ii. A description of the methods to be used to establish lines of communication and documentation within Proposer's team, including communication among the sub-organizations and management personnel;
- iii. A description of how Proposer intends to interface with IFA and the Department, their respective consultants, applicable third parties, and relevant federal, state, and local agencies, including the Stakeholders; and local police and fire departments, on all matters including planned transportation and utility infrastructure in the Project area; and
- iv. A description of the qualifications and experience of proposed staff members who will be engaged for purposes of public information and community outreach;
- v. A preliminary Public Involvement Plan (PIP) which presents the approach to addressing all items of the PIP as referred to in the PPA Documents; and
- vi. A description of the Proposer's approach to store and retain Project-related documents and information, including (i) in what medium (digital or otherwise) the documents will be maintained; (ii) If electronic, what format will be used; and (iii) the Proposer's approach for security and backup of the project documentation.

4.1.2 Preliminary Project Baseline Schedule

The Proposal shall include a summary level Preliminary Project Baseline Schedule and narrative for all design, construction and operations and maintenance during the construction of the Project (the "Preliminary Project Baseline Schedule"). The Preliminary Project Baseline Schedule shall include key activities and milestones included in the design-build baseline schedule and the operations and maintenance baseline schedule (within the Project Schedule). The Preliminary Project Baseline Schedule shall use a high level critical path method and shall represent Proposer's plan for completing the Work between NTP1 and Substantial Completion. Proposer's Preliminary Project Baseline Schedule submission shall not limit, modify or alter IFA's or the Department's ability to review and approve the Preliminary Project Baseline Schedule, and selection of a Proposer shall not be deemed to be acceptance or approval of Proposer's Preliminary Project Baseline Schedule;

The Preliminary Project Baseline Schedule shall be in the form described in Section 1.5.2.1.1 of the Technical Provisions and Section 5.7.5 of the PPA; provided, however, that the Preliminary Project Baseline Schedule submitted with the Proposal does not need to be cost loaded. The Preliminary Project Baseline Schedule shall include at least the following:

- A narrative which describes the proposed execution of the Work through Substantial Completion; and
- Schedule activities representing all design, construction and operations and maintenance during construction necessary to achieve Substantial Completion, at least meeting the

level of detail for activities as specified in the INDOT “Recurring Special Provision 108-C-215” (referenced in the Technical Provisions). The requirement to limit activity durations to no more than 20 days will not apply to the Preliminary Baseline Schedule.

The Preliminary Project Baseline Schedule will be appended to the PPA as Exhibit 2-B.

A completed Form N that includes Proposer’s proposed milestone deadlines consistent with the Preliminary Project Baseline Schedule. The maximum number of days between the effective date of NTP2 and Substantial Completion must be consistent with the time periods indicated in Form N. The “IFA Last Allowable Dates” in Form N are not-to-exceed time periods. Proposer may propose time periods shorter than such not-to-exceed dates, but shall not propose a time period in excess of the not-to-exceed period.

Form N will be appended to the PPA as Exhibit 4.

4.1.3 Preliminary DBE Performance Plan

The Proposal shall include the Proposer’s Preliminary DBE Performance Plan which shall describe the contents of the plan, as well as the general approach of the Proposer to meeting the DBE goals for the Project and complying with the DBE requirements of the PPA Documents. The Preliminary DBE Performance Plan shall be appended to the PPA as Exhibit 2-L, Developer’s Preliminary DBE Performance Plan. The Preliminary DBE Performance Plan shall include the following elements:

- a. A comprehensive and aggressive approach to achieving the DBE Goals;
- b. Approach to encourage participation of DBE firms;
- c. Approach to outreach and assistance for potential DBE firms who may be eligible to become certified and participate as DBEs; and
- d. A description of how Proposer shall challenge and expand technical, management and business capabilities of participating DBE firms by incorporating mentoring, training and assistance efforts for firms wishing to expand their capabilities.

4.1.4 Preliminary Workforce Diversity and Small Business Performance Plan

The Proposal shall include a Preliminary Workforce Diversity and Small Business Performance Plan to utilize, mentor and train minorities and women. In the Preliminary Workforce Diversity and Small Business Performance Plan, the Proposer shall expressly commit to participate in the Department’s Equal Employment Opportunity Trainee Program. The Preliminary Workforce Diversity and Small Business Performance Plan shall be appended to the PPA as Exhibit 2-N. The Preliminary Workforce and Small Business Plan shall include the following elements:

- a. A commitment to participate in the Department's "On the Job Training Program" and to comply with the Department's "On the Job Training Program" requirements;
- b. A comprehensive and aggressive strategy and overall approach to educating and training employees in various job functions as well as training for environmental and Site specific issues;
- c. The approach for encouraging participation in the Workforce Diversity and Small Business Performance Plan;
- d. Program goals and the approach for mentoring on public-private partnerships, design, construction, operations, and maintenance;
- e. Procedures and methodologies for dividing work into economically feasible units to encourage small business participation and woman and minority owned business;
- f. The criteria for evaluating effectiveness of the Workforce Diversity and Small Business Performance Plan;
- g. A description of the specific training programs to be utilized to educate and train employees in various job functions as well as training for environmental and Site specific issues;
- h. Eligibility criteria for participation in such programs; and
- i. Training and mentoring educational workshops addressing the following:
 - o A description of targeted technical disciplines;
 - o Identification of specific audiences;
 - o Development of a short-term plan;
 - o Development of a long-term plan;
 - o Identification of workshop administrative procedures;
 - o Identification of frequency of the workshops; and
 - o Bonding and insurance requirements.

4.1.5 Quality Management

The Preliminary Project Management Plan shall provide an overview of the proposed approach to quality management during design and construction and the operations and maintenance of the Project. The approach shall reference the relevant sections included in the Preliminary Design-Build Plan and the Preliminary Operations and Maintenance Plan.

4.1.6 Cost Control, Safety, Environment and Risk Management

- a. Cost Control - Describe Proposer's document, cost control, and schedule management system to be used to control, review and coordinate the cost and schedule of the Work during the operations, maintenance, design and construction phases
- b. Safety - Include a description of the Safety Plan to be implemented during the phase preceding Substantial Completion and during the Operating Period, meeting the requirements set forth in the PPA Documents.
- c. Environmental Management - Describe the management approach to environmental compliance and permitting. The management approach shall:
 - i. Describe applicable qualifications and experience of the Environmental Compliance Manager and the environmental team that will be available during the Term of the Project;
 - ii. Describe Proposer's methods to develop its Environmental Compliance and Mitigation Plan that will ensure permits, issues and commitments associated with Governmental Approvals are integrated into the Work;
 - iii. Describe Proposer's methods for ensuring adequate installation, maintenance and repair of erosion and sediment control devices.
 - iv. Identify potential environmental risk and describe the approach to mitigate, eliminate, or reduce those environmental risks;
 - v. Describe Proposer's compliance with the Environmental Management System (EMS) during the Term; and
 - vi. Describe Proposer's approach to sustainability and how Proposer will comply with or exceed the sustainability requirements set forth in Section 7.11 of the Technical Provisions. .
- d. Risk Management - Describe the approach to identify, assess, manage, mitigate and allocate project-specific risks relating to design, and construction. The Proposal shall include at a minimum:
 - i. Identification of significant risk categories, such as: maintenance of traffic during construction, limitations on access to certain portions of the right of way, geological conditions, design, Governmental Approvals, earthquake, flooding, Hazardous Materials, construction completion, operations, maintenance, inflation, financing, legislative policy, technology, and residual value;
 - ii. Describe the potential consequences of the identified risks;

- iii. Describe the probability of identified risks;
- iv. Propose procedures and tools to conduct a risk sensitivity analysis; and
- v. Propose risk-mitigation strategies to eliminate or reduce specific risks.

4.2 Preliminary Design-Build Plan

The Preliminary Design-Build Plan shall present Proposer's design-build technical solutions.

The Preliminary Design-Build Plan shall include information relevant to the Proposer's schematic and proposed approach to the Project roadway elements, bridge structures, retaining walls and other surface structures, in each case as set forth in Exhibit B, Sections 4.2.1 through 4.2.3.

4.2.1 Design-Build Technical Solutions

4.2.1.1 Roadway Elements

The Proposal shall include a description of the roadway elements for the Project and shall include the following:

- a. A description of the construction staging and traffic control and sequencing proposed to accommodate traffic during the construction of the Project. The construction traffic control shall include the following:
 - i. The overall traffic management and control and sequencing approach;
 - ii. Conceptual construction staging diagrams including initial and ultimate proposed treatment of ramps and staging of major drainage trunk lines;
 - iii. A description of how access to business and residential properties will be provided;
 - iv. A narrative description of how Proposer intends to schedule and sequence the construction to minimize impacts on the environment, communities, third parties and traveling public while still meeting the requirements of the PPA Documents; and
 - v. A description of the intended laydown, recycling, staging, disposal and maintenance locations to be used during construction, including avoidance of any sensitive areas.
- b. The approach to addressing geotechnical related issues for the Project, including the presence of karst features; and identification of the scope and objectives of future investigations (as applicable);
- c. A description of how the Project ROW and adjacent roads and properties will be maintained and protected, including the intended measures to be used to

mitigate and minimize noise, vibration, light, dust, erosion and sediment control and local road damage;

- d. A preliminary roadway schematic showing the roadway concept and technical solutions. Proposer's schematic shall be presented in English units on a maximum 36-inch by maximum 120-inch roll plots at a scale of 1 inch = 100 feet and shall clearly identify the Work to be completed.

Proposer's schematic shall also include:

- i. Proposer's approach to pavement design, including details of the proposed design method, material types, roadway classifications, traffic loading and design life considerations; and
- ii. A description of all existing roadways and structures to be closed, demolished, left as is, or incorporated into the Project.
- iii. General Project roadway information including Project limits, design speeds, functional classifications, and design values met;
- iv. Project horizontal alignments including PI station and offset, degree of curve, radius, length of curve, PC and PT station and offset and bearings of all control lines;
- v. Project planimetrics including curbs and barriers, driveways, edge of pavement, and surface roadways' edge of shoulders;
- vi. Proposed construction limits;
- vii. Project vertical alignments including existing ground profiles including vertical clearance, grades, VPI station, vertical curve length and K-values;
- viii. Typical sections including ROW limit, existing ground, pavement cross slope, super elevation, lane and shoulder widths, roadside ditches and slope ratio for fills and cuts; and
- ix. Proposed O&M Limits that are based on Proposer's schematic.

4.2.1.2 Bridge Structures, Retaining Walls, Noise Walls and Other Structures

The Proposal shall provide a description of the various highway bridge structures, retaining walls, noise walls and other structures required for the Project. The information shall include at least the following:

- a. A description of Proposer's approach to the selection of materials that will meet the requirements of the PPA Documents, including the Handback requirements at the end of the Term;

- b. Proposer's schematic, which shall include:
 - i. Sufficient detail to indicate bridge locations and limits, bridge types, foundation types, controlling vertical clearances, and typical span arrangements; and
 - ii. Preliminary wall types, proposed locations and limits for retaining and noise walls and other structures; and
- c. The Proposer's approach to the Durability Plan (see Section 2.1.4 of the Technical Provisions), including the measures that Developer will adopt to ensure the necessary durability requirements are included in the Work and the Proposer's approach to establishing and exceeding the specified condition rating of each structure at Substantial Completion and at Handback..

4.2.1.3 Context Sensitive Solution Elements

The Proposal shall include Proposer's approach and solutions surrounding aesthetic treatments for the Project, including submission of Proposer's *Aesthetic and Landscape Concept Master Plan*, a plan that is to use the aesthetic design guidelines set forth in the Technical Provisions. The Aesthetic and Landscape Concept Master Plan shall employ context sensitive solutions for all aesthetics and landscape work. The Aesthetic and Landscape Concept Master Plan shall include adjacent natural and manmade features, conceptual design elements, limits of construction phasing, and clear labels or a legend to identify these elements. The Aesthetic and Landscape Concept Master Plan shall be formatted as a roll plan at a minimum scale of 1 inch = 100 feet to show the areas of proposed aesthetic treatments and transitions to the adjacent natural and manmade features. The Aesthetic and Landscape Concept Master Plan shall also include color renderings on 11x17 sheets for major aesthetic features as listed below. Aesthetic and landscape elements of the Aesthetic and Landscape Concept Master Plan shall include the following:

- Bridges (including pier details, parapet details, texture, and color of fence, concrete sealers for parapet/superstructure/piers/abutments, and painted steel surfaces) (include rendering);
- Streetscape enhancements (including plantings and furnishings);
- Bicycle and pedestrian facilities;
- Contour grading;
- Retaining structures (texture, color, architectural details);
- Slope protection;
- Vegetation (see Section 5.4.3 of the Technical Provisions);

- Historic Preservation Plan Areas (see Section 5.4.3.2 of the Technical Provisions);
- Street lighting;
- Traffic signal mast arms;
- Right-of-way and stormwater facility fencing and screening;
- Architectural concrete textures; and
- Architectural surface finishes.

4.2.1.4 Utility Relocation and Adjustment Work Elements

The Proposal shall set forth the following information pertaining to Proposer's approach and solutions involving utility relocations and adjustments to accommodate the Project:

- a. Description of how the Project utility relocations, adjustments and protections in place will be performed, including the intended interface between the Utility Owners and IFA and the Department;
- b. A description of the construction staging and sequencing approach proposed to accommodate utility relocations, adjustment and protections in place during the construction of the Project; and
- c. A description of how Proposer will proactively coordinate and engage the Utility Owners in order to define Work elements and responsibility, betterments and coordination in order to ensure cooperation and mitigate potential delay.

4.2.2 Design-Build Management Approach

4.2.2.1 Organization

- a. Describe the proposed overall project management organization for design and construction, identifying participating firms/organizations and individuals. It shall include:
 - i. A description of the management approach for development and coordination of design, including integrating related issues such as right of way, survey, environmental permitting, Utilities and community relations; and
 - ii. A description of the proposed approach for delivering the design for the Project, including where the designers will be located and how designs developed by different firms and offices will be integrated and coordinated to ensure consistency and quality.

- b. Internal Organization Systems - Describe the organizational systems to be used for design and construction, which shall include:
 - i. A description of the management approach for construction, including how design will be integrated with construction, and how the Work will be divided and controlled;
 - ii. A description of how Proposer's team members will work together to provide a unified design, construction, and quality approach to all elements of the Work during the design and construction phase of the Project;

4.2.2.2 Design-Build Baseline Schedule

- a. Schedule - Describe the proposed project schedule methodology for design and construction and include the following:
 - i. A description of the approach used for preparing, controlling and updating the Project Schedule, for calculating progress performance on a monthly basis;
 - ii. A developed Work Breakdown Structure (WBS) as set forth in INDOT "Recurring Special Provision 108-C-215" (referenced in the Technical Provisions);
 - iii. A description of the approach to integrate subcontract activities into the Proposer's scheduling and reporting system; and
 - iv. A description of the approach to managing resources and activities, both those of Proposer and Contractors, in order to achieve the Project Schedule and, if necessary, to recover schedule slippage.

4.2.3 Design-Build Quality Management

The Preliminary Design-Build Quality Management Plan shall describe the Proposer's quality approach to design and construction for the Project, including at least the following:

- a. For the *design* quality component of the Preliminary Design-Build Quality Management Plan, a description of the design deliverable process, a description of the internal process for design reviews, a description of quality assurance and quality control functions, and an explanation of how IFA and the Department will be involved. The design quality component shall also present Proposer's approach to reporting relationships and responsibilities, including IFA and the Department oversight procedures to be implemented; conformance with federal oversight requirements; how design quality management will be documented; and how changes will be made to correct design deficiencies; and

- b. For the *construction* quality component of the Preliminary Design-Build Quality Management Plan, include a description of the approach for integrating with design, documenting the control of materials, acceptance testing, inspection and monitoring of construction activities, including reporting procedures, methodologies, and corrective actions. Include an explanation of how IFA and the Department will be involved, and how construction will be documented and corrected.

4.3 Preliminary Operations and Maintenance Approach

The Proposal shall describe the Proposer's technical solutions to operations and maintenance phases during construction and during the Operating Period, the approach to management of operations and maintenance, and the approach to operations and maintenance quality and quality management, each as required in Exhibit B, Sections 4.3.1 through 4.3.3.

4.3.1 Operations and Maintenance Technical Solutions

4.3.1.1 Roadway and Bridge Operations

The Proposal shall describe how the daily roadway operations functions will be handled including:

- a. The approach to monitoring the roadway, including the detection and response to emergencies, hazardous and inclement weather, breakdowns, accidents, and incidents;
- b. The approach for handling emergency services, including coordination with all emergency service providers; and
- c. A description of the approach to accident analysis and implementation of improvements to user safety.

4.3.1.2 Routine Maintenance

The Proposal shall describe the Proposer's approach to routine maintenance, including:

- a. A description of the approach used for life cycle cost analysis over the duration of the PPA, including how material durability will be determined and price variation (i.e. future energy costs, future labor costs, etc.) will be assessed;
- b. Details and locations of maintenance yard(s) and facilities;
- c. A preliminary list of specialized maintenance equipment proposed for use throughout the life of the Project;
- d. A description of the approach to supply and management of maintenance spare parts;

- e. The approach to general sweeping, cleaning, ice and snow removal, removal of debris, and graffiti removal;
- f. The approach to traffic management during maintenance work;
- g. The approach to inspection and testing of Project items, and the identification, classification and rectification of Defects and Nonconforming Work during inspections; and
- h. A description of the system to be used for maintaining accurate as-built records, and records of inspections and maintenance activities.

4.3.1.3 Rehabilitation Work.

The Proposal shall describe the approach to Rehabilitation Work, including the processes that will be employed for developing a rolling program of major maintenance repairs and replacements, including how Proposer will minimize traffic disruptions and maximize uninhibited travel flow of users. The information shall describe the approach to programming of works and costing and ensuring that handback requirements will be met. The Proposal shall include a preliminary Rehabilitation Work schedule. The schedule shall show Proposer's approach to scheduling the Rehabilitation Work to indicate the timing of periodic maintenance activities, rehabilitation activities and other Rehabilitation Work. Describe how the Proposer will manage staged construction relating to Rehabilitation Work, including how it will simultaneously manage construction with ongoing operation and maintenance activities during Rehabilitation Work phases.

4.3.2 Operations and Maintenance Management Approach

4.3.2.1 Organization

- a. Describe the proposed overall project management organization relating to operations and maintenance during construction and during the Operating Period, identifying participating firms/organizations and individuals. The Proposal shall include:
 - i. An organization chart outlining the structure of Proposer's project management organization during the operations and maintenance phases of the Project. Include a description of the roles allocated, responsibilities, interrelation and Work to be accomplished by each member of the management team;
 - ii. Information describing how each of the Key Personnel involved with operations and maintenance will fit into the organization, including a description of each key person's function and responsibility relative to the Project, and indicating the percent of time that they will devote to the Project during the operations and maintenance phases; and

- iii. Qualification and experience required for task managers in each role reporting to the Key Personnel involved with operations and maintenance.
- b. A description of how Proposer's team members will work together to provide a unified operations, maintenance, and quality approach to all elements of the O&M Work;
- c. A description of Proposer's team decision-making process, how internal disputes between team members will be resolved during the operations and maintenance phase;
- d. A description of Proposer's training program for operations and maintenance personnel;
- e. A description of the methods to be used to establish lines of communication and documentation within the Proposer's team during the operations and maintenance phases, including communication among the sub-organizations and management personnel;
- f. The approach to operations and maintenance prior to and following Substantial Completion, and specifically during transition after Substantial Completion;
- g. A description of how the Proposer intends to interface with IFA and the Department, their respective consultants, applicable third parties, and relevant federal, State, and local agencies on all matters including planned transportation and utility infrastructure in the operation and maintenance phases of the Project area; and
- h. The Proposal shall describe the public information and communications approach used during the Operating Period of the Project, including the qualifications and experience of proposed staff members who will be engaged for purposes of public information and community outreach during the operations and maintenance phases of the Project and a preliminary Operating Period PIP which presents the approach to addressing all items of the PIP as referred to in the PPA Documents.

4.3.2.2 Baseline Schedule

- a. Schedule – Describe the proposed Project operations and maintenance schedule methodology for at least the following:
 - i. A description of the approach used for preparing, controlling and updating the Project Schedule during the Operating Period, for calculating progress on a monthly basis, and preparing Payment Requests on a quarterly basis;
 - ii. A description of the approach to integrate subcontract activities into the Proposer's scheduling and reporting system; and

- iii. A description of the approach to managing resources and activities, both its own and subcontractors, in order to achieve the Project Schedule, and if necessary to recover schedule slippage.

4.3.3 Operations and Maintenance Quality Management

The Proposal shall describe Proposer's quality program for operations and maintenance during the Project, including during construction. The Proposal shall include a description of quality assurance and quality control functions, an explanation of how IFA and the Department will be involved, and Proposer's approach to reporting relationships and responsibilities, including IFA and the Department oversight procedures.

The Proposal shall describe the Proposer's internal process for preparing and reviewing Incident reports, Nonconformance Reports, traffic reports and Maintenance Work Reports, and how noncompliance issues will be documented and corrected. The Proposal shall also describe how the quality process will be integrated into the Work to effect changes, as necessary, in maintenance procedures and performance.

Exhibit C

FINANCIAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit C describes the submission format for financial proposals and outlines the required information that will comprise a Financial Proposal.

Each Proposer shall submit the information required by this Exhibit C in the organization and format specified herein. The Financial Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each component of the Financial Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

The Financial Plan will be appended to the PPA as Exhibit 2-C. Other parts of the Financial Proposal will be appended to the PPA as noted.

1.1 Format of Financial Proposal; Interpretation Matters

All financial information provided in the Financial Proposal shall be in U.S. Dollar currency only and all amounts shall be clearly identified as real or nominal dollars.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Financial Proposal, the hard copy version will prevail. If there are any differences between the sum of individual line amounts and totals, the individual line amounts will prevail.

1.2 Contents of Financial Proposal

All parts of the Proposal that indicate price and financial terms are to be included in the Financial Proposal. No parts of the Proposal that indicate price and financial terms are to be included in the Technical Proposal.

The required contents and organization of the Financial Proposal are presented in this Exhibit C and summarized in the Proposal checklist provided in Exhibit E. Proposers are to provide all the information set out in this Exhibit C. **A copy of the checklist for the Financial Proposal shall be included in the Financial Proposal**, indicating Proposer's use of such checklist to ensure all contents of the Financial Proposal are provided. The Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

2.0 Financial Capacity Information

Proposers shall clearly identify any differences between the financial capacity information submitted in the Proposal and the information submitted in the SOQ.

The Financial Proposal shall include the following information for Proposer, all Equity Members, the Design-Build Contractor (if the Design-Builder is a consortium, partnership or any other form of a joint venture, all such entities comprising Design-Builder), any Guarantor and any Financially Responsible Party:

- Audited financial statements (in printed form and on a CD or flashdrive) for all periods subsequent to those included in the SOQs, audited by a certified public accountant in accordance with generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS).
- In addition, interim unaudited statements (in printed form and on a CD or flashdrive) for the period since the most recent completed fiscal year for the above entities are to be provided.

The Financial Statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must meet the following requirements:

1. Financial Statement information must include:
 - a. Opinion Letter (Auditor's Report) (only required for audited, fiscal year-end financial statements)
 - b. Balance Sheet
 - c. Income Statement
 - d. Statement of Changes in Cash Flow
 - e. Footnotes audited by a certified public accountant in accordance with GAAP or IFRS (only required for audited, fiscal year-end financial statements).

For purposes of clarity, interim financial statements are not required to be audited and an Opinion Letter (Auditor's Report) is not required. However, interim financial statements must be prepared following the same guidelines (U.S. GAAP or IFRS) as the audited financial statements.

2. Financial Statements must meet the following requirements:
 - a. **GAAP/IFRS:** Financial Statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (U.S. GAAP) or International Financial Reporting Standards (IFRS). If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial

statements that would be affected by a conversion to U.S. GAAP or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.

b. **U.S. Dollars** - Financial statements must be provided in **U.S. dollars**. If financial statements are not available in U.S. dollars, the Proposer must include summaries of the income statements and balance sheets for the applicable time periods converted to U.S. dollars by a certified public accountant.

c. **Audited** – Fiscal year end financial Statements must be audited by an independent party qualified to render audit opinions (e.g. Certified Public Accountant). If audited financials are not available for the Proposer, an Equity Member, the Design-Build Contractor, Guarantor or Financially Responsible Party, the Proposal shall include unaudited financial statements for such entity, certified as true, correct and accurate by the chief financial officer or treasurer of the entity.

d. **English** – Financial Statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all Financial Statement information must be accompanied with the original financial statement information for Proposer's original hard-copy Financial Proposal submission (including electronic submission) and one additional copy (in Financial Proposal copy #1). All remaining hard copies of the Financial Proposal need only include a translation of all such Financial Statement information with certification(s), as more fully set forth in Section 4.4.3(a) of the ITP.

3. Other information and requirements:

a. **Newly Formed Entity** - If the Proposer is a newly formed entity, Proposer shall expressly state that Proposer is a newly formed entity and does not have independent financial statements.

b. **Financially Responsible Party Letter of Support** - If Financial Statements of a parent company or affiliate company ("Financially Responsible Party") are provided, in form and substance acceptable to IFA, in its sole discretion, to demonstrate financial capability of an Equity Member, a letter from the Financially Responsible Party must be provided confirming that it will guarantee all the obligations of such Equity Member with respect to the Project; provided, however, that if an Equity Member intends to fund its equity contribution in full at Financial Closing; or post a letter of credit to lenders at Financial Closing to secure its obligations to fund its equity contribution and evidence of the foregoing is provided to IFA, the foregoing guarantee shall not be required.

If a Financially Responsible Party was identified for the Design-Build Contractor in the SOQ, Proposer must provide a description of how that Financially

Responsible Party will financially support the Design-Build Contractor and include copies of all documents intended to provide that support (guaranties, letters of credit, etc.).

c. **SEC Filings** - If the team or any other entity for which financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their latest annual report on Form 10K. For all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K.

d. **Credit Ratings** - Appropriate credit ratings, including credit rating reports, must be supplied for Proposer, Equity Members, Design-Build Contractor, any Guarantor and any Financially Responsible Party, to the extent such entities have credit ratings. If no credit ratings exist, include a statement specifying that no credit ratings exist for that entity.

e. **Material Changes in Financial Condition** - A letter from the chief executive officer, chief financial officer or treasurer for each of Proposer, Equity Members, Design-Build Contractor, any Guarantor and any Financially Responsible Party, either (a) providing information on any material changes in financial condition since submission of the SOQs and those that are pending or (b) certifying that no such material changes have occurred. Additionally, Proposers shall be required to provide updated information following the Proposal Due Date about such entities as such information becomes public.

The following list identifies certain items that IFA would consider a material change in financial condition. This list is intended to be indicative only. At the discretion of IFA, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the Project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. The affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the fiscal periods between submission of the SOQ and most recent completed fiscal periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

List of Representative Material Changes

A. An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;

B. A downward change in tangible net worth of 10% of shareholder equity;

C. A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;

D. A downward change in credit rating for the affected entity, a related business unit, or parent corporation of the affected entity;

E. Inability to meet material conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;

F. The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 10% of its workforce or involving the disposition of assets exceeding 10% of the then shareholder equity; and

G. Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material change in financial condition since submission of the SOQs or may be pending for the next reporting period.

f. **Off-Balance Sheet Liabilities** - A letter from the certified public accountant, chief financial officer, treasurer or certified public accountant for each entity for which financial information is submitted, identifying all material off-balance sheet liabilities equal to or in excess of 10% of shareholder equity in the aggregate.

The information required under this Exhibit C, Section 2.0 shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in Proposer's organization (i.e., Equity Member, Design-Builder, subcontractor, etc.). Financial Statements shall be provided in electronic, searchable PDF and Microsoft Word format, in addition to "hard-copy" submissions as part of the Financial Proposal.

3.0 Financial Plan

Committed financing is required under the RFP. The Financial Proposal and Financial Plan will be based upon committed finance plans at the Proposal stage (subject to the requirements below). Details of the committed financing requirements are included in Exhibit C, Section 3.3 and Section 3.4.

3.1 Financial Plan Executive Summary

The Financial Plan shall contain a short (no more than three pages) Financial Plan Executive Summary outlining the Proposer's plan of finance and plan, schedule and approach to achieve Financial Close.

3.2 Identity of Financial Institution

The Financial Proposal shall identify the financial institution(s) that will provide any letter of credit required under the PPA and its rating information. For the avoidance of doubt, this includes, without limitation, Financial Close Security, payment and performance security and letter(s) of credit provided by Equity Members satisfying clause (b) of the definition of "Committed Investment." Provide a statement certified by the chief financial officer or treasurer of the Proposer that it will be able to obtain all required letters of credit. The Financial Proposal shall also identify at least one Core Lender, one Lead Underwriter and/or a Private Placement Agent.

3.3 Range of Financing Sources

Proposers shall describe their Financial Plan, which shall be fully developed and include the following:

- Senior debt finance;
- Mezzanine debt finance;
- Private Placement;
- Equity and quasi-equity finance (including subordinated debt or loan stock);
- Use of PABs (subject to the limitations set forth in Section 1.9.3 of the ITP); and
- Any other forms of finance, provided, however, that, unless notified via an Addendum to the RFP, Proposers are not to assume the use of TIFIA in their Financial Plans;

The proposed Financial Plan shall also provide the following information:

- Identity of the investors and include commitments from Equity Members per the requirements of Section 3.5 of this Exhibit C;

- Identity of the Core Lender(s), Lead Underwriter(s) and/or Private Placement Agent; and any other lead arrangers, lead managers and/or underwriting banks and/or quasi-equity providers that have given commitments per the requirements of Section 3.4 of this Exhibit C;
- Letters of commitment and support from the Core Lender(s) and/or Lead Underwriter(s) other lead arrangers, lead managers and/or underwriting banks that meet the requirements of Section 3.4 of this Exhibit C;
- If the Financial Plan includes a Bond Financing (hereinafter defined), a letter from one or more of the Rating Agencies providing an indicative investment grade rating, together with information on the assumptions used (e.g., quantum of debt, tenor, amortization) in establishing the rating and written confirmation by the Proposer and its financial advisor that the Financial Plan is based on the same structure as rated; provided that if the Proposer has not retained a financial advisor, Proposer shall state that it has not retained a financial advisor and such confirmation by a financial advisor shall not be required;
- If the Financial Plan includes the sale of debt securities in a Private Placement, (i) a letter from the Proposer confirming that the Private Placement Agent is properly registered as a broker-dealer with the Securities and Exchange Commission, the National Association of Securities Dealers and in states where the purchasers of such securities are located and that the Private Placement will meet an exemption under Section 4(a)(2) of the Securities Act of 1933, as amended, indicating which exemption is being relied upon; (ii) a list of the purchasers of the Private Placement; and (iii) the investment representation letters executed (or to be executed) by purchasers of the debt securities in the Private Placement that attest to compliance with the securities law exemptions being relied upon.
- Due diligence reports from all technical advisors performing due diligence for Proposer in the final form delivered to its Core Lender(s) and/or Lead Underwriter(s) (e.g., the reports provided in connection with obtaining the commitments and support letters);
- If applicable to a Bond Financing, identity of monoline insurers as well as a detailed term sheet setting forth the terms and provisions upon which the bond insurer will provide such insurance;
- Type and purpose of each funding source and facility;
- The proposed steps and timeframes for reaching commercial close and Financial Close, which must be consistent with the requirements of the PPA Documents per the requirements of Section 3.7 of this Exhibit C;
- Evidence of input from legal counsel to the Core Lender(s) and/or Lead Underwriter(s) on the PPA Documents and unconditional acceptance by the Core Lender(s) and/or Lead Underwriter(s) of the PPA Documents in the form included in the RFP Documents;

- Written confirmation by the Proposer that it will keep the MAP fixed, subject only to referenced interest rate movements and certain changes in financial terms as expressly set forth in the PPA;
- Written confirmation that the Proposer's blended equity IRR, in both real and nominal terms, shall only increase from the Proposal submission IRR levels following execution of the PPA in accordance with Sections 13.7.9 and 13.7.10 of the PPA; and
- Average life of each debt facility.

3.4 Details for Core Lender(s) and Lead Underwriter(s) Commitment and Support Letters

Exhibit C, Section 3.4 provides the requirements for commitment letters with respect to bank financings (a "Bank Debt Financing"), capital markets financings other than a Private Placement (a "Bond Financing") and Private Placements included in a Proposer's Financial Plan.

Proposer should consider Bank Debt Financings, Bond Financings and Private Placements, or a combination thereof. PABs allocations can be assumed in the financing structure in accordance with Section 1.9.3 of the ITP. The final amount of any PABs allocation obtained by IFA is set forth in Section 1.9.3 of the ITP.

With respect to a Bond Financing, the letter of commitment shall include the following:

- Agreement by the Lead Underwriter(s) to purchase not less than one hundred percent (100%) of the volume of bonds to be issued at market prices. In the event that a Proposer has more than one Lead Underwriter, the aggregate volume commitments of the Lead Underwriters must equal not less than 100% of the volume;
- Confirmation from the Lead Underwriter(s) that certain due diligence (i.e. legal, insurance, and technical due diligence) has been performed and is acceptable;
- Confirmation from the Lead Underwriter(s) that the PPA Documents are acceptable in the form included in the RFP Documents;
- Confirmation from the Lead Underwriter(s) that final credit approval has been received subject only to completion of final documentation and satisfaction of customary conditions precedent;
- A detailed term sheet providing credit-approved terms and conditions, including, but not limited to, (i) amounts in US Dollars of the facilities provided, (ii) customary conditions precedent to Financial Close, (iii) required documentation, (iv) principal covenants (affirmative and negative), (v) financing security (including guarantees), (vi) events of default, (vii) structural features, (viii) cover ratios, (ix) reserve accounts and the requirements with respect to such accounts, (x) redemption/prepayment features, (xi) drawdown schedule, (xii) capital repayment grace period, (xiii) repayment schedule and

final maturity date, (xiv) flow of funds, (xv) representations and warranties, (xvi) any proposed hedging arrangements in relation to interest rate risk, (xvii) arrangement and other fees, as applicable and (xvii) any other material terms and conditions relevant to the Bond Financing;

- A description of the fees payable to the Lead Underwriter(s); and
- Any other material information that would be relevant to a Bond Financing.

With respect to a Bank Debt Financing or a Private Placement, as applicable, the letter of commitment shall include the following:

- Commitment by the Core Lender(s) for no less than 100% of the amount of the proposed Bank Debt Financing or Private Placement proceeds, as applicable. In the event that a Proposer has more than one Core Lender, commitment by the Core Lenders, in the aggregate, must equal not less than 100% of the amount of the proposed Bank Debt Financing or Private Placement proceeds, as applicable. Such commitments must include fixed credit spreads and pricing commitments for a period of not less than 120 days after the Proposal Due Date;
- Confirmation from the Core Lender(s) that final due diligence has been completed (i.e. legal, insurance and technical due diligence) and is acceptable;
- Confirmation from the Core Lender(s) that the PPA documents are acceptable in the form included in the RFP Documents;
- Confirmation from the Core Lender(s) that final credit approval has been received subject only to completion of final credit documents and satisfaction of customary conditions precedent;
- A detailed term sheet providing credit-approved terms and conditions, including, but not limited to, (i) interest rates specifying the base rate and applicable margins (ii) amounts in US Dollars of the facilities provided, (iii) customary conditions precedent to Financial Close, (iv) required documentation, (v) principal covenants (affirmative and negative), (vi) financing security (including guarantees), (vii) events of default, (viii) structural features, (ix) cover ratios, (x) reserve accounts and the requirements with respect to such accounts, (xi) redemption/prepayment features, (xii) drawdown schedule, (xiii) capital repayment grace period, (xiv) repayment schedule and final maturity date, (xv) flow of funds, (xvi) representations and warranties, (xvii) any proposed hedging arrangements in relation to interest rate risk, (xviii) arrangement and other fees, as applicable, and (xix) any other material terms and conditions relevant to the Bank Debt Financing or Private Placement, as applicable;
- With respect to a Private Placement, the purchase agreement(s) of the purchasers of the Private Placement;
- A description of the fees payable to the Core Lender(s); and

- Any other material information that would be relevant to a Bank Debt Financing or Private Placement, as applicable.

3.5 Details of Equity Source and Equity Member Letters

For each equity source, Proposers shall provide:

- Identity of the investors. In cases where the equity is contributed by a fund please identify: (i) the date the fund was established; (ii) the total amount raised in the investment fund; (iii) the total amounts of undrawn and uncommitted funds available to be invested in the Project; (iv) confirmation that the Project is an eligible investment of the fund; (v) confirmation that the amount to be contributed does not exceed the maximum investment permitted by the fund bylaws, based on the amount raised in the investment fund as of the bid date; (vi) fund managers and general characteristics of the fund investors; and (vii) the percentage of participation;
- The amount of funds the shareholder is to commit and the timing of such subscription;
- The terms and conditions of the subscription, including dividend rights attaching to shares and/or repayment terms for shareholder loans, the extent to which funds are committed and the length of time funds will remain in the project vehicle; and
- If the total amount of equity finance (including quasi equity), is expected to change during the life of the Project, the terms and conditions of any further planned equity subscription, including the expected timing and amount, and whether this will be provided by the existing shareholders or by third party investors.

Proposers are advised that the Proposal must include an equity level of at least ten percent (10%) of an amount equal to the Total Project Capital Costs less the cumulative Milestone Payments, each expressed in year of expenditure terms, which must be maintained in accordance with Section 13.6 of the PPA.

The Proposal shall include certified copies of the board minutes or other written evidence of approval of the contents of the Financial Proposal by each Equity Member, together with appropriate evidence of the authorization of the person/body giving the approval. Sufficient documentation must be provided that provides appropriate assurance that private equity will be in place, including letters from the Equity Members evidencing their commitment to provide equity funding.

If a Financially Responsible Party or Guarantor has been identified for a Proposer or Equity Member and a guarantee is required as set forth in Section 2.0(3)(b) of this Exhibit C, the Proposal shall include written confirmation from the Financially Responsible Party stating that it is willing to provide a guaranty in relation to the availability of equity/quasi-equity for the Project, and that it has adequate funds available.

3.6 Financial Advisor Letter; Certifications re: Review by Eligible Surety and/or Eligible Financial Institution

3.6.1 Financial Model Format Requirements

The Proposal shall include an opinion letter from Proposer's financial advisor (or if one has not been appointed by Proposer as of the Proposal Due Date, by Proposer's chief financial officer or treasurer) indicating the debt funding is achievable and sufficient to fulfill Proposer's commitments as set out in the Proposal.

3.6.2 Review by Performance Security and Payment Bond Issuing Entities

In instances where Proposer's response to Exhibit C, Section 2.0(3)(e) contains descriptions of proposed or anticipated changes in the financial condition of Proposer or any other entity for which financial information is submitted as required hereby for the next reporting period, Proposer shall include a certification from Proposer's Eligible Surety that will issue any required surety bonds and, if applicable, Proposer's Eligible Financial Institution that will issue any required letters of credit that such entity's analysis specifically incorporates a review of the factors surrounding such changes and identifying any special conditions which may be imposed before issuance of surety bonds or letters of credit for the Project. If Proposer proposes to deliver a letter of credit for the Performance Security, then a certification is required from both the Eligible Surety that will issue the Payment Bond and from the Eligible Financial Institution that will issue the letter of credit. For purposes of this Exhibit B, Section 3.6.2, Proposer may append the letter(s) provided pursuant to Exhibit B, Section 3.2.10.

3.7 Schedule for Commercial and Financial Close

The Financial Plan shall include a schedule for completing activities and deliverables necessary to reach commercial close, and reach Financial Close, taking into consideration the review period for deliverables set forth in ITP Section 6.1.1 (as to commercial close) and Section 13.7 of the PPA (as to Financial Close). The schedule shall reflect Proposer's estimated date for commercial close and Financial Close, which may not be after the last applicable deadlines set forth in ITP Sections 1.7 and 4.7(c) (as to commercial close) and the PPA (as to Financial Close).

3.8 Summary Cost Table and Financial Plan Summary Forms

Proposer shall complete a Summary Cost Table Form (Form O) and include the completed forms in the Financial Proposal. Form O shall be appended to the PPA as Exhibit 2-I(1).

Proposer shall submit its completed Form P. Table 6 of Form P must contain the Benchmark Rate(s) and Credit Spread(s) that have been pre-approved by IFA pursuant to Sections 5.10.3 and 5.10.4 of the ITP; provided, however, that Proposer may replace a pre-approved Credit Spread in Table 6 of Form P with a different Credit Spread without any additional approval from IFA so long as, in IFA's determination, it provides for more favorable financing to IFA's benefit than the pre-approved Credit Spread. As part of the Financial Plan, Form P will be appended to the PPA as Exhibit 2-C. In addition, Form O-1 of Form O shall be appended to

the PPA as Exhibit 2-I(2), Capital Cost Table; Form O-3 shall be appended to the PPA as Exhibit 2-I(3), Operating Period Cost Table.

4.0 MAP Proposal

Proposer shall submit a completed Form J.

Proposers shall submit the percentage of the MAP to be linked to CPI in Form P in the range of 0% to 30%. The remainder of the MAP, in the range of 100% to 70% of the MAP (depending on the amount proposed to be linked to CPI), shall be escalated by a fixed escalator of 2.5%. The percentage of the MAP linked to CPI will not be part of the Financial Proposal evaluation, but will, for Developer, be inserted into the equation set forth in Section 2.2 of Exhibit 10 of the PPA.

5.0 General Financial Model Requirements

Proposers shall submit a Financial Model. The format of the Financial Model is at the discretion of the Proposers, but must comply with the requirements set out in this Exhibit C, Section 5.0.

5.1 Financial Model Structure and Supporting Documents

5.1.1 Financial Model Format Requirements

The Financial Model shall be compatible with Microsoft Excel Version 2003 or 2007 for Windows XP or later operating system. The file name of the Financial Model shall clearly identify the date of the Financial Model version (e.g., [*Proposer name*] – I-69 Section 5 Financial Model_1-10-14.xls) and change with each successive version of the Financial Model issued. Where additional Financial Models based on the same version are issued (i.e., where the additional Financial Model is generated by changing input cells only) the file name shall reflect that the same version is being used (e.g., [*Proposer name*] – I-69 Section 5 Financial Model_1-10-14b.xls).

Financial Models shall also contain as a minimum the following on a title page in a separate worksheet:

- Model name;
- Proposer's name;
- Model author;
- Version;
- Date (Financial Model date and run date);
- Key to formats (e.g. blue font for inputs); and

- Key to sheet names (i.e., “Inputs” for input sheets, “Calculations” for calculation sheets etc.).

Each output sheet of the Financial Model shall identify the Financial Model version and the date of issue.

No password protection may be included in the Financial Model (including password protected macros, or hidden rows columns, cells or sheets). The Financial Model shall be formatted to facilitate printing.

5.1.2 Financial Model Consistency

The Financial Model shall have time periods down the rows and calculations across the columns. This shall be consistent in all sheets of the Financial Model. There are two areas where consistency is most important:

- Columns – a column shall be used for the same period in each of its occurrence in model worksheets; and
- Rows – a row shall contain only one formula, copied across all columns.

5.1.3 Financial Model Integrity

All calculations shall be coded to provide exactly what they purport to represent, i.e., no balancing figures. Use of a macro is acceptable provided it is appropriately documented in the model and the Assumptions Book and is functional. For purposes of clarity, the Financial Model shall present all formulae, not simply “pasted values.”

5.1.4 Financial Model Linearity

The Financial Model shall calculate in one pass. The model shall not utilize any “add-ins” other than those provided by Microsoft.

5.2 Financial Model Organization

5.2.1 Elements of Financial Model

The Financial Model shall have three distinct elements:

- Inputs – which shall include data and assumptions but no calculations;
- Calculations – individual calculations that support each line of all outputs and reports. There shall be no duplication of calculations nor shall input cells be hard-coded in calculations sheets; and
- Outputs – no input cells hard-coded in output sheets and no calculations except for simple formulae such as sums and check totals.

5.2.2 Financial Model Inputs and Specifications

Models shall be developed with reference to the following key inputs and assumptions:

- Specific Project Dates - All milestone dates for the Project set in the RFP shall be met;
- Periods - Financial Model shall be constructed using monthly periods from Financial Close until Substantial Completion and quarterly periods (with roll ups to annual) from Substantial Completion until two years after the end of the PPA Term and shall use a 30th June reporting year end;
- Revenues – All sources of revenue shall be clearly stated in the Financial Model, with supporting detail being provided in the supporting Assumptions Book. Revenues should clearly identify the Milestone Payment and MAP payments, including a breakdown of the MAP components and adjustments consistent with Form J and Exhibit 10 of the PPA.
- Expenditure - All cost assumptions shall be clearly stated in the Financial Model, with additional detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual cost assumptions. Where aggregate costs are used as an input within the Financial Model, a detailed breakdown shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between costs and the price of the service to IFA;
- Contingencies and Profit Margins - The Financial Model shall make clear where contingencies and profit margins at the Developer level have been included so that the financial evaluation can be based on an appropriate understanding of the levels of risk assumed by Proposers;
- Macroeconomic assumptions - All macroeconomic assumptions used within the Financial Model shall be clearly stated;
- MAP escalation – an assumption of **2.5%** per annum is to be used both for the fixed portion of the MAP and the portion of the MAP linked to CPI.
- Inflation – If inflation indices other than the CPI All items (BES Series ID: CUUR0000SA0) are used within the model (e.g., to inflate wages) then these shall be clearly stated as separate inputs;
- Generally Accepted Accounting Principles (GAAP) – The Financial Model shall be compliant with U.S. GAAP;
- Taxation Rates – The Financial Model shall use the appropriate rates for tax in force at the submission date;

- Tax Allowances – The Financial Model shall clearly show the assumptions regarding tax allowances being claimed.

5.2.3 Financial Model Outputs

The Financial Model shall be provided and will include:

- A summary sheet which includes a sources and applications of funds statement for construction and operation periods, graphs of cover ratios and a profile of cash balances that confirms the financial feasibility of the Project, including all required reserves as prescribed by the Core Lender(s) and/or Lead Underwriter(s), and the MAP, as applicable, under the Financial Model;
- Construction schedules, including (1) monthly sources and uses that include construction phase drawdown requirements, capitalized interest payable or accrued, fees payable or accrued, funding of reserves, source of capital funding for the monthly requirements, investment earnings; and (2) for each source of funding, monthly schedules showing beginning drawn and undrawn balances (funded or committed), construction draws, capitalized interest payable or accrued, fees payable or accrued, funding of reserves and ending drawn and undrawn balances;
- Financial statements (cash flow, sources and uses of funds, balance sheet and profit and loss), in nominal terms for each period;
- A schedule outlining calculation of taxes payable in each period, and showing tax carry forward and un-depreciated balances;
- Cash cascade in order of seniority (consistent with the PPA);
- Spreadsheet representing cash flow, to include revenues, expenses and MAP, showing debt and equity payouts;
- Spreadsheet providing debt coverage ratios, loan life coverage ratio and project coverage ratio. If there are multiple tiers of debt, ratios must be provided for each tier;
- Spreadsheet representing repayment schedule for each financial component, any accretion schedules with a separation of principal and interest included;
- Internal rate of return on pre-tax and post-tax equity and quasi-equity/subordinated debt in both real and nominal terms and a blended equity return, incorporating all sub-senior debt finance (“Original Equity IRR”);
- Debt to equity ratio for all periods, including at the time of Substantial Completion, defined as the ratio of total debt to total equity and quasi-equity;
- Spreadsheet showing notional principal outstanding on a combined basis and separate in each period;

- Weighted average cost of capital (the average cost of equity and debt weighted by the prevailing proportions of debt to equity for the initial design and construction) at the project company-level over the term of the PPA;
- Net present value of construction costs, O&M costs, public funds and revenue payment, separately and in total, discounted to the Proposal Due Date using a discount rate equivalent to the stated weighted average cost of capital. Additionally, the MAP will be stated in nominal amounts as well;
- For each annual period of each loan, show all actual and average ratios required by the term sheets of the Core Lender(s) and/or Lead Underwriter(s), including as a minimum, the debt service cover ratio, loan life cover ratio (being the net present value of future net cash flow available to service debt over the loan life including cash balances but excluding the balance of the lifecycle maintenance reserve, divided by the senior debt outstanding);
- Appropriate reserves as required by the funder's term sheets, which may include a debt service reserve account and a maintenance reserve account. IFA will expect the Financial Model to incorporate the benefit of interest earned on all project company cash balances;
- If a refinancing is assumed, any cashflows associated with such refinancing; and
- The impact of all claims for tax allowances made by the project company.

5.2.4 Financial Model Functionality and Sensitivity Analysis

The Financial Model is to provide the ability to run pre-Financial Close sensitivities to absolute or percentage changes, whichever is appropriate, in each of the following areas:

- deductions to revenue
- inflation rates;
- interest rates;
- capital costs; and
- operating cost, maintenance cost and rehabilitation costs.

The methodology for running such sensitivities shall be clearly defined in the model instructions guide submitted as part of the Proposal.

5.3 Financial Model Assumptions Book

Proposers shall submit an Assumption Book describing fully all the assumptions underlying the financial projections within the Financial Model and at a minimum include the items listed below:

- Dates as listed in the RFP documents;
- Assumptions relating to general inflation and, where different, specific inflation relating to each component of expenditure, including construction costs and revenue for each year;
- Forecast capital expenditure, presented in prices at the Proposal Price Date and classified in accordance with the construction cost categories outlined in the Summary Cost Table Form (Form O) and Financial Plan Summary (Form P);
- Tax and GAAP depreciation assumptions – split between the various categories of fixed asset;
- O&M costs, presented in prices at the Proposal Price Date analyzed in the categories outlined in the Summary Cost Table Form (Form O) and Financial Plan Summary (Form P); and
- All financing assumptions, including but not limited to drawdowns, capital repayment moratoria, repayment schedules and maturity, refinancing assumptions and gains, interest rates and margin, and arrangement and other fees (all must be referenced to the relevant credit provider term sheet).

Any third party reports developed to support the revenue and cost estimates used in developing the financial offer shall be appended to the Assumptions Books.

5.4 Financial Model Instructions Guide

Proposers shall provide details of how the Financial Model operates.

The instructions shall include step by step instructions on the procedure to run and to optimize the Financial Model, including any constraints imposed by the credit providers on results of downside sensitivities. The instructions shall also explain how to print the model.

6.0 Detailed Cost and Pricing Data

Proposers shall also provide the detailed back-up information regarding the basis for the Proposer's cost estimates for development, design, construction, operations, and maintenance of the Project, meeting all the requirements of this Section 6.0 (the "Cost and Pricing Data"). The Cost and Pricing Data shall be separately sealed, and shall include copies of all offers and all data and information received from all Contractors (at all tiers) identified in the Proposal and any other potential Contractors that provided data and information used as the basis for the Summary Cost Table Form. The Cost and Pricing Data shall include supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge and fee information used by the Proposer in the creation and derivation of its Proposal, including copies of all offers, and all data and information relating to Cost and Pricing Data, received from all Contractors (at all tiers) identified in the Proposal and any other potential Contractors that provided data and information used as the basis for Form O and Form P of the Proposal. The Proposer shall submit its Cost and Pricing Data in hard copy and

whenever possible shall also provide electronic copies. Proposer shall submit the Cost and Pricing Data in such format as is used by Proposer and its Contractors in connection with the Proposal. The Cost and Pricing Data provided with the Proposal shall be personally examined by an authorized officer of Proposer prior to delivery who shall ensure that they meet the requirements of this Exhibit C, Section 6.0.

Within 72 hours of the Proposal being submitted, Proposer's Cost and Pricing Data only shall be delivered into the escrow established pursuant to the agreement set forth in Form L.

The Cost and Pricing Data of the Preferred Proposer shall remain in escrow upon execution of the PPA.

7.0 Independent Insurance Broker/Consultant Letter

Proposer shall submit an executed letter in the form of Form Z from its independent insurance consultant or broker (with such modifications as shall be acceptable to IFA, in its sole discretion).

8.0 Verification

Each Proposer shall satisfy itself as to the revenues, payments, costs and tax consequences of entering into the PPA and becoming the Developer. IFA makes no representations or warranties, express or implied, and assumes no liability whatsoever, with respect to revenues, payments, costs or the consequences of federal, state, local or other income tax treatment of Developer under the PPA.

Exhibit D
REQUIRED FORMS

(see attached)

Exhibit E

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
A. Executive Summary		
Executive Summary (Exclude price information)	No forms are provided	<u>Exhibit B, Section 3.1</u>
B. Proposer Information, Certifications & Documents		
Proposal Letter	<u>Form A</u>	<u>Exhibit B, Section 3.2.1</u>
Authorization Documents	No forms are provided	<u>Exhibit B, Section 3.2.1</u>
Identification of Proposer and Equity Members	<u>Form B-1</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Proposer Organization	<u>Form B-2</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Major Participants, and Identified Contractors	<u>Form B-3</u>	<u>Exhibit B, Section 3.2.2</u>
Letter accepting joint and several liability, if applicable	<u>No forms are provided</u>	<u>Exhibit B, Section 3.2.2</u>
Responsible Proposer and Major Participant Questionnaire	<u>Form C</u>	<u>Exhibit B, Section 3.2.3</u>
Industrial Safety Record for Proposer and Major Participants	<u>Form D</u> (as applicable)	<u>Exhibit B, Section 3.2.4</u>
Personnel Work Assignment Form and Commitment of Availability	<u>Form E</u>	<u>Exhibit B, Section 3.2.5</u>
Letter(s) Regarding Pre-Proposal Submittals	No forms are provided	<u>Exhibit B, Section 3.2.6</u>
Non-Collusion Affidavit	<u>Form F</u>	<u>Exhibit B, Section 3.2.7</u>
Buy America Certification	<u>Form G</u>	<u>Exhibit B, Section 3.2.8</u>

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
DBE Certification	<u>Form H</u> No forms are provided for the DBE Performance Plan or Job Training Plan	<u>Exhibit B, Section 3.2.9</u>
Surety/Financial Institution Information	No forms are provided	<u>Exhibit B, Section 3.2.10</u>
Conflict of Interest Disclosure Statement	<u>Form I</u>	<u>Exhibit B, Section 3.2.11</u>
Equal Opportunity Employment Certification	<u>Form Q</u>	<u>Exhibit B, Section 3.2.12</u>
Lobbying Certification	<u>Form R</u>	<u>Exhibit B, Section 3.2.13</u>
Debarment and Suspension Certification	<u>Form S</u>	<u>Exhibit B, Section 3.2.14</u>
Insurance	<u>No forms are provided</u>	<u>Exhibit B, Section 3.2.15</u>
Confidential Contents Index	<u>No forms are provided</u>	<u>Exhibit B, Section 3.2.16</u>
C. Proposer Election of Termination for Convenience Calculation Method		
Election of Termination for Convenience Calculation Method	<u>Form V</u>	<u>Exhibit B, Section 3.4</u>
D. Volume 1 Appendices		
Copies of Organizational Documents	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
Proposer Teaming Agreement or Key Terms	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
Executed Contracts or Term Sheets/Heads of Terms	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
E. Proposal Security (Proposal Bond or Proposal Letter of Credit)		
Proposal Bond	<u>Form K-1</u>	<u>Exhibit B, Section 3.3.1</u>
Proposal Letter of Credit	<u>Form K-2</u>	<u>Exhibit B, Section 3.3.2</u>

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
F. Escrow Agreement		
Escrow Agreement	<u>Form L</u>	<u>Exhibit B, Section 3.5</u>
G. Preliminary Performance Plans		
Preliminary Project Management Plan	No forms are provided	<u>Exhibit B, Section 4.1</u>
Preliminary Project Baseline Schedule for Design and Construction	No forms are provided	<u>Exhibit B, Section 4.1.2</u>
Completion Deadlines	<u>Form N</u>	<u>Exhibit B, Section 4.1.2</u>
Design-Build Plan	No forms are provided	<u>Exhibit B, Section 4.2</u>
Operations and Maintenance Approach	No forms are provided	<u>Exhibit B, Section 4.3</u>
H. Volume 2 Appendices		
Key Personnel Resumes	No forms are provided	<u>Exhibit B, Section 3.2.5</u>
Technical Drawings, Graphs and Data	No forms are provided	<u>Exhibit B, Section 4.2</u>

Financial Proposal

Proposers shall follow the order of the Financial Checklist in their submissions. A referenced copy of this document shall be submitted with the Financial Proposal.

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
A.	Updated financial information Proposer must provide the corporate and financial information identified in <u>Section 2.0 of Exhibit C</u> , for the Proposer, Equity Members, Design-Builder, any Guarantor and any other Financially Responsible Party		
A1	Audited Fiscal Financial Statements for all periods subsequent to SOQ and unaudited interim financial statements (<u>Exhibit C, Section 2.0</u>)		
A2	Financially Responsible Party letters of support (as required) (<u>Exhibit C, Section 2.0</u>)		
A3	For publicly held companies, most recent SEC 10-K and 10-Q reports and any 8-Ks filed since the SOQs (<u>Exhibit C, Section 2.0</u>)		
A4	Credit Ratings (<u>Exhibit C, Section 2.0</u>)		
A5	Letter regarding material change in financial condition since submission of the SOQ and for next reporting period (<u>Exhibit C, Section 2.0</u>)		

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
A6	Letter disclosing all material off balance sheet liabilities (<u>Exhibit C, Section 2.0</u>)		
B	Financial Plan (<u>Exhibit C, Section 3.0</u>)		
B1	Financial Plan Executive Summary (<u>Exhibit C, Section 3.1</u>)		
B1	Identity of Financial Institution (<u>Exhibit C, Section 3.2</u>)		
B2	Range of Financing Sources (<u>Exhibit C, Section 3.3</u>)		
B3	Details for Core Lender(s) and Lead Underwriter(s) Commitment Letters (<u>Exhibit C, Section 3.4</u>)		
B4	[Reserved]		
B5	Details of Equity Source and letters from Equity Members (<u>Exhibit C, Section 3.5</u>)		
B6	Financial Advisor letter (<u>Exhibit C, Section 3.6</u>)		
B7	Schedule for Commercial and Financial Close (<u>Exhibit C, Section 3.7</u>)		
B8	Summary Cost Table and Financial Plan Summary Forms (<u>Forms O and P, Exhibit C, Section 3.8</u>)		
C	MAP Proposal (Form J) (<u>Exhibit C, Section 4.0</u>)		

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
D	Financial Model (<u>Exhibit C, Section 5.0</u>)		
D1	Financial Model (<u>Exhibit C, Section 5.1 to 5.2</u>)		
D2	Financial Model Assumptions Book (<u>Exhibit C, Section 5.3</u>)		
D3	Instructions on operations of the Financial Model (<u>Exhibit C, Section 5.4</u>)		
E	Cost and Pricing Data (<u>Exhibit C, Section 6.0</u>) (to be submitted to escrow)		
F	Independent Insurance Broker/Consultant Letter (<u>Exhibit C, Section 7.0</u>)		